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At the Supreme Court
Sitting as the High Court of Justice

H CJ 70724-08-04

In the matter of:

1. _____ al-'Ajur, ID ----
2. _____ al-'Ajur, ID ---- (minor)

Represented by counsel, Adv. Nadine Abu Arafeh (Lic. No. 89020) and/or Nadia Daqqa (Lic. No. 66713) 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) and/or Aminah Qumbar (Lic. No. 97486)

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.

1. **Israel Defense Forces**
2. **Chief Military Police Officer**
3. **National Security Council**
4. **Attorney General**
5. **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 families of the Petitioners, a father and his **five year old** daughter, Gaza Strip residents, who were held by the military as of March 24, 2024, when the military broke into the family's home, and whose whereabouts and holding place since then are unknown; where they are held, who holds them and according to which law; to the extent they were released or transferred to another body – when, where and to whom and what is known about their current whereabouts. Have both of them or either one of them passed away while held by the military; if this is the case when and in what circumstances; To the extent the Petitioners are no longer alive we wish to know where

their bodies are held and by whom. To the extent that the Petitioners are unlawfully held by an Israeli authority, **including, *inter alia*, in a detention facility which is not a declared detention facility**, the Honorable Court shall be requested to issue an order for their immediate release.

- b. Order the Respondents to check whether the Petitioners are held in an undeclared incarceration facility, since the cases in which people are arrested and held in undeclared incarceration facilities are increasing, and it seems that the answer "there is no indication of incarceration" arises from non-registration of detainees in undeclared incarceration facilities, as well as from non-registration in official facilities.
- c. Decide once and for all which body is responsible for providing information about the holding place of the Petitioners and others in their circumstances; disclose the identity of the bodies holding information about the location in which the Petitioners and others in their circumstances are held.

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 in view of the urgency of the matter, within a time period similar to the periods given in similar petitions which were recently submitted, where periods of five days at the most were given (see **HCJ 1608/24 Ziyarah v. IDF; HCJ 1730/24 Lubad v. IDF; HCJ 1698/24 Kulab v. IDF; HCJ 2655/24 Alsheikh v. IDF; HCJ 2656/24 'Awadallah v. IDF; HCJ 4282/24 Thaladini v. IDF**).

The Petition at hand concerns the most fundamental right of a human being arrested by the Israeli security forces and held in their custody: that their whereabouts shall be known.

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

As of March 24, 2024 the Petitioners, a father and his five-year-old daughter, were held by soldiers, in their custody. Since then, their family does not know where they are held and what happened to them.

The passage of time increases the uncertainty in which the family lives, its concern and anxiety. The passage of time also frustrates – by the minute – the exercise of the most fundamental rights of the Petitioners who are held in custody and are devoid of the ability to protect their own rights by themselves.

The importance of having this information increases in view of the reports in the media, including in the Israeli media, according to which the way in which Israeli security forces conduct themselves these days by no means guarantees and protects the bodily integrity and dignity of the Gaza residents held by the authorities. 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 described in some cases degrading and abusive behavior including the use of civilians as a human shield. These reports raise a substantial and real concern for the life and bodily integrity of said individuals.

Currently, and following previous proceedings concerning the disclosure of information to the families of Gazan detainees, more is unknown than is known. However, there are also some things which are clear and bright as daylight. It is clear that concealing information regarding the holding place of Gazan detainees is contrary to international law as well as to Israeli law. It is clear that under the veil of secrecy surrounding their holding place, detainees are held in horrendous incarceration conditions amounting to torture, which are prohibited even in a time of war. This secrecy thwarts the ability to exercise detainees' rights and neutralizes the supervision mechanisms over the incarceration conditions in the places in which they are held. Each one of the above separately, and all the more so, all of them in the cumulative, justifies the remedies requested in the petition.

In **HCJ 2254/24 Abu Musa v. Israel Defense Forces** (May 2, 2024) (hereinafter: **Abu Musa**), the Respondents informed that on the basis of an individual examination "there is no preclusion preventing the petitioner from meeting counsel at this time, to the extent he so wishes.

Accordingly, a written request should be sent to the e-mail address [which was specified there]". Several days after Respondents' notice a hearing was held in Abu Musa in which it was clarified that requests in the matters of the other Gazan detainees may also be sent to the aforementioned e-mail address. In its judgment dated May 2, 2024 the honorable court stated that "If there are future cases in which the remedy of *Habeas Corpus* is requested before 90 days have elapsed [from the day of the arrest, during which a meeting with a lawyer can be prohibited if the arrest is made by virtue of the Unlawful Combatants Law) and after the request has not been answered – the court's door is open."

Against the backdrop of the judgment in Abu Musa, this petition is filed in the matter of the Petitioners whose family addressed HaMoked – Center for the Defence of the Individual (hereinafter: **HaMoked**). For the avoidance of doubt, and in view of the explicit holding of the honorable court in HCJ 9021/23 **Wadi v. Israel Defence Forces** (February 18, 2024) (hereinafter: **Wadi**), attached is a power of attorney signed by Petitioner 1's wife who is also Petitioner 2's mother.

In several *Habeas Corpus* petitions which were filed with this honorable court in the past in the matter of residents of the occupied territories who had been arrested by soldiers or other Israeli security bodies, the court established a **maximal** period of **24 hours** in which the respondent should respond 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 detainees who are Gaza Strip residents in HCJ 5226/14 **Abu Reida v. The Military**, the respondents explained that they could not commit to a period shorter than 48 hours in a manner manifesting their understanding of the mere obligation to disclose the type of information requested in the petition at hand.

The grounds for the petition are as follows

Petitioners' matter

1. The Petitioners are a father and his minor five years old daughter, residents of the Gaza Strip, who have disappeared while in Respondent 1's custody (hereinafter: the **Soldiers**).
2. On March 24, 2024 the soldiers burst into the al-'Ajur family home located behind A-Shifa hospital.
3. During the bursting-in, the soldiers fired at the inhabitants, injuring several family members, including Petitioner 2 and her mother. Thereafter, the soldiers took the minor daughter to another room to treat her injured shoulder. At that time they ordered Petitioner 2's mother to leave the house and her wounded daughter. In the absence of any other choice and with her life under threat, Petitioner 2's mother left her alone with the soldiers who had promised to take care of the minor. It should be noted that at that time Petitioner 1 was left alone in the room since the soldiers ordered his uncle to join the family's men.
4. At the same time, the soldiers separated the family's women from the men. Some of the men were taken for interrogation and others were detained in civilian houses. The

soldiers ordered the women to leave the house and start moving to the southern part of the Strip.

5. Two week later, some family members returned to the building, but found that the house had been shelled. The worried family tried to locate the Petitioners in the building and in any other possible place, but unfortunately the house had been completely demolished and all of the family's attempts to locate the Petitioners were to no avail.
6. Petitioners' whereabouts have vanished since they were left in the custody of soldiers, who promised to take care of and treat the injured minor. It is possible that the soldiers are still holding the Petitioners without divulging any information in that regard to the family. The family is seriously concerned that the security forces did not fulfill their responsibility to keep the Petitioners safe, including a helpless minor, and may have left her alone in an unsafe place which does not fit her medical needs.
7. Pursuant to the family's request, on July 24, 2024, HaMoked wrote to the e-mail address referred to by the Respondents in Abu Musa, the "Incarceration Control Center" mashlat.tium@gmail.com and requested to receive information regarding the whereabouts of the Petitioners. On that very same day, an answer was received from the Incarceration Control Center stating that following an examination which had been conducted no indication of Petitioners' arrest or incarceration was found.

A copy of the correspondence between HaMoked and the Incarceration Control Center from July 24, 2024 is attached and marked **P/1**.

8. Notwithstanding the Incarceration Control Center's response, Petitioner 1's wife was informed by a detainee who was released from Sde Teiman facility that her husband had been held with him in the same facility since he had heard the prison guards calling Petitioner 1's name in April 2024. In addition, she heard from another source that her husband was held in Ketziot prison. It emerges from the above that other than by turning to legal instances the family has no way of receiving information concerning the whereabouts of the Petitioners, since it seems that unless the Respondents are forced to conduct a thorough investigation in the matter, it will not be possible to know what happened to the Petitioners.
9. In addition, we shall not conceal the concern that at a certain point the Petitioners had died, since reports of detainees who have died while in custody are increasing, and even according to official bodies their number amounts to at least a few dozens. Therefore, Respondent's answer in their matter is insufficient and the above possibility should also be examined.

The Legal Argument

The binding legal framework in a time of war

10. The residents of the Gaza Strip are "protected persons" according to the laws of war, pursuant to the Fourth Geneva Convention (Convention (IV) relative to the Protection of Civilians in Time of War, 12 August 1949). Particularly, the thousands of residents

registered as Gaza Strip residents held by the Israeli authorities are also 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 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".

12. According to Jean Pictet, the official Red Cross commentator of the Geneva Convention, Article 27 of the Fourth Geneva Convention applies to every protected person and even more so to incarcerated persons:

"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 including 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 covenants that Israel is a party of, 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. In the case at hand, a severe concern arises that the above obligations were violated – as we have seen, the Petitioners are a father and his minor daughter, who was injured when the soldiers promised to take care of her. They were left in the soldiers' custody in a combat zone, completely disconnected from the outside world, while neither their families nor any other person have any information as to their whereabouts and fate.

15. Even in a time of war, it is prohibited to transfer protected persons without giving notice to their families and any other body concerning their whereabouts and the reason for which they are being 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 Petitioners who were or are still held in their custody, contrary to the obligations imposed on them. Therefore, it is incumbent upon the Respondents or anyone on their behalf which held or still holds the Petitioners, to keep organized information in their respect and to disclose it, particularly to the Petitioners' family members who are naturally concerned for their safety and wellbeing.
17. Moreover! The International Convention for the Protection of All Persons from Enforced Disappearance of 2006 whose adoption was supported by Israel, expressly prohibits enforced disappearance, including the refusal of the state enforcing the disappearance to provide information concerning the fate of the person who has disappeared, in a manner placing it outside the protection of the law. It is further stated that such conduct may not be justified even in a state of war or any other public emergency. It should be noted that Article 5 of the Convention provides that widespread or systematic practice of enforced disappearance constitutes a crime against humanity.
18. It is well known that currently, the question of whether war crimes are committed by Israel under the Rome Statute is being examined by the criminal court. The continued enforced disappearance of Gaza Strip residents may expose policy makers and those responsible for it to legal proceedings on this level.

Respondents' obligations towards Petitioner 2 being a minor

19. In addition to the fact that Respondents' policy constitutes a brazen violation of the obligations imposed on Israel by virtue of international customary law, in the case at hand the violation applies to a minor in complete disregard of the elevated obligations applicable to minors held in custody.
20. It is well known that the Convention on the Rights of the Child (hereinafter: the **Convention**) which was adopted by the United Nations in 1989 and was ratified by Israel in 1991, constitutes the central document entrenching the rights of minors in international law.
21. The Convention emphasizes the crucial difference between minors and adults and includes comprehensive provisions relating to all areas of minors' lives. According to the Convention, minors shall be entitled to special protections for their full and harmonious development. Bearing that in mind, their basic rights and wishes should be taken into account, and in any decision relating to minors, their age and development level shall constitute a key consideration.
22. In December 1990, the UN General Assembly approved the "Rules for the Protection of Minors Deprived of Their Liberty", known as the "Havana Rules". This set of rules emphasizes the child's best interest and provides, *inter alia*, that the states parties should

establish a special statutory system for minors, ensure that anyone handling minors is qualified to do so, and adapt the incarceration facilities to the minors' special needs.

23. The Convention on the Rights of the Child also binds Israel in the occupied territories as is confirmed by the UN Committee monitoring the implementation of the Convention on the Rights of the Child which rejects the claim that the Convention does not apply there; the UN Committee monitoring the implementation of the Optional Protocol to the Convention on the Rights of the Child regarding children involved in armed conflicts demanded that Israel report to it on the measures taken by Israel for the purpose of implementing the international standards with regard to Palestinian minors residing in the occupied territories, during their arrest and interrogation¹.

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

24. As elaborated above, the right to receive information about a detainee's place of incarceration stems from the international customary law which binds Israel. The mirror image of the obligation which applies to the state is the right of the detainee and their family members. This right is a basic right – of both the detainee 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 harms the human dignity of the detainees and their relatives.
25. The right to receive notice as aforesaid was also recognized as a basic right by this Honorable Court. As stated by the 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 basic 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".**

26. 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 it emerges from the aforementioned attempts to locate Gazan detainees that Respondent 2 apparently holds the requested information in its

¹ United Nations Committee on the rights of the Child, Consideration of Reports Submitted by States Parties under Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, 4 March 2010, section 4.

possession but refuses to disclose it and therefore it should be instructed to refrain from blocking the disclosure of the information or that the requested information shall be provided by another authorized body in a way similar to the way in which information concerning West Bank residents is provided by Respondent 2.

27. Hence the remedies which are requested in the Petition at hand concerning Respondents' obligation to give notice of a person's arrest and their place of incarceration **and their obligation to keep in their possession updated information concerning the arrest and place of incarceration of each and every detainee held by any of the state's authorities and the readiness to hand it over to family members or their attorneys contacting them.**

Registration of the detainee in the detention place

28. Obviously, each and every detainee has the right to have their place of detention certain and known to all. 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 ascertain with those in charge of the incarceration facility the detainee's 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, if any, also depends on their orderly registration in their place of detention.
29. 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.
30. 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.
31. 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."
32. Chapter 5 of the Israel Prison Service directives (section 5.06) provides:

"An updated and accurate registration shall be conducted in prison with regard to any prisoner held therein..."

33. 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.
34. In addition, and according to the aforesaid, the failure to register detainees held by the military is contrary to the obligation entrenched 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.
35. 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 of the detention place be given. The same applies to the Order regarding prevention of infiltration.
36. 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 whether in the framework of the military system or in the framework of the civilian statutory and legal system. Hence, there is no justification for the continued enforced disappearance of the Petitioner and the hundreds and even thousands of detainees who are protected persons.

In Conclusion

37. Therefore, since as of the date these lines are penned, the Respondents have not yet notified what had happened to the Petitioners who, on March 24, 2024, were held by soldiers, their families have no other option but to turn to legal instances.
38. By its nature this Petition is not supported by an affidavit and powers of attorney on behalf of the Petitioners. An affidavit on behalf of HaMoked is attached to this Petition concerning its attempts to receive information about the Petitioners, and concerning its acts in that regard. In addition, a power of attorney of Petitioner's granddaughter is attached to the petition.

For these reasons, the honorable court is requested to urgently issue writs of *Habeas Corpus* as requested in the beginning of the petition, directed at the Respondents and to obligate them to pay the costs of trial and attorneys' fees.

Jerusalem, August 29, 2024

Nadine Abu Arafeh, Adv.
Counsel for the Petitioners