

In the matter of:

1. \_\_\_\_\_ **Dawidi**  
I.D. \_\_\_\_\_
2. **HaMoked: Center for the Defence of the Individual,  
founded by Dr. Lotte Salzberger - Reg. Assoc.**

both represented by counsel, Att. Daniel Shenhar (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 Elad Cahana (Lic. No. 49009) and/or Noa Diamond (Lic. No. 54665) and/or Nimrod Avigal (Lic. No. 51583) and/or Benjamin Agsteribbe (Lic. No. 58088)  
Of HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger,  
4 Abu Obeida Street, Jerusalem  
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. **Inspector General – Israel Police**

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

**The Respondent**

**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:

- a. To respondent 1 - why he does not notify the family of petitioner 1 (hereinafter: the "**petitioner**") what happened to the petitioner, who was detained by Israel's security forces on December 18, 2011 and whose whereabouts since the date of his arrest are unknown; if he is being held by respondent 1 or by anyone on his behalf – where is he being held and pursuant to which law; and if he was released or transferred to another body – when,

where, to whom, and what does respondent 1 know 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 Area who is being held by any of the state's authorities.
- c. To respondents 3 and 4, if the petitioner is being held by any 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 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, that the fact of his detention and his whereabouts be known. The exercise of the detainee's other rights depends on this right - the right to be represented by 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 relative *without delay*. No information was given to the 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 person who is in custody and is unable to protect his interests by himself.

If the petitioner is still in the hands of the 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 all 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 Area 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 H CJ 5117/09 **Nazal et al. v. Commander of IDF Forces in the West Bank**.

## **The grounds for the petition are as follows:**

### **The Petitioner's Interest**

1. The petitioner is 17 years old and a resident of Huwwara, near Nablus.
2. On December 19, 2011, the petitioner's family requested petitioner 2 (hereinafter: "**HaMoked**"), to assist it to locate the petitioner who was detained and taken from his working place in the village of Huwwara a day earlier, December 18, 2011, at around 10:00 AM.
3. On that very day, HaMoked requested the control center located at the headquarters of respondent 2 (hereinafter: the "**control center**") to assist it to locate the petitioner. At the same time, HaMoked contacted the control center located at the headquarters of respondent 3, which informed HaMoked that it had no record of the petitioner.
4. Following this response, HaMoked contacted the control center again. Having been advised of the urgency of the matter, a soldier from the control center informed HaMoked that he understood from the war room of the Samaria territorial brigade that the unit that detained the petitioner **was still holding him in a military base, which was not an officially recognized detention facility**. The control center soldier said that the reason for holding the petitioner in a place which was not recognized as a detention facility was that **the forces were waiting for the arrival of a police officer, and due to the fact that a police officer had not yet arrived, they did not know "what to do with the detainee"**.
5. Hence, the petitioner is being held in a place which is not a legally recognized detention facility and which is not suitable for holding detainees. Furthermore, many severe omissions may be pointed at: the precise location of the petitioner is unknown; No information was given to the family regarding his detention and whereabouts; the petitioner was not recorded as a detainee. Consequently, right now the petitioner is completely defenseless as against the arbitrariness of the force which detained him.
6. Petitioner 2 is a human rights organization which assists Palestinians, 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 Detention Place – Obligation of Respondents 1 and 2**

7. The right to be notified of a detention of an individual and of his whereabouts cannot be over-stated. This right is a fundamental right - both of the detainee and of his family. This right constitutes a part of the fundamental right to

human dignity. A state authority that does not strictly enforce it, but rather conceals persons in its custody from their relatives for substantial periods of time is acting cruelly and injuring the very humanity of the detainee and his family.

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

**"If a person is arrested, notice of his arrest and location 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 are mine – D. S.)

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

"The obligation to give such notification stems from the fundamental right of a person who was lawfully detained by the competent authorities, to 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 as well as to his relatives.**"

10. In 1995, after the control center failed to fulfill its obligations, HaMoked filed an additional petition to the High Court of Justice (HCJ) (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 with power of attorney representing the detainee or his family.

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

11. 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 was recognized by the courts as a fundamental right of the detainee and his relatives, deriving from human dignity and general principles of justice"**.
12. Thus, it is the obligation of respondent 1 to give the detainee's family notification regarding his detention and the place where he is being held, 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.
13. The issue of detainees' 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 supervision 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 over stated. Ensuring detention is public guarantees that the power to detain shall not be abused and prevents uncontrolled use of such power.** Indeed, the power of the state is immense, be its intentions as good as they may be. Without notification the exercise of such power may go astray, even if supported by security reasons. There are obvious risks attached to concessions or flexibility. Experience shows us that an excessive use of power, which is not timely uprooted, creates a new reality. Power, unlike a boomerang, does not return once it is released. Therefore, the authority should be very strict when the exercise of detention powers is

concerned. **This strict attitude requires immediate notification of the detention.**"

14. 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**

15. 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 persons 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 the exercise of his rights as a detainee. 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.
16. 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 that 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.
17. 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**

18. Due to the utmost importance attributed to the requirement to keep record of a detainee in the 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."

19. Chapter 5 of the Israel Prisons 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 and indicating the term of incarceration or detention, calculation of the date upon which the incarceration shall terminate and other dates required to calculate minimum time periods for eligibility to certain benefits (such as: vacations) or vested rights (such as: appearing before the Prisoners Early Release Committee)."

#### **Keeping Record of Detainees Held by Respondent 4**

20. 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 incarcerated 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."**

21. 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 the failure 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.
22. 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 at the beginning of the petition, and after receiving the respondent's reply, make the order absolute, and to order the respondent to pay trial costs and attorneys' fees.**

Jerusalem, December 19, 2011

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Daniel Shenhar, Attorney  
Counsel for Petitioners

(File No. 71145)

## **Affidavit**

I, the undersigned, Orly Barmak, I.D. No. 038254942, having been warned to say the truth and that I shall be subject to the punishments prescribed by law should I fail to do so, hereby declare in writing as follows:

1. I make this affidavit in support of a petition for a writ of *habeas corpus* in the matter of a resident of the West Bank.
2. I am a client advocacy representative with HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger.
3. I hereby confirm that all details specified in the petition concerning petitioner 1 were received from his family and duly gathered by an experienced team at HaMoked.
4. All details concerning the attempts to locate the petitioner are correct and were accurately recorded.
5. I hereby declare that this is my name, this is my signature and that the content of my affidavit is true.

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Orli Barmak

I hereby confirm that on December 19, 2011, the above, personally known to me, appeared before me, Att. Daniel Shenhar, at the offices of HaMoked: Center for the Defence of the Individual, 4 Abu Obeida Street, Jerusalem, and after having been warned by me to say the truth and that she shall be subject to the punishments prescribed by law should she fail to do so, she confirmed the truthfulness of her above affidavit and signed it before me and in my presence.

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Daniel Shenhar, Attorney