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Date: July 27, 2014

In your response please refer to: 83748

To:

Adv. Osnat Mandel
Head of HCJ Division
State Attorney's Office
Ministry of Justice
Jerusalem

By fax: 02-6467011

Urgent

Dear Madam,

Re: **Pre-petition regarding Identity of Detainees from Gaza held in Israel**

1. As part of its activity, HaMoked – Center for the Defence of the Individual, protects the rights of Palestinian detainees held in Israel. In this context, HaMoked has taken action to protect the rights of Palestinian detainees at the Ofer camp, which was used as a military detention facility (in HCJ 3239/02 **Iyad Mar'ab et al. v. Commander of IDF Forces in the Judea and Samaria Area** and HCJ 3278/02 **HaMoked – Center for the Defence of the Individual v. Commander of IDF Forces in Judea and Samaria Area**), uncovered the existence of the secret detention facility 1391 (in HCJ 9733/03 **HaMoked – Center for the Defence of the Individual v. the State of Israel**), and located detainees, residents of Gaza, who were detained within the framework of the "Cast Lead" operation (HCJ 289/09 '**Attar v. Israel Defence Forces**).
2. According to various reports in the media, since last Wednesday, hundreds of Gaza residents have been detained by Israel, within the framework of the war which takes place over there. The state conceals their identity, their exact number, their place of detention, and their holding conditions.
3. As is known, Gaza is currently in a state of chaos. Many families fled their homes, scattered around and do not know what happened to their loved ones. Many of the dead have not yet been identified and some of them are still buried under the ruins. Under these circumstances there is no way to find out who of the family members was detained and is held in Israel and obviously,



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it is impossible to ensure that the rights of the detainees are protected and that due process is maintained in their matter.

4. Even in a state of fighting Israel is obligated to abide by the law, and protect basic human rights:

Israel is not an isolated island. It is a member of an international community... The military operations of the army are not conducted in a legal vacuum. There are legal norms — partly from customary international law, partly from international law enshrined in treaties to which Israel is a party, and partly from the basic principles of Israeli law — which provide rules as to how military operations should be conducted (HCJ 4764/04 **Physicians for Human Rights v. Commander of IDF Forces in Gaza**, IsrSC 58(5) 385, 391).

5. Under applicable law, even in a state of fighting, notice of a person's detention and his whereabouts is an essential condition for the protection of his fundamental rights: "The state, which has lawfully detained a person, has the obligation to inform his relatives of his detention and whereabouts, so that they know that their relative was detained and where he is being held and will be able to provide him with the necessary assistance he requires in order to protect his liberty..." (quote from the words of the Honorable Justice Arbel in paragraph 17 of her judgment in HCJ 8435/12 **Mahmud Abu Sal v. Commander of Military Forces in the West Bank**, TakSC HCJ 8435/12 (3), 8131).
6. HaMoked, as an organization which takes action to locate detainees and protect their rights, believes that it is its obligation, at this time, to act in lieu of the detainees' families, who are currently under fire and in a state of uncertainty, and request information regarding the identity of the detainees and their place of detention. This is the only possible way to protect their fundamental rights. This is the place to note that in HCJ 8278/02 **HaMoked – Center for the Defence of the Individual v. Commander of IDF Forces in Judea and Samaria Area**, IsrSC 57(1) 385, HaMoked, as a public petitioner, petitioned against the incarceration conditions at the Ofer facility, and the court enabled its representatives to visit the detainees who were held in said facility, together with an attorney. If this was the case then, it applies even more forcefully now, when even the identity of the detainees is not known.
7. In view of the above, you are hereby requested to transfer to HaMoked the names and ID numbers of all detainees from Gaza who are held by the

security authorities within the limits of the State of Israel, and the details concerning the place of detention of each one of them.

8. It should be further noted that different parties, including human rights organizations and private attorneys, contacted HaMoked for the purpose of obtaining information regarding the identity of the detainees and their place of detention so that they may visit them and represent them.
9. We request to receive the information urgently, so that proper arrangements may be made by us in this regard. A situation in which human beings are held for five whole days and nights under the cover of secrecy is inconceivable, and we shall clearly act to rectify it should we fail to receive an answer.

Sincerely,

Daniel Shenhar,
Advocate

CC:

Mr. Yehuda Weinstein, Attorney General, by fax 02-6467001

Major General Dani Efroni, Military Advocate General, by fax 03-5694526

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