

In the matter **1. A. A., I.D. No. XXXXXX et 567 el. in attached list**  
of:

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

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**The Petitioners**

- vs -

- 1. Israel Defense Forces**
- 2. Chief Military Police Officer**
- 3. Israel Prison Service Commissioner**
- 4. Israel Police Commissioner**
- 5. National Security Council**

represented by counsel from the State Attorney's Office  
29 Salah a-Din St. Jerusalem, 91010

**The Respondents**

## **Petition for Writ of Habeas Corpus**

A petition is hereby filed for a writ of habeas corpus, directed at Respondents and instructing them as follows:

- a. To inform the families of Petitioners 1 to 568 (hereinafter: **Petitioners**), who were present in Israel when the war broke out by virtue of entry permits for purposes of work or medical treatment, and were taken into custody by security forces in the weeks that followed, and whose whereabouts are unknown, whether they are being held by any of the Respondents or any agent acting on their behalf, **where they are being held and pursuant to what law**; if they have been released or transferred to another party - when, where and to whom, and any information they have on their current whereabouts. Inasmuch as Petitioners are being unlawfully held by an Israeli authority, **including being held at a site that is not an official detention facility**, the Court is hereby asked to instruct their release to the West Bank.
- b. Alternatively, and inasmuch as they are being held in a detention facility that has thus far not served as an official detention facility, produce the order declaring it a detention facility.
- c. Instruct Respondents to allow Petitioners to meet with lawyers in order to assess the legality and conditions of their detention.

## **Motion for Urgent Hearing**

**The Honorable Court is requested to schedule an urgent hearing of the petition.**

The petition concerns the most fundamental right of any detainee detained by soldiers or other Israeli security forces, that the fact of their detention and their whereabouts be known. This right is a condition for exercising the detainee's other rights - the right to legal counsel, the right to challenge the conditions of detention and more. The detainee's family also has the right to know what has happened to their loved one and where they are being held.

On the day the war broke out, October 7, 2023, thousands of workers from Gaza were lawfully present in Israel by virtue of work permits and working for employers across the country. Following the grave, ongoing events, serious concern has arisen for their lives and bodily integrity. There are already known cases of workers who have been subjected to threats and violence at the hands of Israeli civilians, police officers and soldiers.

Given that Gaza Strip residents are unable to return home, nor do they feel safe in Israel, many hundreds [of the workers who were in Israel on October 7] have tried crossing into the West Bank to shelter with local residents until they are able to return home.

It is instructive to note that several days after the events began, residents of the Gaza Strip in possession of Israeli entry permits, began receiving notices that their permits were being revoked, while they were in Israel, and no record of them was found on COGAT's Al-Munaseq application. This made these individuals more vulnerable and exposed them to legal and other sanctions. The permit revocations have, naturally, caused a great deal of anxiety among the workers, as they are currently, inadvertently, illegally

present in Israel. Fear of being caught in Israel without a valid stay permit has driven most of them to attempt crossing into the West Bank and remain there until they are able to return home, or to try to find hiding places near their workplaces [within Israel].

Many inquiries received by human rights organizations from the family members of hundreds of workers from Gaza paint an extremely dire picture. Contact with most workers was lost during the first days of the war, and their families did not know their whereabouts. In many cases, contact was lost exactly when Gaza residents attempted to enter the West Bank.

Other workers who did manage to reach the West Bank reported that upon attempting to cross, they were interrogated for many hours by the [Israeli] military and held for extended periods of time, some of them in restraints. There are testimonies of violent and degrading treatment during interrogations. In addition, hundreds of workers had their mobile phones and large sums of cash taken from them. Even [some of] those who did manage to reach towns and villages in the West Bank were seized by Israeli security forces on their hosts' premises.

It is instructive to note that residents of the Gaza Strip who were present in Israel for the purpose of receiving medical treatment pursuant to medical permits were apprehended by Israeli security forces in the same manner as the workers, despite their special circumstances. Among these individuals are minors and elderly people with conditions that require monitoring and treatment, which they are more than likely not receiving. Holding them in harsh conditions and denying them contact with lawyers may put their lives in immediate danger.

Though no official announcement has been made, the picture that emerges is that many workers are being involuntarily confined to detention facilities in the West Bank, including a facility referred to as "Anatot," with no contact with the outside world, without receiving legal counsel or representation and with no one being informed.

One testimony obtained by HaMoked: Center for the Defence of the Individual (hereinafter: HaMoked) as part of its work locating detainees was given by a Palestinian who was born in the Gaza Strip and moved to the West Bank about 25 years ago. The man was detained in Israel on October 8, 2023 (hereinafter: the Detainee). After a habeas corpus petition was submitted in the Detainee's matter, HaMoked was informed he had been released on October 18, 2023, and had been held in a facility in the "Anatot" area while in custody.

Following his release, a representative from HaMoked spoke to the Detainee, who reported that Palestinians from the Gaza Strip, including workers employed in Israel, were being held in extremely dire conditions. The Detainee described being kept for three days in a cage-like structure on a military base, with no roof, exposed to the elements, without food, water, a bathroom, cigarettes, medications or mattresses.

He was later moved to a camp spanning roughly 300 square meters, with one chemical toilet, with hundreds of other workers in extremely crowded conditions. In this place, described as resembling a livestock pen, the Detainee said two elderly, sick workers were held with him and received no help. When he asked to contact the ICRC, the response was brutal physical violence and obscene language from the soldiers. At a certain point, an officer told the detainees that they were being held because there were Israeli hostages

in Gaza, and that as long as the Israeli hostages were in Gaza, there was no prospect of the workers' release.

After three more days, the Detainee was taken to a Shin Bet officer. At the beginning of the interrogation, the Detainee stated he had been born in Gaza but moved to the West Bank some 25 years prior and was no longer considered a Gaza resident. The interrogator wondered why he had been detained and paused the interrogation to find out why the Detainee was being held with residents of the Gaza Strip if he was a resident of the West Bank. After these inquiries were made, the Detainee was taken back to the camp where he had been held and released the next day.

HaMoked became aware of these harsh detention conditions only because the Detainee was released after being found not to be a Gaza resident. All facts pertaining to the Detainee are supported by an affidavit given by Mr. Murad Muna, a client intake officer with HaMoked, who was in contact with the Detainee and received the information directly from him.

Media reports from the last few days indicate about 4,000 residents of the Gaza Strip who entered Israel before the war are currently held in detention facilities in Israel, including individuals who entered with entry permits.

<https://www.mako.co.il/news-military/6361323ddea5a810/Article-7185445d66d3b81026.htm>

Arrests cannot be made secretly and in contradiction of the law. There is genuine concern that these arrests were made without legal authority, without cause for arrest, and without any orders whatsoever having been issued in the matter. These workers are being held in custody without proper records and documentation, in unknown conditions. The facilities in which they are being held are unknown and unrecognized as incarceration facilities. It is not clear whether they have been declared as such and whether they are suitable for holding human beings, let alone thousands of people. In addition, the workers are being held for an unspecified period of time and without guarantees for their most basic rights, primarily protection for their right to due process, legal counsel and judicial review (see, HCJ 3239/02 **Marab v. Military Commander** (February 5, 2003) (hereinafter: **Marab**)). Such mass arrests are prohibited. Additionally, due to the lack of transparency and complete blackout, it is impossible to ensure the detainees' basic needs are being met, including access to proper food and basic health services. These concerns have been raised by officials within the Ministry of Justice who expressed their concern about the imprisonment of thousands of workers from Gaza.

<https://www.haaretz.com/israel-news/2023-10-26/ty-article/.premium/gazan-workers-describe-inhuman-treatment-at-israeli-detention-facilities-since-war-started/0000018b-6631-d473-a5fb-66f9fa930000>

## **The Grounds for the Petition**

### **The Petitioners' Matter**

1. Petitioners 1-568 are residents of the Gaza Strip who, on the eve of the war that broke out on October 7, 2023, were in Israel by virtue of Israeli entry permits. All were imprisoned by Israeli security forces, and for the past few weeks, no information has been received about them.

2. Following requests from the petitioners' families, HaMoked sent inquiries to the Military Incarceration Control Center (hereinafter: MICC), operating under Respondent 2, to trace some of the Petitioners.
3. The MICC, which is tasked with providing the place of detention of every Palestinian in custody within 24 hours of the inquiry date, responded "not traced" with respect to some of the Petitioners. In a more generalized response, the MICC said it "does not trace detainees from the Gaza Strip."
4. This answer was provided despite the fact that in several petitions that concerned tracing detainees from the Gaza Strip in similar circumstances, the MICC was the agency authorized to provide details of their whereabouts. When information was requested in the past about the place of detention of Gaza residents, the question of how long the MICC would take to provide said information was raised. The Respondents stated that, due to the exigencies of war, more time would be needed than the ordinary 24 hours, and nothing shorter than 48 hours could be guaranteed (See, Respondents' response dated July 29, 2014, in HCJ 5226/14 **Abu Rida v. the Military**, and Respondents' response dated January 22, 2009 in HCJ 289/09 '**Atar v. The Military**).

Respondents' Response dated July 29, 2014, in HCJ 5226/14 is attached hereto and marked **P/1**.

Respondents' Response dated January 22, 2009 in HCJ 289/09 is attached hereto and marked **P/2**.

5. The State's position was that inasmuch as an individual inquiry regarding the location of a particular resident of Gaza was made by the family of that particular detainee, it may be provided in writing to the MICC and would be processed in a timely manner.
6. This is the reason HaMoked sent the MICC a written request to trace the Petitioners. However, the MICC said they had not been located, and HaMoked was verbally told that the MICC did not trace Gaza residents.
7. Subsequently, on October 15, 2023, HaMoked contacted the head of the High Court Department at the State Attorney's Office, Adv. Aner Helman, asking to locate 116 Gaza residents, more than 100 of whom had been arrested in circumstances similar to those described above.

A copy of HaMoked's letter dated October 15, 2023 is attached hereto and marked **P/3**.

8. On October 16, 2023, a response was received to the letter dated October 15, 2023, stating: "The High Court of Justice Department does not currently handle notices of impending legal action concerning detainees from the Gaza Strip."

A copy of the letter dated October 16, 2023, is attached hereto and marked **P/4**.

9. In addition to individual inquiries in the Petitioners' matter, counsel for the petitioners made several general inquiries with various state officials. So, on October 12, 2023, a number of human rights organizations contacted the Attorney General to find out what the policy was with respect to the detention of Gaza residents arrested by Israel,

whether they were arrested as part of the fighting or simply because they were residents of the Gaza Strip.

A copy of the organizations' letter to the Attorney General, dated October 12, 2023, is attached hereto and marked **P/5**.

10. Additionally, on the same day, the undersigned sent an inquiry on behalf of several human rights organizations focusing on the issue of Gaza workers being involuntarily confined to detention facilities in Israel.

A copy of the letter sent by human rights organizations dated October 12, 2023, is attached hereto and marked **P/6**.

11. As noted, the Petitioners were in Israel prior to the events. They received Israeli entry permits after meeting the criteria for entering Israel. According to the rules in practice, Shin Bet officials screened them individually and confirmed they do not pose a security threat to Israel. As far as we are aware, those people were taken into custody in mass arrests solely because they are residents of the Gaza Strip and for no other reason.

12. Meanwhile, on October 22, 2023, a petition for a writ of habeas corpus was submitted to the Honorable Court on behalf of ten Gaza residents who were imprisoned by Israel's security forces, enclosing a long list of over 400 additional Gaza residents (see HCJ 7637/23 **M. Kashta v. Israel Defense Forces**) (hereinafter: **Kashta**). Following that petition, Respondents announced, on October 28, 2023, that the competent authority with regard to the requested information was Respondent 5, the National Security Council.

13. Once Respondents notified that Respondent 5 in this matter was the correct address for the requested information, he was contacted immediately. In the evening hours of October 29, 2023, a partial answer was received regarding the Petitioners' place of detention, without mention of the law pursuant to which they were being held.

A copy of Respondent 5's response dated October 29, 2023, is attached hereto and marked **P/7**.

14. On the same day, i.e. October 29, 2023, another letter was sent, listing another group of names of Gaza residents in Israeli custody, with a request to trace them. Respondent 5 was also asked to clarify the legal cause for their detention, and the same was asked with respect to the previous group - the petitioners in **Kashta**. In the absence of a response, a reminder was sent on October 31, 2023. No response has been received to date.

A copy of the letter dated October 29, 2023, and the reminder dated October 31, 2023, is attached hereto and marked **P/8**.

15. Further to the above, Petitioners 1-10 were asked to state whether they intended to continue with the petition after the court narrowed the proceeding to the matter of the ten named petitioners without addressing the hundreds of individuals whose names were added to the petition and who - for reasons of efficiency - were not registered as

petitioners. Hence, on October 30, 2023, the Honorable Court was asked to delete the petition without prejudice to Petitioners' arguments, both generally and individually.

16. It should be noted that the list of names provided to Respondent 5 included the name of a 17-year-old minor, who, on the eve of the war, was in Israel pursuant to a medical permit given in light of his chronic heart condition due to which he was receiving care at Tel HaShomer Hospital. The minor was arrested by the Israel Police on October 16, 2023, and his whereabouts have since been unknown. Though the person in question is a minor and in need of follow-up care and monitoring, an inquiry in his matter to the High Court of Justice division of the State Attorney's Office was met with the same response, and no information has been provided about him.

A copy of the letter notifying impending legal action with respect to a sick minor dated October 26, 2023, is attached hereto and marked **P/9**.

A copy of the response of the State Attorney's Office dated October 26, 2023, is attached hereto and marked **P/10**.

17. The dire consequences of detaining people unlawfully and 'disappearing' them completely are emerging. Testimonies that continue to arrive from individuals who were erroneously confined and released after many days spent in mass holding facilities paint a shocking picture.
18. The testimony collected by the undersigned from Y.R. provides a harrowing description of the holding conditions in said facilities. Y.R. is a Palestinian resident of the West Bank who, prior to the events of October 7, 2023, worked in Israeli communities near the Gaza border pursuant to an Israeli entry permit. Fearing for their safety when the war broke out and the Israeli entry permits in their possession were canceled, Y.R. and other workers, some of whom are residents of Gaza, agreed to turn themselves in to the Israeli authorities after being promised they would be taken to the West Bank.
19. Y.R. and another group of workers turned themselves in to [Israeli] soldiers on October 12, 2023. They were immediately taken to the Sde Teiman military base, where they were stripped down to their underwear. The workers were interrogated for several hours and then transported to the Military-Police-run prison at Ofer Camp. During this time, Y.R. was subjected to severe violence, verbal abuse and humiliating treatment by the soldiers.
20. He described being held in the facility as actual torture, both physically and mentally. Y.R. estimates he was held together with about 250 detainees in a tent in an area spanning no more than 400 square meters. In the first few days, the detainees were held without drinking water, food or even toilets. Several days later, water taps were installed, and three toilet stalls were provided - for 250 people. They slept on thin blankets on the floor. Thin mattresses were provided to some. On two of the nights, it rained, and the detainees had to huddle in the center of the tent to avoid getting wet. The detainees were exposed to the elements without weather-appropriate clothing or a change of clothes.

21. Later, they were provided with very small amounts of food. According to the description, detainees requiring medical care who asked to see a physician were subjected to violence the first time they asked, and later, avoided requesting.
22. Y.R. said that one day, a particular age group was told to approach the gate of the ward in which they were being held. The security forces put them on a bus and drove them away. Then, everyone left behind in the ward heard bursts of gunfire. This incident led everyone to believe the soldiers had executed the men they had taken away. The men taken were only returned to the ward later that day.
23. Similarly, Y.R. described that one day a group of workers from the Gaza Strip was brought into their area, all of them dressed in white clothing. The workers said they had been held for two days without knowing where, given they had been blindfolded, and had been stripped of their clothing. Two days later, they were given white clothes to wear, put on a bus, and told they were being taken to be executed en masse. It was only when they arrived at the Ofer prison facility that they realized that this was apparently a psychological trick the soldiers had used to torture them.
24. Y.R. was held at the Ofer prison facility for about two weeks before being released with another group of Palestinians from the West Bank when it was discovered they had been taken into custody mistakenly. As noted, this was not the first case in which the continued detention of individuals with no legal basis whatsoever, while denying their families and lawyers information about their whereabouts results in false imprisonment.
25. Y.R. was released from jail, but thousands more detainees continue to be held in deplorable conditions while the fact that they are in custody is kept secret.

A copy of the affidavit of Adv. Nadia Dakka confirming Y.R.'s statements is attached hereto and marked **P/11**.

26. Furthermore, the courts have come across the issue of the detention of Gaza residents who were in Israel on the eve of the war. The distorted reality created by the unlawful conduct of the authorities has given rise to legal difficulties with respect to the normative framework for their continued detention, having created a "normative vacuum." And so, in DA 54574-10-23 **Jaffa Police Station v. Muhammad Ta'a et al.**, a matter concerning workers from Gaza who were lawfully present in Israel prior to the war and arrested by Respondent 4, given that their detention was not governed by any law, the Tel Aviv Magistrate's Court found no legal authority for remanding them to custody.

A copy of the transcripts of the hearing dated October 31, 2012, is attached hereto and marked **P/12**.

27. Failure to determine a normative framework for keeping these individuals in custody and disclosing it to the public results in a situation of unlawful mass incarceration and exposes the individuals in custody to harsh detention conditions amounting to veritable inhumane and degrading treatment.



28. It is no coincidence that requests made by lawyers to visit these detainees are left unanswered, necessarily indicating an intention to hide the serious violations of the obligations imposed on the authorities even in times of war.
29. As attempts to obtain information on the whereabouts of residents of the Gaza Strip who were in Israel on the eve of the war, several attempts were made to arrange for a lawyer to visit detainees from Gaza whose whereabouts were disclosed through the proceedings in **Kashta**. A letter was sent to the office of Col. Eli Levertov, Judea and Samaria Area Legal Advisor, on October 26, 2023, and a second letter was sent on October 30, 2023. Neither communication has been answered, and, although three weeks have passed and those detainees' whereabouts have been divulged, the legal cause for their detention remains unknown, nor is it possible to visit them and assess their holding conditions.

A copy of requests to arrange a lawyer's visit to detainees held in military facilities is attached hereto and marked **P/13**.

30. At the time of writing, no responses have been provided to the letters detailed above, and all or some of the Respondents continue to hold thousands of individuals under a shroud of secrecy.

## **The Legal Argument**

### **The Applicable Normative Framework in Times of War**

31. The thousands of workers present inside Israel during hostilities are protected persons. Article 27 of the Fourth Geneva Convention, applicable to a state of war, requires Israel to give them the following treatment:

"[R]espect 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..."

32. Article 33 of the Fourth Geneva Convention prohibits the use of collective punishment against protected persons:

"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."

33. Israeli law also establishes, in this context, that in a state of war Israel has the duty to uphold the law, and within its framework basic human rights:

"Israel is not an island. It is a member of an international community. The military's operations are not conducted in a legal vacuum. Legal norms do exist— some emanating from customary international law, some from international law enshrined in treaties to which Israel is a party, and some from the basic principles of Israeli law – which provide rules as to how combat is to be conducted." (HCJ 4764/04 **Physicians**

**for Human Rights v. Commander of the IDF Forces in the Gaza Strip** (IsrSC 58(5) 385, 391).

34. Therefore, the laws applicable in a state of war also include a duty to avoid harming protected persons who do not take part in hostilities and to protect them. The case herein raises grave concern that these duties are being violated. It appears that the workers were taken against their will to prison facilities, completely cut off from the outside world, without their families or anyone else knowing where they were and what happened to them. No one has any information about the workers' holding conditions, such that concerns over inappropriate conditions cannot be ruled out.
35. It appears that the arrest of the thousands of workers present in Israel pursuant to permits was carried out without indicating a legal authority. No order was published, and no authority in Israeli law provides for keeping people in custody without a cause. There is certainly no authority to carry out mass arrests and transfer the detainees to facilities without notifying their families or any other party of their whereabouts and the reason for their detention.
36. Note well, the revocation of the permits in the workers' possession does not alter the fact that they were lawfully present in Israel. On the contrary. The blanket permit revocation by Respondent 1 put the petitioners in an impossible position. Unable to return home or travel to the West Bank and lawfully remain there, these individuals found themselves in a situation where through no fault of their own, without being given a warning or offered a solution, they became illegal aliens in Israel. They are now apparently imprisoned for a crime they did not commit.
37. Moreover, Respondents presently refuse to divulge any information about the identities of workers and others who are apparently being held in incarceration facilities, where they are being held, or the reason for their detention. No information has been provided as to whether they are considered "detainees," detained for interrogation, pursuant to what law, and for how long. **Mass detention without an examination of each individual case, without clear cause and without judicial review** is unlawful, arbitrary detention. As ruled in **Marab**, detention not rooted in concern that the detainee is a threat to public safety or national security, or might pose such a threat, are arbitrary:
- "Thus a person should not be detained merely because he has been detained during warfare; a person should not be detained merely because he is located in a house or village wherein other detainees are located. The circumstances of his detention must be such that they raise the suspicion that he—he individually and no one else—presents a danger to security. Such a suspicion may be raised because he was detained in an area of warfare while he was actively fighting or carrying out terrorist activities, or because he is suspect of being involved in warfare or terrorism." (Paragraph 23 of President Barak's judgment).
38. Moreover, knowledge of a person's arrest and place of detention is a necessary condition for safeguarding their fundamental rights. This is all the more important when the information requested relates to individuals who were arrested without a cause and are being held in ambiguous circumstances.

39. HaMoked alone received 408 inquiries from family members of workers from the Gaza Strip who disappeared under circumstances similar to those described above. Such inquiries are still pouring in at the time of writing.
40. It is instructive to note that, beyond the question of the authority to arrest thousands of workers and whether or not this was necessary, Article 43 of the Fourth Geneva Convention requires Israel to provide the names of the protected persons who were detained or whose residence has been assigned as quickly as possible. So far, no list has been provided and individual inquiries have gone unanswered.
41. Furthermore, Article 35 of the Fourth Geneva Convention states protected persons who find themselves in the territory of a power engaging in war with their nation, have a right to leave that territory, and should any of them be denied this right, their names must be divulged:

"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."

42. The 1958 authoritative commentary of the ICRC on Article 35, sets forth that countries that detain persons seeking to depart are obligated to provide information, and that refusal to do so must be grounded in compelling 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>

43. In the matter at hand, a blanket refusal to provide information about all workers in Israeli custody, including confirmation that they are, in fact, in Israeli custody, as well as their whereabouts contravenes Israel's obligations, particularly since the matter concerns individuals who were present in Israel by virtue of work permits given so they may earn a living. For this reason, Respondents or whoever is holding the workers on their behalf, must immediately lift the fog from their situation, maintain proper records about them, and provide the information to anyone requesting it; both generally and particularly when it comes to family members who are, naturally, concerned for their safety.
44. Finally, Article 37 of the Fourth Geneva Convention states that even those held by the power in whose territory they found themselves, should be held in humane conditions. Holding people incommunicado, cut off from the world, and without providing

minimal information to inquiring family members indisputably fails to meet this standard and makes it extremely difficult to verify other minimal standards are met.

45. Amid all this, we now turn to the legal provisions applicable to each of the Respondents.

### **Notification of Place of Detention - Obligations of Respondents 1 and 2**

46. There is no need to elaborate on the right to be notified of a person's arrest and place of detention. This is a fundamental right – afforded to both the detainee and their family. It is part of the fundamental right to human dignity. A governmental system that fails to ensure this right is respected, and, instead, makes people in its custody disappear and hides them from their families for considerable periods of time, is one that treats both detainees and their relatives with cruelty.

47. Section 53(A) of the Order regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651) - 2009 stipulates:

**“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 have been added - N.D.).

48. Petitioners appear to be held in detention facilities in the West Bank, which are under the control of Respondent 1 pursuant to security legislation. They are individuals who were apprehended inside the State of Israel or in the West Bank. In addition, their family members contacted Israeli lawyers for help locating their loved ones, unlike the state of affairs described in H CJ 7439/23 **Haitham Abd al-Wahid v. Israel Defense Forces** (published on the Judicial Authority website) (October 31, 2023). In any event, a “normative vacuum,” cannot occur, and, since the matter concerns Gaza residents, other rules apply. As demonstrated in the first part of the legal chapter, the laws of war apply in this situation, all the more so, when the persons in detention are subjects of an entity currently engaged in hostilities with Israel, an entity that, under international law, forms part of the territory occupied by the State of Israel. Respondents must apply the same rules to these detainees, who are protected persons, as apply to other detainees who are protected persons from the West Bank.

49. The jurisprudence of this Honorable Court has recognized the right to notification as a fundamental right as well. As remarked by Vice President Elon in H CJ 670/89 **Odeh v. Commander of IDF Forces** in the Judea and Samaria Area, IsrSC 44(4) 515, 517:

The obligation to give such notification stems from a fundamental right afforded to a person who is lawfully arrested by the competent authorities, to inform his relatives of his arrest and his place of detention so that they will be apprised of what befell their detained relative, and how they may extend him the assistance he requires to safeguard his liberty. **This is a natural right derived from human dignity and general principles of justice, and it is afforded to both the detainee himself and his relatives.**

50. In 1995, after the MICC failed to discharge its duties, HaMoked filed a High Court petition (HCJ 6757/95 **Hirbawi v. IDF Commander in Judea and Samaria** (hereinafter: **Hirbawi**). As part of this proceeding, the Supreme Court gave the effect of a judgment to an arrangement reached by the parties whereby:

a) **Upon the arrest of a resident in the Area**, notice of his arrest and place of detention will be delivered without delay **by telephone to a telephone number provided by the detainee to the arresting party**.

The arresting party will deliver a telephone message as noted and record the details of the message given and the recipient's information on a form prepared for this purpose.

**Inasmuch as the detainee so requests, notification by telephone will also be provided to a lawyer whose name and contact details are provided by the detainee**. The arresting party will notify the detainee of this right...

b) The IDF Control Center (the MICC or any other party) **will obtain from all parties... updated information regarding the detention and place of detention of a detainee, once daily, such that the detainee may be traced** in response to a written request from an external party.

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 to the detainee or their family.

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

51. In HCJ 8435/12, **Mahmoud Abu Sal v. Military Commander** (August 22, 2013), the Respondents (the same Respondents herein) said that the MICC's work protocols had been revised to prevent situations in which detainees "disappear." The new protocols are cited in Paragraph 4 of the Respondent's Response dated February 25, 2013:

**First**, it has been ordered that when a detainee has not been found to be in the custody of the IPS, the Israel Police, or the Command temporary holding facilities in the Judea and Samaria Area, inquiries will be made with the seven regional brigades in charge of the different sectors in the Judea and Samaria Area. These brigades oversee the operation of the military forces that carry out arrests in the Judea and Samaria Area. Such inquiries will be made in order to ascertain whether the detainee had been detained by any of the regional brigades and has not yet been transferred to the agencies charged with holding detainees in the Judea and Samaria Area.

**Second**, following inquiries with the regional brigades, and if the detainee is not found to be held by one of them, inquiries will be made with military police officials in IDF commands (North, South and

Central) to ascertain whether the detainee had been evacuated to a hospital in the sector overseen by one of the commands.

52. Thus, it is the duty of Respondent 1 to notify the detainee's family of their detention and place of detention, whether by telephone or by any other means. It is the duty 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 lawyers in order to obtain updated information regarding the whereabouts of their loved ones through the MICC.
53. The issue of detainee tracing and the functioning of the MICC was also discussed in the decision of Honorable Registrar Boaz Okon in HCJ 9332/02 **Jarar v. Commander of IDF Forces**. In his decision, the Honorable Registrar writes:

"Providing information serves as a means of monitoring 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 for the family whose relative disappeared "without explanation" cannot be overstated. Ensuring detention is public guarantees that the power to detain is not abused and prevents uncontrolled use of such power.** Indeed, the power of the state is immense, however benevolent its intentions may be. Without notification, this power may go unchecked, even if its use is supported by security reasons. There are obvious risks attached to concessions or flexibility. Experience shows that excessive use of powers, which is not uprooted promptly, creates a new reality. Power, unlike a boomerang, does not return once it is released. Therefore, the authority should exercise utmost diligence where the exercise of detention powers is concerned. **This diligence requires immediate notification of the detention.**"

54. Hence, the remedies sought herein, involving Respondents' duty to give notification of a person's arrest and place of detention and the **duty of Respondent 2, particularly, through the MICC, to maintain updated information concerning the detention and place of detention of each and every detainee held by any state authority.**

#### **Record of Detainees in the Place of Detention**

55. Every detainee has the right to have their place of detention known. Recording the detainee's presence in the place of detention is essential for exercising his rights. Only this allows his family and lawyer to check with the officials in charge of the place of detention on his status, medical condition, detention conditions, if and when he can be visited, etc. Only this allows them to act to ensure his rights as a detainee are upheld. The right of a detainee to be present during legal proceedings against him also depends on proper registration at the place of detention.
56. Failure to keep proper record of a detainee in the place of detention severely infringes upon the detainee's and his family's fundamental rights. A governmental system 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, fails to discharge its obligations and is derelict of its duty.

57. Proper records of detainees is regulated in statute both with respect to detainees held by Respondent 3 and those detained by Respondent 4. We address this below:

### **Record of Detainees Held by Respondent 3**

58. Due to the utmost importance attributed to the requirement to keep record of a detainee in their 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 information pertaining to such person recorded.

59. Chapter 5 of the Israel Prison Service Provisions (Section 5.06) provides:

**An updated and precise record shall be kept in prison with respect to each prisoner held therein...**

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

60. Section 3A(2) of the National Headquarters Orders 12.03.01 entitled “Treatment of Detainees in the Detention Facility” provides:

**A person shall not be held in a detention facility before the official in charge of the investigation or detention notifies his family of the detention,** and before an officer interviews him and advises him of his right to contact a lawyer

61. The provisions of the law are, therefore, clear and explicit.

62. Due to its nature, this petition is not supported by an affidavit and power of attorney given by the Petitioners. Attached hereto are two affidavits on behalf of HaMoked regarding its attempts to obtain information about the Petitioners and the actions it has taken in this matter.

**For the above reasons, the Honorable Court is requested to urgently issue Writs of Habeas Corpus directed at the Respondents as sought.**

Jerusalem November 2, 2023

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[Our File. No. 124823]