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

HCJ 9332/02

In the matter of:

- 1. I. Jarar**
- 2. HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger (Reg. Assoc.)**

both represented by attorneys Taraq Ibrahim (Lic. No. 31081) and/or Yossi Wolfson (Lic. No. 26174) and/or Adi Landau (Lic. No. 29189) and/or Tamir Blank (Lic. No. 30016), of HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger, 4 Abu Obeideh Street, Jerusalem
Tel. 02-6283555; Fax. 02-6276317

The Petitioners

v.

Commander of IDF Forces in Judea and Samaria

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

The Respondent

Petition for Writ of Habeas Corpus

A petition is hereby filed for an order nisi, directed to the Respondent and ordering him to appear and show cause why he does not notify the family of Petitioner 1 as to the whereabouts of Petitioner 1, who was detained by Israel's security forces: if he is being held by the Respondent or by anyone on his behalf – where he is being held and pursuant to which law; and if he was released or transferred to another entity – when, where, to whom, and what the Respondent knows about the current location of Petitioner 1.

Request for Urgent Hearing

The Honorable Court is requested to set an urgent hearing on the petition.

This petition involves the most fundamental right of a detainee detained by soldiers or other security forces of Israel during the course of their operations in the West Bank: that the fact of his detention and his whereabouts be known. The exercise of other rights of the detainee

depends on this right: to legal representation, to intervention in matters relating to the conditions of his detention, and so on. His family also has the right to know what befell their relative and where he is being held.

The law provides that notification of the place where a detainee is being held must be given to a relative *without delay*. In the matter of Petitioner 1, *eight days* have already passed since he was detained. Despite the attempts of Petitioner 2 to locate him, the Respondent has not stated where the detainee is being held.

The family's uncertainty, concern, and anxiety grow with each passing day. The passing time also frustrates – minute by minute – exercise of the most fundamental right of persons who are in custody and unable to protect themselves.

If he is still in the hands of the state authorities, the family is entitled by law to know *immediately* where he is and to appoint an attorney to represent him in the detention proceedings. If he is no longer in state hands, the state must rapidly provide all information that will assist in locating him and in protecting him, if protection is required.

In a number of habeas corpus petitions filed in recent months that Petitioner 2 filed with this Honorable Court regarding residents of the Occupied Territories detained by soldiers or other Israeli security forces, the Court set a *maximum period of twenty-four hours* in which the Respondent must respond to the petition. For example, in HCJ 8352/02, *Habaiba et al. v. Commander of IDF Forces in the West Bank* (filed on 2 October 2002); HCJ 8417/02, *Abu Abid et al. v. Commander of IDF Forces in the West Bank* (filed on 3 October 2002); HCJ 8488/02, *Nabatiti et al. v. Commander of IDF Forces in the West Bank* (filed on 7 October 2002).

Attached hereto are the following documents:

A copy of the first petition and decision of 2 October 2002 in HCJ 8352/02, referred to above, *marked P/1 and P/1A*.

A copy of the first petition and decision of 3 October 2002 in HCJ 8417/02, referred to above, *marked P/2 and P/2A*.

A copy of the first petition and decision of 7 October 2002 in HCJ 8488/02, referred to above, *marked P/3 and P/3A*.

The grounds of the petition are as follows:

The facts

The Petitioners' interest

1. Petitioner 1, 22, is a resident of Wadi Burqin (Jenin District). On 27 October 7 2002, IDF forces entered his house, searched it, and then arrested him. That same day, Petitioner 2 requested the Control Center of the Military Police Officer Command to locate Petitioner 1. On 31 October, the Control Center responded that it was not holding him. Petitioner 1's family has not heard from him since his arrest.
2. Petitioner 2 is a human rights association that assists residents of the Occupied Territories whose rights have been violated by the Respondent. Its activities involve, inter alia, providing assistance in locating persons detained by Israeli security forces.

Repeated failure

3. The failure to locate Petitioner 1 is not unique. In recent months, we have witnessed serious flaws in the functioning of the Control Center, which was given the task of locating detainees and providing the information to their families and to organizations that deal in these matters. The flaws have already led to many petitions being filed with this Honorable Court, which in almost every case led to the detainee being rapidly located in a detention facility. The cases that reach this Honorable Court are only the tip of the iceberg of the problems that Petitioner 2 faces on a daily basis. Some failures result from technical problems that can be resolved (such as computer-communication problems between the Control Center and the detention facilities). Some of the problems result from flaws in the work procedures within the unit. Some of the problems result from defects in the detaining officials' reporting to the Control Center; for example, the Control Center receives updated information from the Police and the Prisons Service by computer. However, we find that the information provided by these bodies does not include (at least in some cases) information on detainees held in Police and Prisons Service facilities in the General Security Service wings. To obtain information on these detainees, the Control Center contacts the GSS. The responses from the GSS are not made immediately, and the delay can last a week. This delay breaches the High Court's ruling (in *Hirbawi*, cited below) requiring the Control Center to receive updated information, *once a day*, on the location of each detainee.

On 30 September 2002, Petitioner 2 wrote to the State Attorney's Office regarding the delay in GSS responses. Petitioner 2 has not yet received a response to its letter.

A copy of the letter is attached hereto and *marked P/4*.

Legal argument

4. The right to notification on the arrest of an individual and his whereabouts can be stated succinctly. This right is a fundamental right both of the detainee and of his

family. This right is part of the basic right to human dignity. A state authority that does not ensure its fulfillment, but hides persons in its custody from the detainees' relatives for a substantial period of time, strikes a cruel blow at the very humanity of the detainee and his family. In the words of the vice-president, M. Elon, in H CJ 670/89, *Odeh et al. v. Commander of IDF Forces in Judea and Samaria*, Piskei Din 43 (4), 515, p. 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.

5. This fundamental right creates the obligation of the relevant authorities to provide this information to the detainee and his family. This obligation is also enshrined in statute and in the common law. Section 78A(b) of the Order Regarding Defence Regulations (Amendment No. 53) (Judea) (No. 1220), 5748 – 1988, which amended the Order Regarding Defence Regulations (Judea and Samaria) (No. 378), 5730 – 1970, states that:

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.

(emphasis added)

In H CJ 6757/95, *Hirbawi et al. v. Commander of IDF Forces in Judea and Samaria*, *Takdin Elyon* 96 (1) 103, this Honorable Court gave the effect of a judgment to an arrangement that the parties reached, as follows:

A) Upon the detention of a person who is a resident of the region, notification on his detention and on his place of detention will be delivered without delay by telephone to a telephone number that the detainee gives to the detaining official.

The detaining official will provide said telephone notification, and will record on a form prepared for this

purpose the details of the notification that he conveyed and the particulars of the person who received the notification.

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

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

Where the detainee did not provide details for the delivery of notification by telephone, a postcard will be sent, at the time of his detention, to his relatives at the address that the detainee provides.

B) The IDF's Control Center (whether the Control Center or another entity) will receive from all entities (IDF, Israel Police Force, Prisons Service) updated information once a day on the arrest and place of detention of a detainee, in a manner that enables it to locate the detainee, upon written request by an external person or entity.

C) The IDF Control Center will provide details from the said information in response to a written request of public organizations that deal in such matters and/or upon the request of an attorney representing the detainee or his family.

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

D) IDF officials will check with officials of the Palestinian Authority on the feasibility of providing the said information also to the D.C.O., so that the said notification can also be delivered through its auspices.

6. Thus, the state authority that detains a person from the region is required to give notification to the detainee's family, either by telephone or by other means, as to the fact of his arrest and regarding the place where he is being held. As a back-up to this duty, the mechanism enables the families to turn to organizations like Petitioner 2 and

to attorneys to obtain updated information from the IDF's Control Center on the whereabouts of their loved ones.

7. There is also no dispute that the state has the obligation to assist in locating detainees, to the degree that it has information that enables discovery of the detainees' whereabouts. The individual's fundamental rights to liberty, life, and bodily integrity lie in the balance. The rights to life and bodily integrity have a special constitutional status: pursuant to the Basic Law: Human Dignity and Liberty, the state is required not only not to harm detainees, but to act to protect them.
8. When the last information about an individual is that he was in state custody, these obligations obtain a special character. A liberal democracy cannot accept a situation in which it detains people and causes them to disappear as if the earth had swallowed them.
9. By its nature, this petition is not supported by affidavits and powers of attorney given by the Petitioners, except for the affidavit (and power of attorney) on behalf of Petitioner 2, relating to the information on Petitioner 1 in its office and to the actions that it has taken in this matter.

For the above reasons, the Honorable Court is requested to issue urgently a writ of habeas corpus as requested at the beginning of the petition, and after receiving the Respondent's reply, make the order absolute, and to order the Respondent to pay court costs and attorneys' fees.

Jerusalem, 3 November 2002

[signed]

Tareq Ibrahim, Attorney
Counsel for Petitioners