

Disclaimer: The following is a non-binding translation of the original Hebrew document. It is provided by **HaMoked: Center for the Defence of the Individual** for information purposes only. The original Hebrew prevails in any case of discrepancy. While every effort has been made to ensure its accuracy, **HaMoked** is not liable for the proper and complete translation nor does it accept any liability for the use of, reliance on, or for any errors or misunderstandings that may derive from the English translation. **For queries about the translation please contact [site@hamoked.org.il](mailto:site@hamoked.org.il)**

**At the Supreme Court**  
**Sitting as the High Court of Justice**

**HCJ 2565/15**

In the matter of:

1. \_\_\_\_\_ Mas'ud, ID No. \_\_\_\_\_
2. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – RA 580163517**

All represented by counsel, Adv. Sigi Ben Ari (Lic. No. 37566) and/or Benjamin Agsteribbe (Lic. No. 58088) and/or Hava Matras-Irron (Lic. No. 35174) and/or Anat Gonen (Lic. No. 28359) and/or Daniel Shenhar (Lic. No. 41065) and/or Bilal Sbihat (Lic. No. 49838) and/or Abir Jubran-Dakawar (Lic. No. 44346) and/or Nasser Odeh (Lic. No. 68398)

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.

**Ministry of Defense**

represented by the State Attorney's Office  
29 Salah a-Din Street, Jerusalem 91010  
Tel: 02-6466590; Fax: 02-6466713

**The Respondent**

**Petition for Habeas Corpus**

A petition for an *order nisi* is hereby filed which is directed at the respondent ordering it to appear and show cause, why it should not provide information concerning the whereabouts of petitioner 1's brother, \_\_\_\_\_ Mas'ud (ID No. \_\_\_\_\_), who was last seen on August 1, 2014, in the Gaza Strip,

lying down, bleeding, with some soldiers near him: is the petitioner, or his body, held by the respondent or anyone on its behalf, and if the answer is positive, where is he held and by virtue of which law; and if the petitioner or his body are not held by the respondent, what does it know about their whereabouts.

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

#### **The Factual Background and exhaustion of remedies**

1. In July and August 2014, Israel conducted extensive belligerent activities in the Gaza Strip (known as "Protective Edge"), during which many Gaza residents were killed. In the beginning of August, extensive belligerent activities were conducted, *inter alia*, in the Rafah area.
2. Petitioner 1 (hereinafter: the **petitioner**), is a resident of Rafah, whose brother, \_\_\_\_\_ Mas'ud (hereinafter: the **missing person**), also a resident of Rafah, has been missing since August 2014. The missing person was last seen on August 1, 2014. He was lying down motionless, covered in blood, with some soldiers near him. Since then he has been missing and his family does not know what happened to him.
3. Petitioner 2 is a human rights not-for-profit association engaged, *inter alia*, in the location of missing Palestinians, residents of the West Bank and the Gaza Strip. The association also engages in the return of bodies of Palestinians held by Israel to their family members (hereinafter: **HaMoked**).
4. On October 28, 2014, HaMoked turned, on behalf of the petitioner, to respondent's legal advisor, and requested him to assist it to locate the missing person.

A copy of HaMoked's letter to the respondent dated October 28, 2014 is attached and marked **P/1**.

5. On November 20, 2014, HaMoked sent a reminder of its said letter.

A copy of the reminder is attached and marked **P/2**.

6. On December 7, 2014, respondent's response to HaMoked's letter was received, which stated that it had already referred the matter to the relevant parties with the Israel Defense Forces (IDF) and with the Israel Security Agency (ISA) on November 13, 2014, and that their response had not yet been received.

A copy of respondent's response to HaMoked's letter dated December 7, 2014, is attached and marked **P/3**.

7. On December 30, 2014, after the elapse of two months with no pertinent response, HaMoked sent an additional reminder to the respondent.

A copy of the additional reminder is attached and marked **P/4**.

8. After the elapse of more than three months with no response from the respondent, HaMoked turned on February 2, 2015, in a pre-HCJ procedure, to the Director of the HCJ Department at the State Attorney's Office, and requested her intervention in securing a response, so as to prevent the need to turn to court.

A copy of the letter to the HCJ Department is attached and marked **P/5**.

A copy of the HCJ Department's e-mail confirmation of its receipt of the letter – P/6.

9. About five and a half months passed from the first application to the respondent, and almost two months and a half from the application to the State Attorney's office, but no response has been received. Therefore, there is no alternative but to file this petition.

### **The Legal Argument**

10. The obligation to give notice of a person's detention and his whereabouts or the whereabouts of his body cannot be overstated. The right to be notified of a person's whereabouts is a fundamental right – of the missing person himself as well as of his family members. Said right constitutes part of the fundamental right to human dignity. Governmental authorities which do not uphold said right and do not give notice of a person's whereabouts or the whereabouts of his body, severely impinge on the human dignity of the missing person as well as on the human dignity of his family members.
11. The obligation to respect the deceased person and his family is enshrined in international law to which the state of Israel is committed (see Article 130 of the Fourth Geneva Convention and the words of the Honorable Justice Procaccia in HCJ 52/06 **Al Aqsa Association for the Development of the Assets of the Muslim Waqf in the Land of Israel v. Simon Wiesenthal Center Museum Corp.**, published in Nevo, hereinafter: **Al Aqsa**, paragraph 190 of her judgment).
12. This honorable court said, with respect to the value of the dignity of the dead, as follows:

This value crosses oceans and continents, and was enshrined in different social, religious and legal traditions as part of the social ethos of both eastern and western world cultures.

(**Al Aqsa**, paragraph 135 of the judgment of the Honorable Justice Procaccia).
13. The Supreme Court reiterates that the constitutional right of human dignity consists of the dignity of the deceased person as well as the dignity of the deceased person's family, which are intertwined and inseparable:

The value of the dignity of a deceased person constitutes part of human dignity, and is afforded constitutional protection in our legal system. It merges with the value of human dignity of a person when alive, and constitutes an integral part thereof. It applies not only to the dignity of the deceased person himself but also projects on the dignity of his loved ones and family members. It relates to the public at large, whose obligation to protect this value characterizes its particular moral and ethical position (**Al Aqsa**, paragraph 56 of the judgment of the Honorable Justice Procaccia).
14. The fundamental right of dignity of the deceased person and his family members is intensified under circumstances in which many people are missing, and their families do not know whether they were killed in the belligerent activities which took place in the midst of the civilian cities and whether their bodies are held by the respondent.

15. From this fundamental right derives the obligation of the authorities to provide the family members any and all information in their possession concerning the missing person, his condition and whereabouts.
16. In addition, there is also no dispute that the state has an obligation to assist in the location of the missing person, to the extent it has information which may enable to find out what happened to him.

For the above reasons, the honorable court is requested to issue a **Habeas Corpus** order as requested in the beginning of the petition, and after receiving respondent's response, to render it absolute and order the respondent to pay trial costs and attorneys' fees.

Jerusalem, April 15, 2015

---

Sigi Ben Ari, Advocate  
Counsel to the petitioners