

In the matter of:

**1. \_\_\_ Wadi and 61 Petitioners in the attached list**

Represented by counsel, Adv. Nadine Abu Arafeh (Lic. No. 89020) and/or Nadia Daqqa (Lic. No. 66713) and/or Daniel Shenhar (Lic. No. 41065) and/or Tehila Meir (Lic. No. 71836), and/or Maisa Abu Saleh-Abu Akar (Lic. No. 52763) and/or Alma Elimelech (Lic. No. 82867)

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. Israel Defense Forces**
- 2. Chief Military Police Officer**
- 3. Commissioner of Israel Prison Service**
- 4. National Security Council**
- 5. Attorney General**
- 6. Military Advocate General**

Represented by the State Attorney's Office  
29 Salah a-Din, Jerusalem 91010

**The Respondents**

**Petition for writ of *Habeas Corpus***

Petition for writ of *Habeas Corpus* is hereby filed which is directed at the Respondents ordering them as follows:

- a. Inform the families of Petitioners 1-62 (hereinafter: the **Petitioners**), all registered as Gaza Strip residents, who were arrested either in Israel or in the Gaza Strip, and whose whereabouts are unknown, who holds them; where they are held and according to which law; to the extent they were released or transferred to another body – when, where and to whom and what is known about their current whereabouts. To the extent the Petitioners are unlawfully held by an Israeli authority, **including in a detention facility which is not a declared detention facility**, the Honorable Court shall be requested to issue an order for their immediate release.
- b. Decide once and for all which body is responsible for providing information about the holding place of the Petitioners and others in their condition; disclose the identity of

the bodies holding information about the location in which the Petitioners and others in their condition are held.

- c. To the extent that the Petitioners are held in a detention facility which until now has not been used as a declared detention facility, instruct to present the order declaring it an incarceration facility.
- d. Order the Respondents to enable the Petitioners to meet with lawyers to examine their incarceration conditions and the lawfulness of their incarceration.

## Motion for an Urgent Hearing

The honorable court is hereby requested to schedule and urgent hearing in the Petition.

### The grounds for the petition are as follows

1. The Petition at hand concerns the most fundamental right of a detainee arrested by soldiers or other Israeli security forces: that the fact of their detention and whereabouts shall be known. The exercise of the detainee's other rights depends on this right – the right to legal representation, the right to intervention regarding their incarceration conditions and even their right to life and that their liberty shall not be arbitrarily denied and the like. It is also the right of the detainee's family to know what happened to their loved one and where they are held.
2. On October 7, 2023 a bleeding, harsh and unprecedented war broke out which continues to this date. However, in time of war, the legal obligations still apply. The reports in the media draw a picture of mass detentions of Gaza Strip residents – either in Israel or in the Gaza Strip – and it emerges from the official reports of the IDF spokesperson to the media that a considerable part thereof, between 80 to 90 percent, are citizens who are considered "protected residents" according to the laws of war.
3. For over two months, hundreds of calls were received by the call center of HaMoked: Center for the Defence of the Individual (hereinafter: **HaMoked**) from families of Gazan detainees who were arrested either in Israel or Gaza. Only in a handful of cases was HaMoked successful in receiving an answer about the person's whereabouts, mainly following legal proceedings and the passage of a long period of time. Many others, including the Petitioners at hand, are still incarcerated *incommunicado*, completely contrary to the duties and obligations according to international law.
4. Mass detention events, some of which were extensively documented by the media, including the Israeli media, show soldiers acting in a manner which by no means guarantees and protects the bodily integrity and dignity of these people. In some of these reports, individuals of different ages were seen without their clothes, kneeling down and bowing their heads with their hands tied behind their backs or huddled in open vehicles exposed to the cold weather. The reports have even shown in some cases degrading and abusive behavior. These reports raise a substantial and real concern for the life and bodily integrity of said individuals.
5. Holding masses in detention, *incommunicado*, significantly increases the risk that said individuals shall be exposed to torture or other cruel, inhuman or degrading treatment or punishment, while the detention itself may constitute an example of such treatment.
6. Having knowledge of a person's detention and of their whereabouts is a necessary condition for maintaining their basic rights and primarily the right to life and bodily integrity. Keeping such information in confidentiality leaves the detainee particularly vulnerable to torture and violation of other basic rights. The nature of this detention also blocks reliable reports of torture in real time.

7. From testimonies collected by HaMoked it emerges that under the secrecy surrounding the mere detention of Gazan residents and their whereabouts, unlawful interrogation methods were used against them which may amount to torture. Said detainees were held for long periods of time, in inhuman conditions that reach the level of torture and degrading and inhuman treatment violating a person's dignity.
8. Under the veil of secrecy and the total absence of transparency and failure to reply to requests, said incarceration facilities in which Gaza Strip residents are held are *de facto* not governed by the rule of law, including by the denial of the ability to scrutinize the manner of their operation and the horrendous incarceration conditions applied therein.
9. One of the testimonies obtained by HaMoked in the framework of its attempts to locate detainees was the testimony of a Palestinian resident who was born in Gaza and moved to the West Bank about 25 years ago, who was arrested in Israel on October 8, 2023. After a petition for writ of *Habeas Corpus* had been filed in the detainee's matter, HaMoked learnt that the detainee was released on October 18, 2023 and that while in custody he was held in a facility in the "Anatot" area.
10. After his release, in a conversation with HaMoked's representative, the detainee said that Palestinian residents from the Gaza Strip, including laborers who had been working in Israel, were held in severe conditions. The detainee described that he had been held in a "cage" in a military camp without a roof, under the sun, with no food, water, toilet, cigarettes, medications or mattress for three days.
11. Thereafter the detainee was transferred to a 300 square meter camp with a chemical toilet cubicle, severely overcrowded with hundreds of other laborers. The detainee noted that two elderly and sick detainees were held with him in the camp in the same conditions in a pen-like place, without any assistance. When the detainee requested to contact the Red Cross, his request was met with physical and cruel violence and crude swearing by the soldiers. At a certain point an officer came and told the detainees that they were held there because Israeli hostages were held in Gaza and that they were not expected to be released so long as the Israeli hostages were held in Gaza.
12. After three additional days, the detainee was brought before an ISA officer. In the beginning of his interrogation the detainee clarified that he had indeed been born in the Gaza Strip but moved to the West Bank about 25 years ago and was not considered a Gaza Strip resident. The interrogator, who at that point wondered why he had been detained, stopped the interrogation and tried to find out why he was held with Gaza residents while he was a West Bank resident. After things had been clarified the detainee was returned to the camp in which he was held and was released only on the next day.

All the facts relating to the detainee are supported by the affidavit of Mr. Murad Muna, serving as HaMoked's complaints coordinator, who by virtue of his position has communicated with the detainee and received the information directly from him.

The affidavit of Mr. Murad Muna is attached and marked **P/1**.

13. Another testimony obtained by HaMoked is the testimony of Y. Z., a Gaza Strip resident who was arrested together with his brothers and father on November 11, 2023. These

family members were taken from their home in Gaza after the soldiers had broken into their home and interrogated them separately.

14. Y.Z. was incarcerated in an UNRWA school while his father and brothers were taken by the military in a military vehicle to Israel. In the first two days, Y.Z. stayed in the school with no food, water and toilet and was thereafter taken by a military vehicle to the Zikim area after a two-hour drive. Upon his arrival, he had been beaten by 10 soldiers who took him and held him in a room for two nights, handcuffed, with no food or water. Y.Z. was interrogated there for the first time.
15. Thereafter, Y.Z. was taken by a bus together with other detainees who had been arrested in the Gaza Strip to an incarceration facility in the Negev. According to Y.Z.'s description it was not a regular incarceration facility but rather a complex made of corrugated tin unsuitable for holding detainees.
16. From there the detainees had been taken to another facility similar in its description to the former facility, where they were held for four additional days. At the end of said period the detainees had been taken to the Gaza border and were released at the Kerem Shalom crossing.
17. HaMoked learnt of the severe conditions in which said detainees were held only after their release. All the facts relating to Y.Z. are supported by the affidavit of Adv. Nadine Abu Arafah who received the information directly from him.

The affidavit of Adv. Nadine Abu Arafah is attached and marked **P/2**.

18. The above description is consistent with recent publications documenting a similar horrendous reality. It even emerges from these publications that several detainees have died while held by Israel and that it has not been reported until now.

<http://www.haaretz.co.il/news/politics/2023-12-06/ty-article-magazine/.premium/0000018c-3b9b-d11b-a3bf-ffbb16d80000>

<http://www.haaretz.co.il/news/politics/2023-12-18/ty-article/.premium/0000018c-7932-d98c-abef-ffb7fcd7000>

19. Detentions cannot be conducted in the shadows and contrary to the law. These individuals are held in custody without any record and regulated registration, under unknown conditions, without any ability to supervise and inspect their incarceration conditions. These individuals are held in custody for an unknown period and without securing their most basic rights, particularly their right to fair process, their right to meet with lawyers and the right to judicial scrutiny (see HCJ 3239/02 **Mar'ab v. Commander of Military Forces** (February 5, 2003) (hereinafter: **Mar'ab**)). Such mass detentions without transparency, without supervision and control and without providing answers to family members wishing to know what had happened to their loved ones and hire lawyers to represent them are totally prohibited. In addition, due to the lack of transparency and total secrecy it cannot be ascertained that the detainees' most basic needs are provided for, including access to appropriate food and basic health services.

20. Presently too, and after the previous proceedings which were conducted concerning the provision of information to the families of Gazan detainees, there is much we do not know. However, some things are clear and bright as day. It is clear that concealing information on the whereabouts of Gazan detainees is contrary to the international law and even to the Israeli law. It is clear that under the veil of secrecy surrounding their whereabouts they are incarcerated in horrendous conditions amounting to torture, which are also prohibited in a time of war. This secrecy thwarts the ability to exercise detainees' rights and renders ineffective the supervision mechanisms over the incarceration conditions in the facilities in which they are held. Each one of the above separately, and obviously all of them in the cumulative, justify the remedies requested in the Petition at hand.

### **The Petitioners**

21. Petitioners 1-48 are Gaza Strip residents who were arrested and taken by the Israeli forces from the Gaza Strip and their whereabouts are unknown. Petitioners 16 and 42 are minors who were detained and taken from their home in the Gaza Strip.
22. Petitioners 49-62 are Gaza Strip residents who were arrested and taken from the territory of Israel or the West Bank and whose whereabouts are unknown.
23. Naturally, the Petitioners' families are under great distress in the Gaza Strip due to the war. It should be noted that HaMoked received hundreds of additional requests but due to the substantial communication difficulties and collapsing infrastructures in the Gaza Strip, only fragments of information about their loved ones was communicated. The Petitioners at hand are those for which HaMoked succeeded to communicate with their families before the Petition was filed, and to receive updates about them.
24. At this point the Petition is filed on their behalf, but attempts are made to communicate with and receive updated information about the other applicants and hence the need to receive the remedy which is requested in paragraph **b** above.

### **Exhaustion of Remedies**

25. Following the requests of the worried families of the Gazan residents who had been arrested by the Israeli forces from the commencement of the war, HaMoked sent to the control center acting under Respondent 2 (hereinafter: **Incarceration Control Center**) requests for information about their place of detention.
26. The Incarceration Control Center which is the body responsible for providing information on the whereabouts of each incarcerated Palestinian within 24 hours from receiving a request in their matter, gave a general answer whereby "it does not trace Gazan detainees".

27. The above, despite the fact that in a number of petitions which concerned the tracing of Gazan detainees in similar circumstances, the Incarceration Control Center was the authorized body responsible for providing the information on their whereabouts. In the past, when an update was requested about the place of detention of Gazan detainees, the question of the time frame within which the Incarceration Control Center should provide the information was raised, and instead of 24 hours the Respondents notified that due to the circumstances of the war, longer time than usual shall be required, and that they would not be able to commit to a period shorter than 48 hours (see Respondents' response dated July 29, 2014 in HCJ 5226/14 **Abu Reida v. The Military**, and Respondents' response dated January 22, 2009 in HCJ 289/09 **Attar v. The Military**).

A copy of Respondents' response dated July 29, 2014 in HCJ 5226/14 **Abu Reida v. The Military** is attached and marked **P/3**;

A copy of Respondents' response dated Respondents' response dated January 22, 2009 in HCJ 289/09 **Attar v. The Military** is attached and marked **P/4**.

28. The position of the state in the above proceedings, namely **Abu Reida** and **Attar**, was that to the extent that an individual request to locate the whereabouts of a specific Gazan resident is made by the family of said detainee, it can be transferred to the Incarceration Control Center, and it shall be handled within the shortest time possible.
29. For this reason HaMoked contacted the Incarceration Control Center and requested information on the whereabouts of Gazan detainees, including some of the Petitioners, but as aforesaid, the latter gave a general and laconic response stating that "it does not trace Gazan residents".
30. Unlike the position of the state in the past, in HCJ 7439/23 **Alwahidi v. The Military**, a proceeding which was conducted in the first days of the war in a petition for a writ of *Habeas Corpus* in the matter of two journalists who disappeared after having been detained by the Israeli forces, the state claimed that the military had no obligation to give HaMoked any information about detained Gazan residents.
31. In this context it should be noted that due to the numerous requests and due to the strict position of the Incarceration Control Center, HaMoked requested information about the incarceration policy of different categories of Gazan residents, whether arrested as combatants in the framework of the hostilities or as uninvolved civilians, and even about Gazan laborers who have been lawfully staying in Israel when the war broke out and who are apparently held by Israel. In the absence of response to HaMoked's request a petition was filed on October 22, 2023 in HCJ 7637/23 **Kashta v. Israel Defence Forces** (hereinafter: **Kashta**). Following said petition the Respondents notified on October 28, 2023 that the body authorized to provide the requested information was Respondent 4 (the **National Security Council**).
32. After it was clarified that the National Security Council was the body responsible for providing the requested information, a request was sent to it in the matter of the petitioners in **Kashta** and on that day a partial response was received about their holding place.

33. In the framework of H CJ 7946/23 **Abu Abed v. Israel Defense Forces**, an additional proceeding which also concerned the tracing of Gazan detainees, which was filed after the National Security Council had refrained from answering HaMoked's requests for information about hundreds of Gazan detainees, the requested information concerning the petitioners in said case was given.
34. According to the above, and in the absence of another address, HaMoked continued addressing the National Security Council in the matter of dozens and even hundreds of Gaza Strip residents who were arrested by the Israeli forces, and individuals with respect of whom there is no information whether they are held as detainees, or not.
35. On November 22, 2023 the National Security Council answered HaMoked's requests concerning different categories of Gazan detainees, and noted that it was not the appropriate body which can provide information about the holding of Gaza Strip residents and that the email address which was given in the state's response in **Kashta** was opened only for the purpose of making inquiries with respect to the petitioners in the proceedings which were pending before the Supreme Court and that said email account was about to be closed. At the same time, the National Security Council provided an address which can be contacted with respect to Gazan detainees who had been staying in Israel prior to the war and who are still held by the state authorities: [anatot.idf@gmail.com](mailto:anatot.idf@gmail.com). It seems that this email address belongs to the "Anatot" facility, but no explanation was given whether said body was also responsible for tracing detainees in other facilities that the Incarceration Control Center refuses to locate, including, for instance, in the military complex "Ofer" or in "Sde Teiman", a facility in the west part of the Negev which according to the media holds detainees who were arrested during the fighting in Gaza.

A copy of the National Security Council's response dated November 22, 2023 is attached and marked **P/5**.

36. In the absence of any other option, HaMoked contacted the above address attaching lists specifying the numerous names of Gazan detainees and their identification numbers. Simultaneously with the request to locate the whereabouts of detainees, lawyers on behalf of HaMoked contacted the above address and the legal advisor for the West Bank requesting to coordinate meetings with detainees held there, but these requests also remained unanswered. Parenthetically, it should be noted that an attempt to meet with a detainee, a Gaza Strip resident who had been living in the West Bank and had been employed there as a physician, who was held in the Anatot facility, for the purpose of representing him in deportation proceedings to Gaza, was unsuccessful and in the absence of legal representation the man was deported to Gaza without any preliminary proceeding. It is a good example demonstrating the fact that the failure to provide the requested information critically affects in many cases the rights of the detainees.

A copy of HaMoked's requests dated November 23, 2023, November 29, 2023, December 10, 2023, December 17, 2023 is attached and marked **P/6**.



37. At the same time, the above body either fails to respond or responds partially and generally, using the words "not located here" or "the detainees are not held in our facility" in response to a request to trace dozens and even hundreds of detainees. It emerges from these answers that the address which was given does not provide a solution for the problem of tracing the whereabouts of the Gazan residents, since it focused only on whether the detainee is held in the Anatot facility or not.

A copy of the answers of the above body dated December 3, 2023 and December 17, 2023 is attached and marked **P/7**.

38. On the principled level several requests were sent to different bodies such as Respondent 5 and Respondent 6 to ascertain which body should be contacted for the purpose of tracing the detention facilities in which Gazan detainees are either held or interrogated.

For instance, on October 15, 2023 HaMoked and Gisha – Legal Center for Freedom of Movement addressed Respondent 5 for the purpose of clarifying the detention policy regarding Gaza Strip residents who were arrested by Israel, either in combat or only for the sole reason of being Gaza Strip residents. About two months later, on December 3, 2023, a request was sent to Respondent 6 with a copy to Respondent 5, on the same matter. However, as of this date, these two requests remained unanswered.

A copy of the request sent by the human rights organizations to Respondent 5 dated October 15, 2023, is attached and marked **P/8**;

A copy of HaMoked's request to Respondent 6 dated December 3, 2023, is attached and marked **P/9**.

39. In addition, HaMoked contacted the director of the HCJ department at the State Attorney's Office, Adv. Aner Helman, in individual cases for tracing Gaza Strip residents who are not among the Petitioners in the case at hand. These requests received a uniform answer stating that the "HCJ department does not currently handle pre-HCJ applications concerning the tracing of detainees who are Gaza Strip residents".

A copy of the answer received on October 16, 2023 concerning the tracing of 116 Gazan residents, is attached and marked **P/10**;

A copy of the answer received on December 12, 2023 concerning the tracing of a detainee, resident of the West Bank who is originally from the Gaza Strip, is attached and marked **P/11**.

40. It emerges from all of the above that there is no body which may be applied to for the purpose of tracing different categories of detainees who are residents of the Gaza Strip, including Gazans arrested from Gaza, Gazans arrested from Israel, and Gazans arrested from the West Bank, whether they are held in military facilities or whether they are held by the Israel Police Service, combatants and non-combatants, regardless of whether they are men, women or children, since all the possible bodies adamantly refuse to handle these requests.

41. Beyond need it should be noted that recently the Incarceration Control Center provided information on the holding place of a Gazan resident who was arrested from Gaza. However subsequently in a phone call, the representative of the Incarceration Control Center clarified that the Control Center was not handling requests concerning Gazan residents and requested that in future HaMoked ensures that the tracing requests it sends do not include Gaza residents. Hence, it apparently seems that the requested information is at the disposal of the Incarceration Control Center, but it refuses to provide it, and at the same time there is no other body which provides it.
42. The failure to regulate the legal framework by virtue of which these individuals are held, or at least the failure to disclose it to the public may lead to a situation of mass incarcerations of individuals contrary to the law, exposing them to severe incarceration conditions amounting to real inhuman and degrading treatment.
43. It is for good reason that the requests of lawyers to meet with said detainees are not answered, in a manner necessarily indicating the intent to conceal the severe violations of the duties imposed on the authorities even at time of war.
44. Simultaneously with the attempts to receive information about the holding place of Gaza Strip residents who had been staying in Israel on the eve of the war, several attempts were made to coordinate lawyer's visits with Gazan detainees whose holding place information had been received in the **Kashta** petition. On October 26, 2023 a first request was sent to the office of Colonel Eli Levertov, the legal advisor for the West Bank, and on October 30, 2023 another request was sent. Both requests have not yet been answered, and although the holding place of said detainees is known, there is no way of knowing on the basis of which legal grounds they are held, and they cannot be visited to ascertain their incarceration conditions, although more than three weeks have passed.

A copy of the requests to coordinate a lawyer's visit with the detainees who are held in the military facilities is attached and marked **P/12**.

## **The Legal Argument**

### **The binding legal framework in time of war**

45. The hundreds of people who are registered as Gaza Strip residents and who are held in custody by Israel are protected persons. Article 27 of the Fourth Geneva Convention, which applies to a state of war, obligates Israel to treat them with dignity and humanity:

"To respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof..."

46. Article 33 of the Fourth Geneva Convention prohibits collective punishment of protected citizens

"No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures

of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited".

47. Israeli law also provides in this context that in a state of combat Israel is bound to uphold the law and in its framework basic human rights:

"Israel is not an island. It is part of an international arrangement... the military's acts of combat are not carried out in a legal vacuum. Legal norms apply – some form part of international customary law, some of international law entrenched in covenants that Israel is a party to, and some of the fundamental principles underlying Israeli law – establishing the rules which apply to combat" (HCJ 4764/04 **Physicians for Human Rights v. Commander of IDF Forces in Gaza**, IsrSC 58(5) 385, 391).

48. Therefore, in the framework of the laws which also apply in a time of war, there is an obligation to protect and refrain from harming protected persons, including those who were not arrested in combat and were not involved therein, and including those who were arrested in the course of combat (which is a negligible part of the residents in whose matter HaMoked submitted its requests). In the case at hand a severe concern arises that the above obligations were violated – the Petitioners have apparently been taken against their will to incarceration facilities, completely disconnecting them from the outside world, while their families or any other person have no information of their whereabouts and what had happened to them. Nobody has any information about the Petitioners' incarceration conditions, and the concern that they are held in inappropriate conditions cannot be ruled out.
49. There is no power, including in a time of war, to transfer detainees to facilities without giving notice to their families or any other body concerning their whereabouts and the reason for which they are held. In some cases they are even transferred to the territory of the hostile country.
50. It should be noted that beyond the question of the authority and the need to arrest individuals some of whom were laborers who had been employed in Israel by virtue of entry permits, according to Article 43 of the Fourth Geneva Convention it is incumbent upon Israel to provide as soon as possible the names of the protected persons who were arrested or who were placed in an assigned residence, but until this day no such list has been provided and individual requests remained unanswered.
51. And note well. With respect to the individuals who had been working in Israel with permits, the cancellation of their permits as soon as the war broke out does not change the fact that they had been lawfully staying in Israel. On the contrary. The sweeping cancellation of the permits by Respondent 1, put the Petitioners of this category in an impossible situation. Unable to return to their homes or travel to the West Bank and stay there legally, said individuals found themselves in a situation whereby, through no fault of their own, without any warning and without any solution, they became illegal aliens staying in Israel without a permit. Now they are incarcerated, apparently, for an offense they did not commit.

52. Moreover, as of today the Respondents refuse to provide any information about the Petitioners and others in their condition who are apparently held in incarceration facilities; neither information about their place of incarceration nor information concerning the reasons for which they are held. Not whether they are "detainees", whether they are detained for interrogation purposes, by virtue of which statute or law and for how long. **Mass arrests with respect of which no information is given to families or to representing counsel may amount** to arbitrary arrests.
53. Furthermore. Information concerning a person's arrest and their place of detention is a necessary condition for protecting their basic rights. The above is reinforced when the requested information pertains to individuals with respect of whom there are no grounds for arrest and who are held in unclear circumstances.
54. HaMoked itself received 402 requests from family members of individuals who are registered as residents of the Gaza Strip who have disappeared in circumstances similar to those described above, and such requests continue to flow in as these lines are penned.
55. Moreover – Article 35 of the Fourth Geneva Convention provides that any protected person staying in the territory of a party to a conflict with the state of their residency has the right to leave the territory of that state, and the names of the persons who have been denied said right should be furnished:

"All protected persons who may desire to leave the territory at the outset of, or during a conflict, shall be entitled to do so, unless their departure is contrary to the national interests of the State... Upon request, representatives of the Protecting Power shall, unless reasons of security prevent it, or the persons concerned object, be furnished with the reasons for refusal of any request for permission to leave the territory and be given, as expeditiously as possible, the names of all persons who have been denied permission to leave".

56. According to the ICRC's official interpretation of Article 35 from 1958, the state holding the persons wishing to leave is obligated to provide information and the refusal to give the names must be based on weighty and extraordinary reasons:

[It] allows the Detaining Power to take no action on a request for notification when, in certain clearly defined cases, there are legitimate security reasons against it. The Detaining Power, however, could not raise an objection on security grounds – and this must be stressed – in order to refuse systematically to reply to questions asked by the Protecting Power.

<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-35/commentary/1958>

57. In the case at hand a sweeping refusal to provide information about all the Petitioners, including a confirmation that they are held by Israel and their holding place is contrary to the obligations imposed on Israel. Therefore, the Respondents or anyone on their

behalf holding the Petitioners should immediately clear the fog surrounding their condition, maintain orderly information about them and provide it to anyone requesting it. The above in general, and particularly to their family members who are naturally worried about their wellbeing.

58. Article 37 of the Fourth Geneva Convention provides that persons held by the Detaining Power should be held in humane conditions. There is no dispute that the holding of persons *incommunicado* disconnected from the world, without providing minimal information to the family members requesting it, does not meet this standard and makes it extremely difficult to ascertain the existence of other minimal conditions.
59. In the context of *incommunicado* incarceration it was held by the European Court in one of the cases in which a detainee was held without contacting a lawyer and without the ability to take legal proceedings against his arrest:

This is a situation incompatible with Article 4 & 5 of the Convention and its underlying rationale, the protection of individuals against arbitrariness. National authorities cannot do away with effective control of lawfulness of detention by the domestic courts whenever they choose to assert that national security and terrorism are involved (**al-Nashif v. Bulgaria** Judgment 20 June 2002, par. 94).

60. The obligation to provide information about their capture and holding place also applies to persons suspected of taking part in combat. Article 23 of the Geneva Convention relative to the Treatment of Prisoners of War, 1949 (the Third Geneva Convention) obligates the Power which detains prisoners of war to give the Powers concerned all useful information regarding the geographical location of the prisoner of war camps. Article 70 of the foregoing convention grants prisoners of war the right to send their family a post card shortly after their capture, including, inter alia, information regarding their address. It emerges from the above that there is an obligation, which is not in dispute, to disclose the holding place of any person arrested by Israel in a time of war.
61. Moreover, the Rome Statute defines as crimes against humanity and as war crimes the refusal to give information on the whereabouts of detainees as part of their enforced disappearance and the employment of interrogation methods of torture and degrading and inhuman treatment.
62. As described above, holding a person *incommunicado* amounts to torture and inhuman treatment. Article 7(1)(f) of the Statute of the International Criminal Court (the Rome Statute) defines the crime of torture as one of the crimes against humanity, which is within the jurisdiction of the international criminal court. According to Article 7(1)(e), incarceration or deprivation of liberty in any other way which is contrary to the basic rules of the international law is a crime against humanity. The incarceration of persons *incommunicado* as broadly described above, is a violation of several provisions of international customary law. According to Article 8(2)(a)(ii) torture and inhuman treatment are also defined as war crimes.

63. As is known, currently, the question of whether war crimes are committed by Israel under the Rome Statute is being examined by the International Criminal Court. The continued enforced disappearance of Gaza Strip residents may expose the policy makers and those responsible to legal proceedings on this level.
64. There is no justification for the continued enforced disappearance of Gaza Strip residents, whether arrested from within Gaza or outside its borders, whether innocent citizens are concerned or persons suspected of being involved in combat, and since it amounts to torture it is contrary to the Covenant against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which was ratified by Israel on November 2, 1991, since the prohibition against torture is absolute, including in a time of war, as Article 2(2) states that "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked in justification of torture".
65. In view of the foregoing we shall refer to the provisions of the law which apply to each one of the Respondents.

#### **Notice of place of detention – the obligation of Respondents 1 and 2**

66. There is no need to elaborate on the right to receive notice regarding a person's arrest and their holding place. This right is a basic right – of both the detainees and their family members. This right forms part of the basic right to human dignity. A governing system which does not uphold it but rather conceals and hides persons in its custody from their family members for substantial periods of time, acts cruelly towards both the detainees and their relatives.
67. The above is also regulated by the military law which applies in the occupied territories. Article 53(a) of the Order concerning Security Provisions [Consolidated Version] (Judea and Samaria Area) (No. 1651), 2009 states:

**"Upon a person's arrest, notice of their arrest and their whereabouts shall be given without delay to their relative, unless the detainee requested not to give notice as aforesaid".** (all emphases in the Petition were added by the undersigned – N.D.)
68. According to the very partial information obtained by us, at least some of the Petitioners are held in incarceration facilities in the West Bank, which are controlled by Respondent 1 by virtue of the security legislation. In addition, in certain cases residents were arrested in the territory of the state of Israel or in the West Bank. In addition, their family members contacted Israeli lawyers and requested them to assist in locating their loved ones, unlike the situation described in the judgment in HCJ 7439/23 **Alwahidi v. Israel Defense Forces** (reported in the Judicial Authority Website) (October 31, 2023). In any case, a situation in which there is a "legal vacuum" is not possible and since we are concerned with Gaza Strip residents, different rules apply.

69. As we have shown in the first part of the legal chapter, the laws of war apply to this situation, and more forcefully when we are concerned with the incarceration of nationals of an entity which is currently fights the state of Israel, an entity which according to international law forms part of the occupied territory by the state of Israel. The Respondents should apply to these nationals, who are protected persons as aforesaid, the laws which apply to other detainees who are protected residents from the West Bank.
70. The right to receive notice as aforesaid was also recognized as a basic right by this Honorable Court. As stated by the Deputy President Elon in HCJ 670/89 **Odeh v. Commander of IDF Forces in the Judea and Samaria Area**, IsrSC 43(4) 515, 517:

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

71. In 1995, after the Incarceration Control Center failed to uphold its obligations, a petition was filed by HaMoked with the High Court of Justice (HCJ 6757/95 **Hirbawi v. Commander of IDF Forces in the Judea and Samaria Area**) (hereinafter: **Hirbawi**). In this proceeding the Supreme Court gave the force of a judgment to a settlement reached between the parties according to which:

- A) **Upon the detention of a person who is a resident of the area**, notification of his detention and 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...

- B) **The IDF Control Center** (whether the Control Center or another entity) will receive from all entities... **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 with 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.

72. In HCJ 8435/12 **Mahmud Abu Sal v. The Military Commander** (August 22, 2013), the respondents (who are the same Respondents in the petition at hand) informed that the work procedure of the Incarceration Control Center had been clarified to prevent situations in which detainees "disappear". Accordingly, the new procedures are quoted in paragraph 4 of respondents' response dated February 25, 2013:

**First**, if the detainee is not held by the Israel Prison Service, Israel Police or in the military detention facilities in the Judea and Samaria Area, a request for information shall be sent to the seven regional divisions governing the different zones in the Judea and Samaria Area, which are responsible for the acts of the military forces performing the arrests in the Judea and Samaria Area, to find out whether the detainee was arrested by any of the regional divisions and has not yet been transferred to the above bodies [sic – N.D.] for holding detainees in the Judea and Samaria Area.

**Second**, after an examination with the regional divisions and if the detainee was not located therein, an examination shall be conducted with the Military Police officials in the IDF Commands (Northern, Southern and Central) to find out whether the detainee was taken to a hospital located in the zones of one of the commands.

73. Hence, it is Respondent 1's obligation to give the detainee's family a notice, either by telephone or in any other way, of their holding place. It is Respondent 2's obligation to maintain updated information about the arrest and holding place of each and every detainee. To back-up this obligation a mechanism was formulated enabling families to contact organizations such as HaMoked and lawyers to receive updated information about the detention place of their loved ones, through the Incarceration Control Center. It should be emphasized that it emerges from the aforesaid that Respondent 2 apparently holds the requested information in its possession but refuses to provide it and therefore it should be instructed to refrain from blocking the conveyance of the information or that the requested information shall be provided by another authorized body in a similar way that information is provided about West Bank residents by Respondent 2.

74. The tracing of detainees and the functioning of the Incarceration Control Center were also discussed in the decision of the registrar Boaz Okon in HCJ 9332/02 **Jerar v. Commander of IDF Forces**. His decision states as follows:

"The provision of information is a means of control and supervision, but it is important from a human perspective in that the detainee loses



control over his life in a single moment. **The importance of thorough reporting to the relatives whose family member disappeared “without explanation” cannot be exaggerated. Giving public notification is a guarantee against misuse of the state’s capability to detain individuals, and prevents unrestrained use of this capability.** Indeed, the power of the state, regardless of how good its intentions may be, is great. Without reporting this power might get out of control, even when explained by security considerations. Concession or flexibility intrinsically entails risks. Experience teaches us that the excessive use of power, which is not timely eradicated, creates a new reality. The power is not like a boomerang; when it is released, it does not return. Therefore, the authority is commanded to give meaningful attention in all matters related to the exercise of detention powers. **This attention requires immediate reporting of the detention”.**

75. Hence the remedies which are requested in the Petition concerning Respondents' obligation to give notice of a person's arrest and their place of incarceration **and particularly, Respondent 2's obligation, through the Incarceration Control Center, to give the information in its possession concerning the arrest and place of incarceration of each detainee held by any of the state's authorities.**

#### **Registration of the detainee in the detention place**

76. Each detainee has the right to have their place of detention known. Therefore, the registration of detainees in the incarceration facility in which they are held is a necessary condition for the realization of their rights. It is the only way that will enable their family and lawyer to trace their holding place, status, medical condition, incarceration conditions, whether and when a meeting with them can be arranged, and the like. It is the only way which will enable them to act for the realization of their rights as a detainee. A detainee's right to be present in the legal proceedings pending against them, if any, also depends on their orderly registration in their place of detention.
77. The failure to register detainees in the incarceration facility severely violates their basic rights as well as those of their family members. A governing system which does not see to it that detainees are registered in their incarceration facilities and does not maintain the ability to receive updated information on the basis of such registration, does not fulfill its duties and obligations.
78. The proper registration of detainees is regulated by legislation in matters relating to detainees held by Respondent 3, as well as detainees held in facilities under the responsibility of Respondent 1 and under a legal framework which is under the control of Respondent 6. We shall explain.
79. With respect to detainees held by Respondent 3 and due to the paramount importance of detainees' registration in their holding place, the registration obligation was established

in primary legislation. Section 4 of the Prisons [New Version] Ordinance, 1971 provides that:

"Upon a person's arrival to prison the director of the prison shall see to that the details which were established with their respect will be registered."

80. Chapter 5 of the Israel Prison Service directives (section 5.06) provides:

**"An updated and accurate registration shall be conducted in prison with regard to any prisoner held therein..."**

81. The enforced disappearance of detainees held by Respondent 3 is a deviation from the rules by which it is bound in this context, and it seems that it is done without authority.

82. In addition, and according to the aforesaid, the failure to register detainees held by the military is contrary to the obligation established in Section 53(a) of the Order concerning Security Provisions [Consolidated Version] (the Judea and Samaria Area) (No. 1651), 2009, according to which information concerning the arrest and holding place should be provided.

83. Indeed, the Incarceration of Unlawful Combatants Law, 2022, does not include provisions concerning notice of a detention place, but the mere fact that legal consultation was regulated and permitted in Section 6 of the law requires that information regarding the detention place be given.

84. Even if Respondent 4 has the authority to advise and recommend to the government on national security matters and policies, it is still subject to the obligations which apply to Israel by virtue of international law and domestic law, both the military and the civilian legal systems. Hence, there is no justification for the continued mass enforced disappearance of hundreds of detainees who are protected persons, for weeks and even months.

85. Accordingly, the provisions of the law are clear and explicit.

86. By its nature this Petition is not supported by an affidavit and powers of attorney on behalf of the Petitioners. Two affidavits on behalf of HaMoked are attached to this Petition concerning its attempts to receive information about the Petitioners, and concerning its acts in that regard.

**For these reasons, the honorable court is requested to urgently issue writs of *Habeas Corpus* directed at the Respondents as requested in the beginning of the Petition.**

Jerusalem, December 21, 2023

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