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At the Supreme Court
Sitting as the High Court of Justice

H CJ 8696/02

In the matter of:

1. **Shahin**
2. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

all represented by counsel, Att. Tareq Ibrahim (Lic. No. 31081) and/or Yossi Wolfson (Lic. No. 26174) and/or Hisham Shbaita (Lic. No. 17362) and/or Adi Landau (Lic. No. 28189) and/or Tamir Blank (Lic. No. 30016) Of HaMoked Center for the Defence of the Individual, founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

1. **Commander of IDF Forces in the West Bank**

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, which is directed at the Respondent, ordering him to appear and show cause why he should not notify the family of Petitioner 1, who was arrested by Israeli security forces, what befell him: if he is being held by the Respondent or by anyone acting 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 Expedited 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 Israeli security forces during the course of their operations in the West Bank: that the fact of his detention and his whereabouts be known. The ability to exercise other rights to which the detainee is entitled depends on this right: the right to counsel, to intervention in matters relating to the conditions of his detention, and so on. The detainee's family also has the right to know what befell their relative and where he is being held.

The law provides that notification of the detainee's whereabouts must be given to a relative *without delay*. In the matter of Petitioner 1, five 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 – the 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 state authorities, the family is entitled by law to know *immediately* where he is and to appoint a lawyer to represent him in the detention proceedings. If he is no longer in state hands, the state must *urgently* provide all information that will assist in locating him and in protecting him, if protection is required.

In a number of *habeas corpus* petitions Petitioner 2 filed with this Honorable Court in recent months 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 was required to 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 page of the petition and decision of 2 October 2002 in HCJ 8352/02, referred to above, is marked P/1 and P/1A.

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

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

The grounds for the petition

The facts – The matter of the Petitioners

1. Petitioner 1, 24, is a resident of Salfit, Nablus District. On 5 October 2002, at 2:00 A.M., soldiers entered his home, searched it, and ultimately detained him. On 6 October 2002, Petitioner 2 contacted the Control Center of the Military Police with a request to locate Petitioner 1. The Control Center responded on 10 October 2002 that they had not found his place of detention.
2. Petitioner 2 is a human rights organization that assists residents of the Occupied Territories whose rights have been denied by the Respondent. Its activities include, in part, helping locate detainees held by Israeli security forces.

The legal argument

3. The right to receive notification of the arrest and whereabouts of an individual 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 rather hides persons in its custody from the detainees' relatives for a substantial period of time, acts cruelly and strikes 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, 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 have them inform his relatives of his arrest and his place of detention so that they will be apprised of what befell their detained relative, and of how they may 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

4. This fundamental right to human dignity gives rise to an obligation on the part of the relevant authorities to provide information about the detention and the detainee's whereabouts to the him and his family. This obligation is also enshrined in statute and in common law. Section 78A(b) of the Order Regarding Defense Regulations (Amendment No. 53) (Judea) (No. 1220), 5748 – 1988, which amended the Order Regarding Defense 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 of his detention and of his place of detention will be delivered without delay by telephone to a telephone number that the detainee provides 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 delivered and the particulars of the person who received the notification.

In the event that the detainee so requests, notification by telephone will also be delivered to a lawyer 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 delivered, 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 Control Center (whether the Control Center or another entity) will receive from all entities (IDF, Israel Police, Israel Prison Service) updated information once a day about 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 said information in response to a written request by public organizations that deal in such matters and/or upon the request of a lawyer representing the detainee or his family.

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

- D) IDF officials will inquire with officials of the Palestinian Authority about the feasibility of providing said information also to the D.C.O., so that said notification can also be delivered through this office.

5. Thus, any state authority that detains a person from the Region is required notify the detainee's family, either by telephone or by other means, that he has been arrested and where he is being held. To aid in the fulfillment of this duty, a mechanism has been put in place to enable families to turn to

