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

H CJ 10327/02

In the matter of:

- 1. B. Jadala**
- 2. M. J.**
- 3. HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger (Reg. Assoc.)**

all represented by attorneys Lea Tsemel 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 Obeidah Street, Jerusalem 97200
Tel: 02-6283555, Fax: 02-6276317

The Petitioners

v.

Commander of the 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

The Petitioners hereby file a petition for an Order Nisi directing the Respondent to show cause why he does not inform the families of Petitioners 1 and 2 as to the lot that befell Petitioners 1 and 2, who were detained by Israel's security forces: if they are being held by him or by someone on his behalf – where they are being held, and pursuant to which law; and if they were released and transferred to another official – when, where, to whom, and what he knows about the place in which they are currently located. In the event that an Israeli authority is holding the Petitioners unlawfully, the court is requested to order their release.

Application for Urgent Hearing

The Honorable Court is requested to hear the petition on an urgent basis.

This petition involves the most fundamental rights of the Petitioners, who were detained by soldiers or other security forces of Israel, whereby their place of detention must be stated and known. This right is dependent on the exercise of other rights of the detainees – the right to counsel, to intervention regarding the conditions in which they are detained, and so on. The families of the detainees also have the right to know what happened to their relatives, and where they are being held.

The law dictates that notice must be given *without delay* to a relative of a detainee indicating the location where he is being detained. The Petitioners' families do not know where they are being held or about the said location.

Quite the opposite. The few details they have received raise grave concerns in addition to the uncertainty the families face. The passing of time frustrates – with every passing moment – the exercise of the most fundamental rights of persons being held in custody and who do not have the power to protect themselves.

The Honorable Court recently set a *maximum* period of *twenty-four hours* in which the Respondent must respond to a petition. For example, in HCJ 8352/02, *Habaiba et al. v. Commander of the IDF Forces in the West Bank* (filed on 2 October 2002); HCJ 8417/02, *Abu Abid et al. v. Commander of the IDF Forces in the West Bank* (filed on 3 October 2002); HCJ 8488/02, *Nabtiti et al. v. Commander of the IDF Forces in the West Bank* (filed on 7 October 2002).

The grounds for the petition are as follows:

The facts

As regards the Petitioners

1. Petitioner 1 is a resident of Nablus, a merchant, who has an unblemished past. He was born on 16 September 1954. On 22 November 2002, while on his way to his home, Petitioner 1 was detained at the bridge leading from Jordan.

Petitioner 2, a cousin of Petitioner 1, is also a merchant who lives in Nablus. He was born on 13 February 1979. He, too, was detained on 22 November 2002 at the bridge while on his return from Jordan.
2. Petitioner 3 is a human rights organization that assists residents of the Occupied Territories whose rights have been violated by the Respondent. Its activities include providing assistance in learning the location in which individuals detained by Israeli security forces are being held.
3. Since 23 November 2002 and 24 November 2002, Petitioner 3 has been trying to locate Petitioners 1 and 2. **For seven days**, members of the staff of Petitioner 3 searched for Petitioners 1 and 2 in every way possible and in every possible official data bank.
4. Whereas it appears that the earth swallowed Petitioners 1 and 2, Petitioner 3's staff members, relying on their experience in a recent case, contacted a police official by the name of Madi Hareb. Hareb, who is assigned to the Kishon detention facility, **confirmed that the two Petitioners were being held in a secret facility within the Kishon detention facility, and that they were not allowed to meet with counsel.**

He refused to provide details about the place in which they were being held, the conditions under which they were being detained, whether the place was officially an interrogation site or a detention site, and the like.
5. HCJ 8696/02, which is presently pending, involved a similar matter. An application to obtain further details that was recently filed on this subject to the State Attorney's Office has yet to be answered, and once again there is mention of a *hidden and secret facility* in which individuals are held for interrogation.
6. **This facility is so secret** that Petitioners 1 and 2 do not appear on the computers of the Prisons Service, and were not found in a search of detainees in facilities of the Israel Police

Force. Petitioner 3's request for the control center of the chief officer's command in the Military Police (hereinafter: Control Center) also received a negative response.

7. During the course of drafting this petition, the detention facilities in Petach-Tikva sprung up as the location of Petitioners 1 and 2, but this siting was inconsistent with the direct response that police officer Madi Hareb gave to staff members of Petitioner 3 on 4 December 2002.

Recurring failures

8. The failure to locate in this case is not a unique case. In recent months, we have been witness to serious flaws in the functioning of the defence establishment in locating the place where Palestinians are being detained. These flaws have already led to the filing of many petitions to this Honorable Court, which led in almost all cases to the rapid determination in which detention facility the Petitioner was being held. The cases that reach this Honorable Court are only the tip of the iceberg of the problems with which Petitioner 3 must cope daily. Some of the failures result from the manner in which the Control Center operates; however, even the most strenuous efforts of the Control Center to perform its task will not succeed without cooperation from other agencies in providing complete, precise, and updated information to the Control Center. According to an investigation that Petitioner 3 conducted on requests made to the Control Center during the first half of November, more than one third of the requests were not answered within one day from the time that the request was made, and more than ten percent of the answers were wrong.

Legal argument

9. A governmental system that does not ensure that the location in which detainees are held is openly disclosed, but conceals and hides individuals in custody from their families for substantial periods of time, acts in a cruel manner that severely harms the humanity of the detainee and his family. In the words of Vice-President M. Elon in HCJ 670/89, *Odeh et al. v. Commander of the IDF Forces in Judea and Samaria*, *Piskei Din* 43 (4) 515, 517:

The requirement for giving this notice is the result of the fundamental right of a person who is lawfully arrested by the competent authorities that they so inform his relatives to enable them to know what happened to their detained relative and how it is possible to render the necessary assistance to safeguard his liberty. This right is a natural right and is derived from human dignity and the general

principles of justice, and is granted to both the detainee and his relatives.

10. The duty of the relevant authorities must, as a result of this fundamental right, provide this information to the detainee and his family. This duty is also enshrined in statutory law and in case law. Section 78A(b) of the Order Regarding Defence Regulations (Amendment No. 53)(Judea and Samaria) (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, information on his detention and the place where he is located will be provided *without delay* to his relative, unless the detainee requests that the said notification not be made. (emphasis added)

In HCJ 6757/95, *Hirbawi et al. v. Commander of the IDF Forces in Judea and Samaria, Takdin Elyon* 96 (1) 103. This Honorable Court gave the effect of a judgment to an arrangement agreed upon by the parties, whereby:

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

The detaining official will deliver the telephone notification as stated and will record on a form prepared for this purpose the details of the notification that he provided and the details of the person receiving the notification.

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

Where the detainee requests that notification by telephone or by other means not be given, the said request will be recorded on the form.

In the event that that he detainee does not provide details for the delivery of notification by telephone, a postcard will be sent indicating his detention to a relative at the address provided by the detainee.

b) All official bodies (IDF, Israel Police, Prisons Service), will provide the IDF's Control Center (whether the Control Center or another official body is involved) updated information on the detention and place of detention of a detainee once a day, in a manner that will enable it to locate the detainee, upon the written request of an external person or body.

c) The IDF's Control Center will provide details from the said information in response to a written request from public associations that deal in such matters and/or to a written request of an attorney empowered to represent the detainee or his family.

After the written request is forwarded, the requesting entity will be able to obtain the information by telephone.

d) IDF officials will check with Palestinian Authority officials regarding the possibility of providing such information also to the DCO in order that the said notice can also be delivered through the DCO.

11. Thus, the authority that detains a person from the region must give the detainee's family notice, either by telephone or by another means, about the location in which he is being held. To reinforce this duty, a mechanism is established to enable the families to contact attorneys and organizations such as Petitioner 3 in order to obtain updated information, through the IDF's Control Center, on the place in which their loved ones are being held.

12. In the present case, there is surely information on the fact that Petitioners 1 and 2 have been detained, but the place in which they are being held is unknown.

According to the comments made by police officer Madi Hareb, the detention of Petitioners 1 and 2 was extended on 3 December 2002. An attorney who took an interest

in the matter of the said Petitioners was informed by Hareb that **their detention had been extended and that they were not allowed to meet with counsel.**

It is likely, therefore, that a legal proceeding is taking place secretly to justify holding Petitioners 1 and 2 in secret custody.

13. In the matter heard in HCJ 8696/02, the Petitioner was transferred from **the secret location** after appeal was made to the Rosh Pina police. When interviewed by an attorney at the end of his secret confinement, the detainee said that, during the time that conformed to the period he was hidden from the public in **a secret facility**, he was told that he was in the Atlit prison. Such disinformation must have been transmitted with the clear intention to conceal matters that were intended to be kept silent. This petition is directed against these matters, and seeks to prevent them.

14. The nature of this petition is such that it is not supported by affidavits and powers of attorney on behalf of Petitioners 1 and 2, except for the affidavit (and power of attorney) on behalf of Petitioner 3 as regards obtaining information on Petitioners 1 and 2 in its office and regarding its activity in matters related to them.

For these 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 response of the Respondent, to make it absolute, and to order that Respondent pay court expenses and counsel fees.

L. Tsemel, Attorney

Counsel for Petitioners