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

HCJ 2254/24

In the matter of: \_\_\_\_\_ **Abu Musa, ID 976066761**

Represented by counsel, Adv. Nadia Daqqa (Lic. No. 66713) and/or Nadine Abu Arafe (Lic. No. 89020) 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 Petitioner**

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 to appear and show cause, as follows:

- a. Inform the family of the Petitioner, a Gaza Strip resident, who was arrested while trying to leave Nasser hospital in Khan Yunis together with his wife and children, according to the military's instructions, and whose whereabouts are unknown; who holds him; where he is held and according to which law; to the extent he was released or transferred to another body – when, where and to whom and what is known about his current whereabouts. To the extent the Petitioner is 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 his immediate release.
- b. Decide once and for all which body is responsible for providing information about the holding place of the Petitioner and others in his condition; disclose the identity of the

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

- c. Order the Respondents to enable the Petitioner to meet with a lawyer to examine his incarceration conditions and the lawfulness of his incarceration.

## Motion for an Urgent Hearing

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

**The honorable court is also requested to order the Respondents to respond to the petition promptly and within a short period of time, given the urgency of the matter, and similar to the time periods given in similar petitions which were recently filed where time periods of 5 days at the most were given (see HCJ 1608/24 Ziara v. IDF, HCJ 1730/24 Lobad v. IDF, HCJ 1698/24 Kolab v. IDF).**

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 for legal representation, the right to intervene in their incarceration conditions 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.

On October 7, 2023 a bleeding, harsh and unprecedented war broke out which continues to this date. However, even in time of war, legal obligations still apply.

The law provides that notice of a person's place of detention shall be given to their relative *without delay*. The Petitioner's family does not know, as of today, where their loved one is held.

The passage of time increases the uncertainty in which the family lives, its concern and fear. The passage of time also frustrates – by the minute – the exercise of the rights of the detainee, who is in custody and is unable to protect and handle his affairs independently.

The importance of receiving the information is reinforced in view of media reports, including in the Israeli media, according to which the conduct of the Israeli security forces by no means guarantees and protects the bodily integrity and dignity of Gaza detainees. 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 exhibited in some cases degrading and abusive behaviors. These reports raise a substantial and real concern for the life and bodily integrity of said individuals.

Holding a person in detention, *incommunicado*, significantly increases the risk that said individual 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.

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 confidential leaves the detainee particularly vulnerable to torture and violation of other basic rights. The nature of this detention also blocks the way to reliable reports of torture in real time. The above is consistent with recent reports. It emerges from said reports that 27 Gaza residents have died in military detention facilities in Israel since the war broke out (see

"27 Gaza residents have died in military detention facilities in Israel since the war broke out", Hagar Sheizaf (Ha'aretz, March 8, 2024)). <https://www.haaretz.co.il/news/politics/2024-03-07/ty-article/.premium/0000018e-1240-df16-a58e-1ffedcf70000>

Detentions cannot be conducted in the dark and contrary to the law. The Petitioner and others in his condition 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 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.

Presently too, and after the previous proceedings which were conducted concerning the provision of information to the families of Gazan detainees, much remains unknown. However, some things are clear and bright as day. It is clear that concealing information on the whereabouts of Gazan detainees is contrary to international law and also to 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.

In view of the recent judgment given in HCJ 9021/23 **Wadi v. Israel Defense Forces** (February 18, 2024) (hereinafter: **Wadi**), this petition is submitted in the case of a petitioner whose mother has turned to HaMoked: Center for the Defence of the Individual (hereinafter: **HaMoked**). For the removal of any doubt, and in view of the honorable court's explicit determination in Wadi, a power of attorney signed by the petitioner's mother is attached hereto.

Therefore, and if the Petitioner is still held by the state authorities, the family is entitled by law to know ***immediately*** where he is held and to appoint a lawyer to represent him in the arrest proceedings. If he is no longer held by the state, the state must ***urgently*** provide any information that will help in locating him, and protecting him if necessary.

In several petitions for writ of *Habeas Corpus* which were submitted to this honorable court in the past regarding residents of the occupied territories who had been arrested by soldiers or other Israeli security forces, a **maximum** period of **24 hours** was established by the court within which the respondent should have submitted its response to the petition. See, for instance, in HCJ 2878/13 **Nasser et al. v. Commander of IDF Forces in the West Bank**. In the context of Gazan detainees in HCJ 5226/14 **Abu Reida v. IDF**, the respondents explained that they could not commit to a period shorter than 48 hours, in a manner showing their understanding of the obligation to merely provide the sort of information requested in the petition at hand.

**The Grounds for the Petition are as follows:**

**The Petitioner**

1. The Petitioner, 44 years old, a Gaza Strip resident, working as an X-Ray technician in Nasser Hospital in Khan Yunis, found refuge therein for himself and his family members who have stayed therein prior to his arrest. On February 15, 2024, according to the instructions of the soldiers, the Petitioner tried to leave the hospital with his wife and children, but was arrested in front of his family members and since then his whereabouts are unknown. The detaining body did not deign to notify the family members of his designated place of detention and of the reason for his arrest.
2. On March 5, 2024, Petitioner's brother (hereinafter: [the brother]) contacted HaMoked and requested its assistance in tracing his brother. Following said request, on the very same day, HaMoked contacted the control center acting on behalf of Respondent 2 (hereinafter: the **Incarceration Control Center**). In addition, HaMoked wrote to the address to which it had been referred to by Respondent 4 in similar cases handled by HaMoked, namely [anatot.idf@gmail.com](mailto:anatot.idf@gmail.com).

A copy of HaMoked's letter dated March 5, 2024 is attached and marked **P/1**.

3. On March 6, 2024 a response was received from "Anatot" facility stating that the Petitioner was not held in the facility. As of the time this petition is penned, no answer has been received to HaMoked's letter from the Incarceration Control Center. Hence, [the brother] and his other family members have no way of tracing the Petitioner other than by applying to legal instances, since the Incarceration Control Center has already expressly informed that it does not provide information regarding the place of detention of detained Gaza Strip residents, who were arrested during the war.

A copy of the response of the Incarceration Control Center dated March 6, 2024 is attached and marked **P/2**.

4. Attempts were also made on the principled level to contact different bodies, such as Respondents 5 and 6, to receive information about the policy according to which detained Gaza residents who were arrested by Israel are held, but to date these two requests remained unanswered.

A copy of the letter sent by human rights organizations to Respondent 5 dated October 12, 2023 is attached and marked **P/3**.

A copy of HaMoked's letter dated December 3, 2023 to Respondent 6 is attached and marked **P/4**.

5. It emerges from the above that there is no body which may be applied to for the purpose of tracing different categories of detainees, residents of the Gaza Strip, since all the possible bodies refuse to handle these requests.
6. In view of the circumstances described above, and in view of the fact that the Respondents continue to conceal the place of detention of the Petitioner and others in his condition, it is clear that the failure to regulate the disclosure of information to the detainees' families applying regarding their loved ones, necessarily attests to the intention

to conceal the severe violations of the obligations imposed on the authorities even in a time of war.

7. Since the arrest, Petitioner's family remains in a situation of uncertainty, for over a month, during which it was unable to find out what had happened to their loved one. [The brother], who is not living in Gaza, confirmed that he maintains an ongoing communication with Petitioner's spouse who has no information concerning the Petitioner's whereabouts and whether or not he was released to Gaza.
8. Hence, until this time, after more than a month has passed and more than ten days from the date of the request in his matter which remained unanswered, the attempts made by the family and HaMoked to trace the Petitioner were unsuccessful. As of the filing date of this Petition, the Respondents have not traced the above Petitioner and have not provided any information about him as is required by law.
9. It should be emphasized that following his arrest Petitioner's family is in distress. Not only were they not given any information about the arrest of their loved one, but they were not given any information as to where the Petitioner would be taken. The distress is exacerbated by the testimonies of detainees who were released proving that indeed the incarceration conditions of Gazan residents in various incarceration facilities are severe, even amounting to torture, as it was recently reported that at least 27 detainees died inside detention facilities in Israel.

### **The Legal Argument**

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

10. The thousands of residents 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..."

11. 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".

12. According to the scholar Jean Pictet, the official commentator of the Geneva Convention on behalf of the Red Cross, Article 27 of the Fourth Geneva Convention applies to any and all protected persons and even more so to incarcerated citizens:

"The obligation to give humane treatment and to respect fundamental rights remains fully valid in relation to persons in prison or interned,

whether in the territory of a Party to the conflict or in occupied territory. It is in such situations, when human values appear to be in greatest danger, that the provision assumes its full significance."

Jean S. Pictet Commentary on Geneva Convention IV of 1949, p. 201 (Geneva, 1958)

13. 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 the international law entrenched in treaties 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).

14. 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, whether they were arrested not in the course of hostilities and took no part in them, and even if they were arrested in the course of combat. In the case at hand a severe concern arises that the above obligations were violated – the Petitioner has apparently been taken against his will to an incarceration facility, completely disconnected from the outside world, while his family or any other person has no information of his whereabouts and what had happened to him. Nobody has any information about the Petitioner's incarceration conditions, and the concern that he is held in inappropriate conditions cannot be ruled out.
15. There is no authority, including in a time of war, to transfer detainees to facilities without giving notice to their families and 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.
16. Moreover, as of today the Respondents refuse to provide any information about the Petitioner and others in his 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. **These arrests may amount** to arbitrary arrests.
17. 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.
18. 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".

19. According to the Red Cross' 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>

20. In the case at hand a sweeping refusal to provide information about the Petitioner, including a confirmation that he is held by Israel and his holding place, is contrary to the obligations imposed on Israel. Therefore, the Respondents or anyone on their behalf holding the Petitioner should immediately clear the fog surrounding his condition, maintain orderly information about him and provide it particularly to his family members who are naturally worried about his wellbeing.
21. Article 37 of the Fourth Geneva Convention provides that persons held by the Detaining Power in its territory 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.
22. 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).

23. The obligation to provide information about their capture and holding place also applies to persons suspected of taking part in hostilities. 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 detained by Israel in a time of war.

24. 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.
25. 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.
26. As is known, currently, the question of whether war crimes are committed by Israel under the Rome Statute is examined by the International Criminal Court. The continued enforced disappearance of Gaza Strip residents may expose the policy makers and those responsible for it to legal proceedings at this level.
27. There is no justification for the continued enforced disappearance of Gaza Strip residents, whether detained 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 stated in Article 2(2): "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".

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

28. 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 in a manner which severely affects the humanity of the detainee and their relatives.

29. The above is also regulated by the military law which applies in the occupied territories. The Petitioner has indeed been arrested in the Gaza Strip and not in the West Bank, but there is no dispute that when he was arrested the Israeli army had effectively controlled the area, and as such it is subject to the duties and obligations applicable to an occupying power according to international humanitarian law, including the obligation to inform the detainee's family members of their arrest and place of detention. Accordingly, for instance, 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.)

30. As we have shown in the first part of the legal section, the laws of war, and particularly the customary laws, apply to this situation, and more forcefully when we are concerned with the incarceration of nationals of an entity with which the state of Israel is currently in war, an entity which according to international law forms part of the territory which is occupied by the state of Israel. The Respondents should apply to these nationals, who are protected residents as aforesaid, the laws which apply to other detainees who are protected residents from the West Bank.
31. The right to receive notice as aforesaid was also recognized as a basic right by this Honorable Court. As stated by Deputy President Elon in H CJ 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".**

32. 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 region, **notification of his detention and of 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 dealing 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.

33. 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.

34. 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 formed 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 pursuant to the attempts described above to locate detained Gaza Strip residents, Respondent 2 apparently holds the requested information in its possession but refuses to provide it. 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.

35. 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**".

36. 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 their obligation to maintain updated information concerning the arrest and place of incarceration of each detainee held by any of the state authorities and the willingness to provide it to the family members or their attorneys following their request.**

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

37. Each detainee obviously has the right to have their place of detention made clear and known to all. 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 also depends on their orderly registration in their place of detention.

38. 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 their ability to receive updated information on the basis of such registration, does not fulfill its duties and obligations.
39. A proper registration of detainees held by Respondent 3, of detainees held in facilities under the responsibility of Respondent 1 and under a legal framework which is under the control of Respondent 6, is regulated by legislation. We shall explain.
40. 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 entrenched 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 it that the details which were established with their respect will be registered."

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

**"An updated and accurate registration shall be conducted in the prison of any prisoner held therein..."**

42. 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.
43. 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.
44. Indeed, the Incarceration of Unlawful Combatants Law, 2022, in as much as it is relevant to the case at hand, 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.
45. 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, including both the military and the civilian legal systems. Hence, there is no justification for the enforced disappearance of the Petitioner as well as of hundreds and thousands of detainees who are protected persons.

46. By its nature this Petition is not supported by an affidavit and powers of attorney on behalf of the Petitioner. An affidavit on behalf of HaMoked is attached to this Petition concerning its attempts to receive information about the Petitioner, and concerning its acts in that regard. In addition, fortunately, a power of attorney of Petitioner's brother is attached to the Petition, who succeeded to provide it since he is living outside Gaza since it is extremely difficult to obtain documents and to generally communicate with family members residing in Gaza.

**For these reasons, the honorable court is requested to urgently issue a writ of *Habeas Corpus* as requested in the beginning of the Petition, directed at the Respondents and to impose on them the obligation to pay the costs of trial and attorney's fees.**

Jerusalem, March 17, 2024

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Nadia Daqqa, Adv.  
Counsel for the Petitioner

## Affidavit

I the undersigned, Orly Barmak, holder of ID number 038254942, having been warned that I should state the truth and that I shall be subject to the penalties 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 Mr. Abu Musa, a Gaza Strip resident.
2. I am a public liaison coordinator at HaMoked Center for the Defence of the Individual founded by Dr. Lotte Salzberger.
3. I hereby confirm that all the details specified with respect to the Petitioner were received from his family and were gathered in HaMoked's office by a skilled team.
4. All the details regarding the attempts to trace the Petitioner are true and were also meticulously recorded by a skilled team.
5. I hereby declare that this is my name, this is my signature and that the content of my above affidavit is true.

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Orly Barmak

I hereby certify that on March 17, 2024 appeared before Adv. Nadia Daqqa, in the offices of HaMoked Center for the Defence of the Individual, located in 4 Abu Obeida St., Jerusalem, the above, who is personally known to me, and after I have warned her that she should state the truth and that she shall be subject to the penalties prescribed by law should she fail to do so, she confirmed the truthfulness of her above statement and signed it before me and in my presence.

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Nadia Daqqa, Ad.