At the Supreme Court **HCJ 4589/12**

Sitting as the High Court of Justice

In the matter of:

1. **_____ a-Din,** ID No. _____
2. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger - RA**

Represented by counsel, Adv. Daniel Shenar (Lic. No. 41065) and/or Sigi Ben-Ari (Lic. No. 37566) and/or Hava Matras-Irron (Lic. No. 35174) and/or Ido Blum (Lic. No. 44538) and/or Noa Diamond (Lic. No. 54665) and/or Nimrod Avigal (Lic. No. 51583) and/or Benjamin Agsteribbe (Lic. No. 58088) and/or Talia Yehuda (Lic. No. 56918)

Of HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger,

4 Abu Obeida Street, Jerusalem, 97200

Tel. 02-6283555; Fax. 02-6276317

The Petitioners

v.

1. **Commander of the Israeli Military Forces in the West Bank**
2. **Chief Military Police Officer**
3. **Israel Prison Service Commissioner**
4. **Israel Police Commissioner**

Represented by the State Attorney's Office,

29 Salah a-Din, Jerusalem 91010

The Respondents

Petition for Writ of Habeas Corpus

A petition for an *order nisi* is hereby filed which is directed at the respondents ordering them to appear and show cause as follows:

a. To respondent 1 - why he does not notify the family of petitioner 1 (hereinafter: the "**petitioner**") of what happened to the petitioner, who was detained by Israeli security forces on June 10, 2012 and whose whereabouts are presently unknown; if he is being held by him 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 agency – when, where, to whom, and what he knows about the current location of the petitioner. To the extent that the petitioner is being unlawfully held by an Israeli authority, the court is requested to order his release.

b. To respondent 2 – why he does not maintain updated information concerning the detention and place of detention of each and every detainee, resident of the Occupied Palestinian Territories, (hereinafter: the OPT) who is being held by any of the state's authorities.

c. To respondents 3 and 4, if the petitioner is being held by either of them – why they do not keep record as required by law, and in real time, of the place of detention of detainees.

Request for Urgent Hearing

The honorable court is requested to schedule an urgent hearing in the petition.

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

The law provides that notification of the place of detention of a detainee shall be given to his family ***without delay***. No information was given to petitioner's family by any official authority. Due to the fact that there is no record of the petitioner on the computer terminals of respondents 2 or 3, the petitioner's family is unable to locate him.

The family's uncertainty, concern, and anxiety grow with the passage of time. The passing time also frustrates – minute by minute – the exercise of the most fundamental rights of a detainee who is in custody and is unable to protect his interests by himself.

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

In a number of *habeas corpus* petitions filed by petitioner 2 with this honorable court regarding residents of the OPT detained by soldiers or other Israeli security forces, the court set a ***maximum period of twenty-four hours*** in which the respondent had to respond to the petition. For instance, in HCJ 5117/09 **Nazal et al. v. Commander of IDF Forces in the West Bank**.

The grounds for the petition are as follows:

Petitioner's Matter

1. The petitioner, a minor, is 16 years old and a resident of the District of Nablus.

2. On June 11, 2012, petitioner's family requested petitioner 2 (hereinafter: **HaMoked**), to assist it to locate the petitioner who, on June 10, 2012, at around 3:00 P.M., was detained by soldiers, while passing the Gitit checkpoint on his way home, near the settlement Ma'ale Efrayim. The petitioner works as a laborer in said settlement, and the other laborers working with him witnessed the arrest and called the family to notify it of same.

3. It should be further noted that no official authority has updated petitioner's family of his arrest and location, although about 24 hours have elapsed from the time of the arrest, and the case at hand concerns a minor.

4. Immediately after having been contacted by the family, HaMoked requested the control center located at the headquarters of respondent 3 (hereinafter: the **IPS control center**) to assist it to locate the petitioner. The IPS control center replied that it had no record of the petitioner.

5. At the same time, HaMoked telephoned the Shomron temporary detention facility, to which detainees who are detained in the northern part of the West Bank are taken. HaMoked was informed by an official at the Shomron facility that no minor or person matching the information provided had arrived at the facility.

6. Furthermore, HaMoked contacted the operations room of the army's Jordan Valley Brigade in an attempt to obtain information regarding the detainee, who was detained in the brigade's region. However, the operations room replied that the information was classified and that they were not prepared to divulge it.

7. Finally, HaMoked contacted the Ma'ale Efrayim police station in an attempt to find out whether the detainee was held there (detainees are sometimes transferred to nearby police stations, before being transferred to another detention facility). A police officer at the station said that he understood that the petitioner was classified as an "ISA[1] detainee", but that no one was willing to give him information concerning the petitioner's detention place.

8. Hence, no information was given to the family regarding petitioner's detention and whereabouts, and presently, he is not recorded as a detainee. Consequently, at present, the petitioner is entirely defenseless against the arbitrariness of the force which detained him. **These omissions have been taking place for almost 24 hours, as of the time of filing this petition (again, it should be emphasized that a 16-year-old minor is concerned).**

9. Petitioner 2 is a human rights organization which assists Palestinian residents of the West Bank whose rights were violated by the respondent. Its activities involve, *inter alia*, providing assistance in locating detainees detained by Israeli security forces.

Legal Argument

Notification of Place of Detention– Obligation of Respondents 1 and 2

10. The right to be notified of a detention of an individual and of his whereabouts cannot be overstated. This is a fundamental right - both of the detainee and of his family. It constitutes a part of the fundamental right to human dignity. A regime that does not strictly enforce it, but rather conceals persons in its custody from their relatives for substantial periods of time acts cruelly and severely injures the very humanity of the detainee and his family.

11. Section 53(A) of the Order regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651) 5770 – 2009 states that:

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

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

[1] The acronym ISA stands for Israel Security Agency, formerly also known as the General Security Service or the Shin Beit (translator note).

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

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

> "a) Upon the detention of a person who is a resident of the Area, **notification of his detention and place of detention will be delivered without delay** by telephone to a telephone number provided to the detaining official by the detainee.
>
> The detaining official will give such telephone notification, and will record, in a form prepared for this purpose, the details of the notification he has given and the details of the person who received the notification.
>
> **In the event that the detainee so requests, notification by telephone will also be given to an attorney whose name and details will be provided by the detainee**. The detaining official will inform the detainee of his above right...
>
> b) **The IDF control center** (be it the control center or another body) **will receive from all bodies… updated information regarding the detention and place of detention of a detainee, once daily, so that the detainee may be located** in response to a written request from an external person or body.
>
> c) **The IDF control center will provide details from said information in response to written requests submitted by public organizations dealing with such matters** and/or in response to written requests submitted by counsel to the detainee or his family.
>
> Following delivery of a written request, the requesting party may obtain the information by telephone."

14. This fundamental right is also expressed in the General Attorney's Guidelines (guideline 4.3002 dated January 4, 2004) which state: "**The obligation to give**

notification regarding a person's detention has been recognized by the courts as a fundamental right of the detainee and his relatives, deriving from human dignity and general principles of justice".

15. Thus, it is the obligation of respondent 1 to notify the detainee's family of his detention and his place of detention, either by telephone or by any other means. It is the obligation of respondent 2 to maintain updated information concerning the detention and place of detention of each and every detainee. In support of this obligation, a mechanism was established to enable families to turn to organizations like HaMoked and to attorneys, in order to obtain updated information regarding the whereabouts of their loved ones through the control center.

16. The issue of detainee location and the functioning of the control center was also discussed in the decision of the Honorable Registrar Boaz Okon in HCJ 9332/02 **Jarar v. Commander of IDF Forces**. In his decision, the honorable registrar writes:

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

17. Hence the two initial remedies requested in the petition involving the obligation of the respondents to give notification of the detention and whereabouts of a person and the obligation of respondent 2, through the control center, to maintain updated information concerning the detention and place of detention of each and every detainee held by any state authority.

Keeping Record of the Petitioner in the Place of Detention

18. It is clear that each and every detainee has the right to have his place of detention clearly known to all. The exercise of the detainee's rights depends on record being kept in his place of detention. Only then can his family and

attorney check with the officials in charge of the place of detention on his status, medical condition, detention conditions, if and when he can be visited, etc. Only then can they act to ensure his rights as a detainee are upheld. The right of a detainee to be present at the legal proceedings conducted against him also depends on proper record being kept in his place of detention.

19. The failure to keep proper record of a detainee in the place of detention severely infringes upon the fundamental rights of the detainee and his family. A state authority which fails to strictly comply with the requirement to keep record of a detainee in the place of detention and to provide updated information based on such records, does not fulfill its obligations and abuses its power.

20. The obligation to keep proper record of detainees is mandated by statute both with respect to detainees held by respondent 3 as well as detainees held by respondent 4.

Keeping Record of Detainees Held by Respondent 3

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

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

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

> **An updated and precise record shall be kept in prison with respect to each prisoner held therein**, including the legal basis for his incarceration, the term of incarceration or detention, a calculation of the date upon which the incarceration shall terminate and other dates required to calculate minimum time periods for eligibility for certain benefits (such as: vacations) or vested rights (such as: appearing before the Prisoners Early Release Board)."

Keeping Record of Detainees Held by Respondent 4

23. The provisions concerning the obligation to keep record of detainees held by respondent 4 are yet stricter and farther reaching than those applicable to detainees held by respondent 3. Section 3A(2) of the National Headquarters

Orders March 12, 2001 entitled "Handling Detainees in the Detention Facility" provides:

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

24. Hence, the third remedy requested in this petition, concerning drawing conclusions from the case at hand, **which is not the first case in which HaMoked has encountered a failure on the part of the respondents to comply with the procedures set forth in the law**, and strict compliance with procedures which will prevent the disappearance of detainees, such as the petitioner.

25. By its nature, this petition is not supported by affidavits and powers of attorney given by the petitioner. Attached to this petition is an affidavit and power of attorney given on behalf of HaMoked relating to the receipt of information regarding 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 urgently issue an *order nisi* as requested, and after receiving respondent's reply, make the order absolute, and to order the respondent to pay trial costs and attorneys' fees.

Jerusalem, June 11, 2012

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Daniel Shenhar, Attorney

Counsel to the petitioners

(File No. 73451)