At the Supreme Court **HCJ 4340/11**
Sitting as the High Court of Justice

In the matter of:

1. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**
2. **The Association for Civil Rights in Israel**

all represented by counsel, Adv. Elad Cahana (Lic. No. 49009), and/or Ido Blum (Lic. No. 44538) and/or, and/or Hava Matras-Irron (Lic. No. 35174) and or Sigi Ben Ari (Lic. No. 37566) and/or Daniel Shenhar (Lic. No. 41065) and/or Noa Diamond (Lic. No. 54665) and/or Nimrod Avigal (Lic. No. 51583)
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. **Military Commander of the West Bank**
2. **Head of the Civil Administration**
3. **Head of the Israel Security Agency**

The Respondents

Petition for Order Nisi

A petition for an *order nisi* is hereby filed which is directed at the respondents ordering them to appear and show cause:

1. Why they should not revoke the amendment to the procedure for processing applications for information on preclusions to travel from the Occupied Palestinian Territories (OPT) abroad. The amendment turns the procedure into a "dual step" process in which an applicant who is not "precluded" does not receive an immediate response;

2. Why they should not provide individuals inquiring whether they are precluded from leaving the OPT to go abroad with correct and accurate responses based on current information.

Motion for Urgent Hearing

The Honorable Court is requested to schedule an urgent hearing in the petition. The petition concerns hundreds of thousands of individuals who travel abroad from the West Bank every year and the procedure for "prior inquiry" regarding security preclusions which was implemented as part of HCJ 8155/06 **The Association for Civil Rights in Israel v. IDF Commander in Judea and Samaria**. The present petition is submitted following a recent amendment to the procedure which drains it of any meaning, turns back the clock and disadvantages residents who apply under the procedure.

The procedure which was drafted in the context of HCJ 8155/06 was designed to allow the hundreds of thousands of Palestinians who travel abroad via the Allenby Bridge border crossing every year to inquire at their local DCOs whether Respondent 1 has banned them from traveling abroad ahead of time. The petition was filed in view of the situation that existed at the time, wherein travel preclusions became known at the time of travel itself at the Allenby Bridge.

The implementation of the procedure has been faulty from the outset. Many applicants have received **incorrect** answers. Petitioner 1 has filed many complaints on this issue and the Court has also voiced its criticism. However, instead of addressing the criticism, fulfilling their obligations and making sure accurate responses are provided, the Respondents opted to amend the procedure. Under the amended procedure applicants would no longer be given any information when they arrive at the DCOs to make their inquiry. They would have to return to the DCO no earlier than four days later and only then would be told whether or not they are precluded from travel (arrival at the DCO in itself sometimes takes an entire day). Those who discover at this time that the Respondent has banned them from travel would only then begin the administrative appeal process which is set to last eight weeks.

This amendment to the procedure further disadvantages applicants and exacerbates the already existing violation of their fundamental rights to freedom of movement and due process.

It is clear that the amendment makes the "prior inquiry" procedure useless. It turns a relatively simple process which requires DCO staff to briefly look at a computer screen and utter a simple response "precluded" or "not precluded" into a process that lasts at least five days and requires applicants to appear at the DCO twice (with all this entails).

We emphasize, as detailed below, that under the initial version of the procedure, which was drafted in the context of HCJ 8155/06, applicants would not have received a response upon arrival at the DCO, but only on a second visit and only then would they have been able to begin the appeal process if necessary. **However, the Court harshly criticized this two step process in the context of the original HCJ 8155/06 and the Respondents hastened to correct the procedure accordingly.** Yet now, after the petition was deleted, the Respondents are attempting to turn back the clock.

Considering the importance of the issue and the large number of people affected by the change as well as the fact that the aforesaid procedure was drafted as a response to a petition and to the Court's remarks on the difficulties caused by the situation that preceded it, the Court is requested to instruct the petitioners to respond to the petition urgently.

Motion for Order Nisi

1. The Honorable Court is requested to issue an *order nisi* pending a ruling on the petition instructing the Respondents to refrain from implementing the amendment to the Procedure for Processing Applications for Prior Inquiry and Removal of Security Preclusions for Travel Abroad, which stipulates a "two step" process and to continue providing applicants with responses at the time they arrive at the DCO, in accordance with the procedure drafted in the context of HCJ 8155/06.

2. To the Petitioner's knowledge, the Respondents have not yet begun using the new procedure.

3. If the amendment is implemented, applicants who have thus far received answers upon arriving at the DCO will no longer receive a response at that time. This change contradicts the Respondents' declarations in HCJ 8155/06 and the decision of the Court in prior proceedings, while causing harm to hundreds of thousands of people and creating a complicated inefficient and unreasonable procedure.

4. As detailed in the petition, this change has no pertinent justification. The Respondents themselves do not argue that it is required for security (or other) reasons. The only reason for introducing it is the Respondents' reluctance to rectify their own bureaucratic deficiencies. Rather than taking the necessary steps for resolving the problems of which Petitioner 1 had complained for some 18 months, the Respondents have opted for a solution which requires less effort on their part but increases the injury to human rights – returning to a procedure which inconveniences applicants and extends their wait times.

5. As is known, according to the judgments of this Court, two considerations guide the decision on issuing an *order nisi*: the likelihood that the petition will be accepted and expediency (see for instance HCJApp 2598/95 **Israel Union for Environmental Defense v. National Planning and Building Commission** (unreported, delivered April 30, 1995)).

6. With respect to expediency: First, to the Petitioner's knowledge, based on daily communications from OPT residents who contact the DCOs, the Respondent has not yet implemented the "two step" procedure and applicants still receive answers at the time they make their inquiry at the DCO. This indicates that the Respondents themselves do not consider the change to be significant. Second, the Respondents have been providing instant answers for some 18 months and the reason for the decision to desist from this practice was not security or other concerns, but an attempt to avoid additional cases in which applicants find out that the answers they were given at the DCO were incorrect.

   Issuance of an *order nisi* will therefore not prejudice the Respondents. However, it is clear that if the motion is rejected, the individuals whom the procedure is designed to assist will be harmed.

7. Since expediency tips the balance in favor of the Petitioners and since the petition is likely to be accepted, the Court is requested to issue an *order nisi*.

Introduction

1. This petition concerns increased infringement of the rights of West Bank residents wishing to travel abroad as a result of a change the Respondents introduced into the Procedure for Processing Applications for Prior Inquiry and Removal of Security Preclusions for Travel Abroad (hereinafter: **the procedure** or **the prior inquiry procedure**). This procedure was drafted in response to the petition filed in HCJ 8155/06, which challenged the unlawful violation of OPT residents' right to freedom of movement, committed in breach of the authority's duty to follow proper administrative procedures.

   A copy of the current version of the procedure is attached hereto and marked **Exhibit P/1**.

   A copy of the procedure prior to the amendment is attached hereto and marked **Exhibit P/2**.

2. As argued in the petition in HCJ 8155/06, an administrative authority has an obligation to notify individuals of its intention to restrict their fundamental rights. In view of the Respondents' contention that they were unable to provide such prior notice, they presented a procedure which was designed to allow Palestinians wishing to travel abroad via the Allenby Bridge to inquire ahead of time whether Respondent 1 intended to prevent them from traveling. This procedure would allow travelers to prepare appropriately, rather than arrive at the Allenby Bridge, ready to depart, only to

discover they were precluded from travel. In the hearings held in the petition, the Court repeated its demands that the Respondents simplify the procedure as much as possible.

3. After the procedure went into effect, it emerged that the DCO computer records were out of date and the answers provided to applicants were incorrect. People based their hopes and plans on the answers given to them only to suffer bitter disappointment when they arrived at the border crossing ready for departure. After many complaints by Petitioner 1 (hereinafter: **HaMoked**) and criticism by the Court on this issue, the procedure was amended, but instead of rectifying the aforesaid deficiencies, they have become the point of departure for the new procedure. Applicants would no longer be given answers and would have to return to the DCO no earlier than four days later in order to be informed of a simple fact – whether they are "precluded" or not.

4. This change would harm individuals who use the procedure whether they ultimately find out that they are "precluded" or not, as all applicants would have to wait for about a week and arrive at the DCO a second time before they received an answer. Only then would those who discover they are "precluded" be able to begin the administrative appeal process which lasts eight weeks.

5. The amendment contradicts the representations made by the Respondents to the Honorable Court in HCJ 8155/06, which provided the grounds for deleting the petition. The amendment has no justification or reasonable explanation since it serves no purpose other than the Respondents' desire to resolve their own failure to provide correct answers.

6. The Petitioners therefore request that the Respondents restore the situation that prevailed prior to the aforesaid amendment and that they take the steps necessary to resolve the issues that led to this change without causing harm to applicants who follow the procedure.

The Facts

The parties

7. Petitioner 1 (hereinafter: **HaMoked**) is a registered not-for-profit organization which is located in Jerusalem and dedicated to promoting the human rights of Palestinians in the Occupied Palestinian Territories (OPT).

8. Petitioner 2 is the Association for Civil Rights in Israel, which is dedicated to protecting and promoting human rights wherever they are violated by Israeli authorities or their agents.

9. Respondent 1 is the military commander in charge of the West Bank on behalf of the State of Israel, which has been holding the West Bank under belligerent occupation for over 40 years.

10. Respondent 3 is the official in charge of civilian affairs in the OPT on behalf of Respondent 1 "to the benefit and welfare of the population and in order to provide and run public services subject to the need for maintaining good governance and public order", as stated in Sec. 2 of the Order regarding the Establishment of the Civil Administration (Judea and Samaria) (No. 947) 5742-1981.

    This mission is carried out through the District Coordination Offices (hereinafter: **DCO**s), where residents of the OPT arrive in person to file various applications. Among the tasks the DCOs perform on behalf of Respondent 2 is notifying individuals inquiring regarding a possible travel preclusion as per procedure, of Respondent 1's decision in their matter.

11. Respondent 3 is in charge of the Israel Security Agency (ISA, formerly the General Security Services (GSS) or shin-beit). His recommendations are presented to Respondent 1 prior to a decision to impose or remove a preclusion to travel via the Allenby Bridge. <u>It should be noted that Respondent 3 has no authority to prevent or permit individuals from leaving the OPT</u>.

The Prior Inquiry procedure

A. Background for the drafting of the procedure (prior to 2008)

12. Respondent 1 (hereinafter: **the Respondent**) has been preventing many residents of the OPT from traveling to Jordan via the Allenby Bridge for many years.

13. In Israel, the Minister of Interior has the authority to prevent individuals from traveling abroad for security reasons subject to providing them with notice of his intention to do so and holding a hearing before making a final decision. No such procedures are followed in the OPT.

14. Thus, for many years, residents of the OPT discovered, to their dismay, that the Respondent had issued a travel preclusion against them on the date of departure, at the Allenby Bridge border crossing, after they had paid for their flights and packed their bags, prepared for job interviews or the beginning of the school year and with flights to catch.

15. This made it very difficult for OPT residents to exercise the right to leave the country, whether they were precluded or not, since no one planning a trip abroad could know which group they belonged to until they reached Allenby Bridge.

    Many Palestinians who had to travel abroad – to undergo surgery, begin academic studies, visit a sick sibling, attend a wedding – were unable to make plans and did not know how, if at all, to prepare for these trips.

    This state of affairs was particularly injurious to people who discovered upon arriving at the border that they were indeed "precluded". In addition to the aforesaid uncertainty, they would then have to commence urgent legal action against the preclusion after already being denied travel, as they had no way of knowing about the Respondent's decision ahead of time.

16. According to the figures supplied by the Respondents in HCJ 8155/06, on which we elaborate below, some 700,000 residents of the OPT travel abroad via the Allenby Bridge each year. For years, most of them have had to decide whether to take the chance and plan a trip that may materialize; some of those who did plan a trip discovered that their fear had come true.

B. HCJ 8155/06 and the initial procedure 2008-2009

17. The foregoing is the background for the petition filed in HCJ 8155/06. The petition underwent transformations during the hearings as did the procedure devised in their context. The Petitioners will hereby refer only to the matters relevant to the petition at bar.

18. The focus of the discussion in HCJ 8155/06 was the chaotic situation described above, which did not allow anyone wishing to travel abroad to make plans and preparations and in which those who had been precluded from travel were destined to find out only en route abroad.

19. In response, the Respondents notified the Court that they were in the process of devising a procedure which would allow Palestinian residents of the West Bank to inquire ahead of time whether or not they were precluded from travel (this, in contrast to the situation in Israel, whereby the administrative authority bears the onus of notification). This procedure was finalized and presented to the Court in 2008 (hereinafter: **the initial procedure**).

20. The initial procedure placed **the onus on the applicants**. They had to personally report at the local DCO and file an "application for inquiry". Responses would not be given then and there, but rather within six weeks and the applicants would have to return to the DCOs to obtain them.

The procedure included an administrative appeal process. Applicants who discovered they were precluded could file an appeal subsequent to the inquiry. Answers would be given within an additional six weeks and applicants would have to arrive at the DCO for a third time in order to obtain them.

Thereafter, if the appeal was rejected, the applicant would be able to petition the HCJ.

21. This meant that Palestinians who wished to follow the procedure and inquire ahead of time whether they could travel abroad would be forced to begin the process at least 14 weeks ahead of time (six weeks for the inquiry, six for the appeal if necessary, and additional time for legal action if necessary). Over this period of time, they would have to arrive at the DCO two to three times.

22. This "two step" process (the initial inquiry and additional time for the appeal) was entirely unreasonable. It created an extremely complicated bureaucratic mechanism and greatly inconvenienced those wishing to follow it.

C. Judicial review and correction of the procedure 2009-2011

23. The Court noted this defect when it reviewed the initial procedure. In a hearing held on November 4, 2009, the Court criticized the "two step" procedure for being long, complicated and unreasonable. The Court instructed the Respondents to consider streamlining it by combining the two steps. The Honorable Justices told counsel for the Respondents, *inter alia*:

> Honorable Justice Hayut:
>
> If someone wants to visit his family in Jordan and appears as precluded on the computer, why can't he be told right away and then it's six weeks [more] and an additional six weeks?... It solves the practicality problem and makes it shorter.
>
> …
>
> Honorable Justice Arbel:
>
> It can make it shorter when it's a combined route like this.
>
> (p. 6, lines 26-27 of the court transcript, p. 7, line 13 of the court transcript).

24. In accordance with these remarks, the following decision was delivered:

> The Respondents will examine the possibility of reducing the duration set forth in the procedure. This shall be done by notifying precluded individuals of the possible preclusion to travel abroad from the Area and providing them with the opportunity to respond prior to a final decision. Only then will [the Respondents] consider whether to allow or deny travel. This would obviate the appeal process as stipulated in the previously drafted procedure.

25. On December 9, 2009, the Respondents notified that they had followed the Court's instructions and that "the exit procedure has been transformed, in line with the suggestion of the Honorable Court, from a 'two step' procedure to a 'single step' procedure. As the undersigned announced during the hearing, a response to the application will be given to the applicant within no more than eight weeks…" (sec. 4 of the notice).

A copy of the Respondent's notice dated December 9, 2009 is attached hereto and marked **Exhibit P/4**.

26. Following Respondents' notice, Honorable President Beinisch delivered her decision on January 21, 2010, in which she instructed the Respondents to clarify whether the amalgamation of the two steps into a single one means that applicants would be given responses when they arrive at the DCOs:

> In our decision of November 4, 2009, we instructed the Respondents to examine whether it would be possible to shorten the inquiry process stipulated in the procedure which is the subject of the petition. In this context, we instructed the Respondents to examine whether the procedure could be changed such that the appeal process forms part of the initial processing of the inquiry and is carried out consecutively rather than in two steps over 12 weeks.
>
> Having studied the Respondents' notice of December 9, 2009 and the amended procedure attached thereto, we are convinced that the new procedure has been amended in accordance to our November 4, 2009 decision. The total duration of the examination, including appeal has been reduced to eight weeks…
>
> Nevertheless, the Respondents are requested to clarify whether or not the initial response to the inquiry will be provided to the resident at the time he submits his application.

A copy of the decision of the Honorable President dated January 21, 2010 is attached hereto and marked **Exhibit P/5**.

27. Accordingly, on February 11, 2010, the Respondents gave notice as follows:

> With respect to Honorable Justice Beinisch's second request of the Respondents, to clarify whether a resident will be provided with an answer at the time he files the application with the DCO – **the answer is affirmative**. Note: **inasmuch as the Palestinian resident arrives at the Israeli DCO, Israeli DCO staff will inform him whether or not there is a security preclusion against him then and there…**
>
> (Sec. 6 of the Respondents' notice).

A copy of the Respondents' notice dated February 11, 2010 is attached hereto and marked **Exhibit P/6**.

28. In view of the changes the petition underwent from the time it was submitted, the Petitioners requested that it be deleted while reserving the right to return to court on this matter in future. A judgment ordering the deletion of the petition was delivered on February 21, 2010. The judgment states that as indicated by the Respondents' notice:

> **A Palestinian resident who arrives at the Israeli DCO will be informed whether or not there is a security preclusion against him then and there…**

> In these circumstances, we instruct that the petition be deleted while the Petitioners reserve the right to return to court on individual matters pertaining to the procedure in future where necessary.

A copy of the judgment dated February 21, 2010 is attached hereto and marked **Exhibit P/7**.

The Respondents' omissions in implementing the amended procedure – providing incorrect information at the DCOs

29. Despite the fact that the procedure has been in practice, in various versions, for some three years, serious omissions have occurred repeatedly, including failure to meet the already generous schedule, refusal to take applications and more.

30. The most serious of these failures – which has recurred often – has been incorrect responses. As stated, the Respondent has refused to provide prior notice of its intention to prevent a person from traveling abroad and has placed the onus of inquiring whether or not a preclusion exists on those planning the trip. HaMoked has been contacted by Palestinians who followed the amended procedure, took an entire work day off in order to get to the DCO, waited for some hours for their turn and were ultimately told that **there was no record of a travel preclusion against them**. Based on this information, they made plans, booked airplane tickets and paid tuition fees. Yet, when they arrived at the Allenby Bridge in order to exercise their right to leave their country, they discovered that it was nothing but fiction. The Respondent had issued a travel preclusion against them, but "forgot" to notify them of this fact when they arrived at the DCO.

31. This was the predicament of the petitioners in the following petitions: HCJ 8269/09 **Sa'fin v. West Bank Military Commander**; HCJ 772/10 **Khater v. West Bank Military Commander**; HCJ 2678/10 **Hamdan v. West Bank Military Commander**; HCJ 4594/10 **Mahrik v. West Bank Military Commander**; HCJ 5594/10 **Jabarin v. West Bank Military Commander**; HCJ 6876/10 **Halef v. West Bank Military Commander**; HCJ 7044/10 **Nofal v. West Bank Military Commander**; HCJ 7498/10 Jawarish v. West Bank Military Commander; HCJ 8681/10 Hussein v. West Bank Military Commander; HCJ 9401/10 Rwajabeh v. West Bank Military Commander; HCJ 579/10 **Fadah v. West Bank Military Commander**; HCJ 777/11 **Muna v. West Bank Military Commander**.

    It also occurred in other cases: **Mr. Bassam al-Farakhin** (exit denied contrary to confirmation in June 2009); **Mr. Mahmoud Diab** (exit denied contrary to confirmation in July 2009); **Mr. Muhammad Qaisi** (exit denied "erroneously" in July 2009); **Mr. Ma'amoun Masri** (exit denied contrary to confirmation in March 2010); **Mr. 'Aboud al-Sharif** (exit denied contrary to confirmation in May 2010); **Mr. Nassim Shanati** (exit denied contrary to confirmation in June 2010) and **Mr. Muhammad Salah** (exit denied in March 2010, a week after confirmation of no preclusion).

32. HaMoked sent repeated communications to the Respondents for some 18 months, requesting that the matter be examined and the results of the examination provided to it (in accordance to the Respondents' undertakings to do so in the context of some of the aforesaid proceedings). HaMoked also requested the procedure be **implemented properly in accordance with its language and purpose**.

33. The Honorable Court has also addressed the severity of the failure in HCJ 7498/10 **Jawarish v. West Bank Military Commander** and called upon the Respondents to order an internal inquiry into the matter.

34. On January 17, 2011, the judgment in HCJ 9401/10 **Rwajabeh v. West Bank Military Commander** was delivered. In this judgment, the Court instructed the Respondents to provide the Petitioners with the results of the inquiry held with respect to the aforesaid failure in implementing the procedure within 60 days.

The procedure's downgrading, the return to the two step procedure and exhaustion of remedies

35. On February 13, 2011, HaMoked received the Respondent's letter from the same date. The letter indicated that the incorrect responses in the abovementioned cases (and others like them) can be divided into two groups:

Group 1: "Human error". In these cases, the Respondent stated that "Security officials are making every effort to ensure full synchronization between the relevant computer databases. The importance of this issue has been clarified to all relevant personnel".

Group 2: "Rare cases", in which "there is no clear decision" with respect to the intention to preclude travel. Regarding these cases, the Respondent wrote: "the possibility of changing the relevant procedure is under advisement". Such a change would mean "notifying the Palestinian inquirer within 96 hours rather than immediately."

A copy of the Respondents' letter dated February 13, 2011 is attached hereto and marked **Exhibit P/8**.

36. It should be noted here that this letter is quite bewildering.

With respect to "group 1", it seems that the term "human error" is no more than a cover for ongoing failure and apathy. Given that the solution suggested by the Respondent is improving computerized databases, it is possible to say that these are not isolated "human errors", but a systemic failure which can be resolved logistically by synchronizing computer databases.

The fact that the requisite change had not been considered for some 18 months, despite repeated communications by HaMoked and increasing documentation of cases in which applicants received incorrect responses at the DCO, coupled with the fact that a judgment was needed in order to instruct the Respondents to comply with undertakings they made quite some time ago, prove that the words lack of respect, apathy and lack of care accurately describe the situation.

Whatever the case, one might presume that the Respondents would take the simple step of improving their databases (a step which, unfortunately, was not considered for 18 months while the Petitioners' communications were being ignored) and resolve the systemic failure to implement the procedure properly. It should be noted that the Respondents' replies to cases of individuals who were given incorrect information by the DCO indicate that the vast majority of these incorrect responses were a result of this failure. In fact, in all but one of the cases in which an explanation for the incorrect answer was given (the exception was HCJ 579/11) the reason was an "error".

As for "group 2", the Respondents' position was most bewildering, as there is no such thing as a "provisory preclusion". Either a person can cross the Allenby Bridge or he cannot. The fact that some "preclusions" require further inquiry does not change the fact that an individual is "precluded" when he arrives at the Allenby Bridge, so there is no reason not to inform him a preclusion exists and review it in the context of an appeal the person would file as any other "precluded" individual would.

It clearly does not justify providing contrary and incorrect answers at the DCO. It clearly does not justify adding at least four days to the entire process, during which the question whether the

individual is "precluded or not" is examined – a question that would be answered instantaneously if the person were to go to Allenby Bridge directly.

37. On March 21, 2011, it became clear that the solution that was finally adopted by the Respondent was even farther reaching and more preposterous than the statements made in his aforesaid letter.

On that date, the Petitioners received a letter from the Respondent from the same date which detailed the "solution" he chose. This "solution" would see the procedure changed such that anyone arriving at the DCO who was not "precluded" would have to wait four more days and then return to the DCO to find out whether he is "precluded" or not. Those who are told that they are indeed "precluded" would then have to wait another eight weeks to have their appeal processed.

Rather than improving the Respondents' computer databases and the coordination among them, their failures have become the underlying assumption of the procedure: the premise is that the DCOs do not have up-to-date information and they have no obligation to update their records. Rather, the applicants should suffer the consequences and would now have to wait another four days for a response.

This change clearly contradicts the undertakings the Respondents had made, which led to the deletion of HCJ 8155/06 and the Court's decision in that action. While the Respondents undertook to implement a "one step" procedure lasting no more than eight weeks, the amended procedure was revoked and reverted back to the initial stage, which was criticized by this Court – a "two step" procedure which would last up to nine weeks.

A copy of the Respondent's letter dated March 21, 2011 is attached hereto and marked Exhibit **P/9**.

38. Hence, on April 4, 2011, HaMoked contacted the Respondents and the director of the HCJ department at the State Attorney's Office. HaMoked emphasized that the amendment to the procedure is a negative change of the status quo and breaches representations made to the High Court of Justice and decisions delivered on the basis thereof. It is, in fact, a regression to a deficient procedure which the Court had criticized.

The letter further indicated that this version of the procedure injures the Palestinians it is designed to serve by needlessly prolonging the processing of their applications and requiring them to arrive at the DCO repeatedly for no purpose.

HaMoked further emphasized that the Respondents should have improved their operations and the coordination between them and instead, their failures had become the premise for a procedure which imposes the burden squarely on the shoulders of the applicants. As such, it is clear that the change in the procedure is entirely unjustified.

In view of the foregoing, HaMoked clarified that the abovementioned amendment to the procedure must be retracted and the procedure in its pre-amendment version be implemented properly, i.e. applicants must be given **final and correct responses at the time they first appear at the DCO**. HaMoked finally noted that if this were not done, the Petitioners would have no recourse but to return to the Court in view of the breach of its aforesaid decision.

A copy of HaMoked's letter dated April 4, 2011 is attached hereto and marked **Exhibit P/10**.

39. On April 28, 2011, HaMoked sent an urgent communication to the State Attorney's Office (a copy was sent to the Respondents). HaMoked briefly repeated the arguments made in its letter of April 4, 2011 and added that given the importance and scope of the issue, if no response were received by May 10, 2011, the Petitioners would consider legal action.

A copy of HaMoked's letter dated April 28, 2011 is attached hereto and marked **Exhibit P/11**.

40. On May 16, 2011, the Petitioners received the Respondent's letter dated May 15, 2011, which indicated that the communication was under review by the competent officials.

    A copy of the Respondent's letter dated May 15, 2011 is attached hereto and marked **Exhibit P/12**.

41. On May 17, 2011, HaMoked contacted the Respondents, noting that given the time the letter had been under their review and the matter's urgency and importance, if no response were received before June 5, 2011, legal action would be considered.

    A copy of HaMoked's letter dated May 17, 2011 is attached hereto and marked **Exhibit P/13**.

42. At the time of submission of this petition, no response has been received. In these circumstances, and considering the importance of the matter and how long the Petitioners have been awaiting a pertinent response, the Petitioners have no recourse but to turn to the Court.

The Legal Argument

A. The right to leave a country to go abroad

43. This petition concerns a process the Respondents created for allowing hundreds of thousands of Palestinians to exercise their basic right to leave their country and the accompanying rights.

44. It is clear that the fact that the Respondents do not notify individuals as to whether or not they intend to prevent them from traveling impedes the ability to exercise the right to leave one's country. People cannot know whether they should plan a trip or not. This is also a breach of natural justice, as detailed below.

45. The aforesaid procedure was created as a result of this situation, to reduce the harm done to residents of the OPT. In this situation, any negative change to the procedure clearly reduces its efficacy and increases the impediment to people's ability to exercise their rights.

46. The Petitioners wish to recall that the issue involves fundamental rights which are enshrined in both Israeli and international law.

47. The right to freedom of movement is the engine that drives the entire gamut of individual rights. It is the engine that allows individuals to exercise their autonomy and choices. When freedom of movement is restricted, this "engine" is compromised and as a result, some of the individual's options and human rights are also adversely affected, while others cease to exist. Hence the significance of the right to freedom of movement.

48. The right to freedom of movement, including the right to leave one's country, is a customary international legal norm and is well rooted in Israeli law as well.

49. The right to freedom of movement is well rooted in international law. See, in this context, Art. 12 of the International Convention on Civil and Political Rights, 1966; Art. 2 of Protocol 4 of the European Convention on Human Rights, 1950; Art. 13 of the Universal Declaration of Human Rights, 1948; Art. 8 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990; Art. 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1965; Art. 10 of the Convention on the Rights of the Child, 1989; Art. 5 of the Declaration on the human rights of individuals who are not nationals of the country in which they live, 1985; Principle VIII of the Helsinki Accords, 1975; Art.

6 of the Declaration of the Uppsala Colloquium, 1972, in which Israel also took part and the Strasbourg declaration on the right to leave and return, 1986.

This Court has also noted the status of this fundamental right in Israeli law in a number of judgments: See, for example, HCJ 6358/05 **Vaanunu v. GOC Homefront Command** TakSC 2006(1) 320, para. 10 (2006), HCJ 1890/03 **Bethlehem Municipality v. State of Israel, Ministry of Defence**, TakSC 2005(1) 1114, para. 15 (2006), HCJ 3914/92 **Lev v. Regional Rabbinical Tribunal**, TakSC 94(1) 1139, 1147 (1994), HCJ 5016/96 **Horev v. Minister of Transportation**, IsrSC 51(4) 1 (1997).

50. **A person's right to leave his country** is a central component of the right to freedom of movement. This right has been constitutionally enshrined in Sec. 6 of Basic Law: Human Dignity and Liberty and has been described as follows:

> The right of a person to leave and return to the country in which he lives is a "natural right". It is one of the fundamental human rights. Restriction of the right gravely infringes on the individual's rights.
> (HCJ 4706/02 **Salah v. Minister of the Interior,** IsrSC 56(50 695, 704 (2002)).

51. Honorable Justice Bach's remarks in **Dhaher** are also relevant here:

> Restricting a citizen's freedom of movement in the sense that he is forbidden to leave the country to travel to another country is a severe violation of individual rights. The Israeli public must be particularly sensitive to this issue for obvious and well known reasons.
>
> Justice Seilberg expressed this sentiment in HCJ 111/53 **Kaufman v. Minister of Interior et al.,** IsrSC 7 534, upon which my esteemed colleague, the Vice President, relied as follows:
>
> "A citizen's freedom to travel outside his country is a natural right which is accepted as self-evident…"
>
> (HCJ 448/85 **Dhaher v. Minister of Interior**, IsrSC 40(2) 701, 712 (1986)).

52. This right continues to stand during armed conflict, as stipulated in Art. 35 of the Fourth Geneva Convention (1948):

> **All protected persons who may desire to leave the territory… shall be entitled to do so**…**The applications of such persons to leave shall be decided in accordance with regularly established procedures** and the decision shall be taken **as rapidly as possible**…. If any such person is refused permission to leave the territory, he shall be entitled to have such refusal reconsidered…
> [emphases added]

The scholar Pictet clarifies in his commentary as follows:

> It should be noted that **the right to leave the territory is not in any way conditional, so that no one could be prevented from leaving as a**

> **measure of reprisals**… It is therefore essential for States to safeguard the basic principle by showing moderation and **only invoking these reservations when reasons of the utmost urgency so demand**. [emphases added]
> (Pictet J.S., Commentary: IV Geneva Convention – Relative to the Protection of Civilian Persons in Time of War, pp. 235-236 (Geneva, 1958)).

53. The Petitioners wish to recall that when it comes to a violation of the right to travel abroad, time is of the essence and the longer a person is prevented from traveling abroad, the more serious the violation:

> The wider-reaching the restriction geographically, the harsher the rest of its conditions and the **longer its duration**, the greater the harm done and the more difficult and complex it is to balance it against the harm and the opposing value (emphases added).
>
> (HCJ 6358/05 **Vaanunu v. GOC Homefront Command** TakSC 2006(1) 320, para. 15 (2006)).

See also the comments made by the scholar Yaffa Zilbershats in her paper "The Right to Leave a Country":

> The restriction of the right to leave must be time-limited as restricting the right to leave the country for a few days is not akin to restricting it for months or years. How can the duration of the restriction on the right to leave be determined? First, **it is important to make sure that the person is allowed to exercise his right to leave the country the moment the interest ceases to exist** […]
>
> Additionally, **there must be a cap on how long** a person is restricted, after which it would be impossible to claim the circumstances justifying the restriction of this right continue to exist […]
>
> Limiting the duration of a restriction on the right to leave conforms to the requirement that any restriction of rights does not exceed necessity, as stipulated in Sec. 8 of Basic Law: Human Dignity and Liberty (emphases added)
>
> (Yaffa Zilbershats, "The Right to Leave a Country", **Mishpatim**, Vol. 23, 69, 5754).

54. Moreover, violating the right to freedom of movement and the right to leave the country inevitably leads to violating other rights whose exercise depends on this right. These rights have also been recognized as fundamental rights that enjoy constitutional status and are also protected under international law.

Thus, for example, people who wish to leave their country for work purposes seek to exercise their right to **freedom of occupation**; people who wish to visit sick relatives seek to exercise their right to **family life**; people who wish to go on a pilgrimage to a holy site seek to exercise their right to **freedom of worship** and **freedom of religion**; people who wish to begin their studies at a

prestigious university oversees seek to exercise their right to **education** and people who need to undergo surgery abroad seek to exercise their right to **health**.

B. The principles of natural justice

55. Natural justice dictates that an administrative authority has an obligation to inform a person of its intent to impinge upon his fundamental rights, so that he may make the necessary preparations and plead his case to the authority:

> It is a fundamental rule that an administrative authority shall not harm an individual unless the individual is first given the opportunity to plead his case before it. It is the authority's duty to give whosoever may be harmed by its decision a fair and reasonable chance to state his claims, and the latter has a fundamental right to be heard.
>
> HCJ 3379/03 **Moustaki et al. v. State Attorney's Office** IsrSC 58(3) 865, 889

Additionally, on the issue of Respondent 1's obligations:

> This Court considers that the existence of fair hearing rules in a matter involving a person, is expressed, *inter alia*, in that one who anticipates severe harm to his person or property shall be given advance notice and be granted an opportunity to raise his objections in the matter.
>
> (HCJ 358/88 **The Association for Civil Rights in Israel v. GOC Central Command**, IsrSC 43(2) 529, 540; emphases added – E.C.)

56. The Court has also held that the duty to hold a hearing is breached even if the authority were to hold one after the violation had already occurred.

> Thus, the general rule is that a competent authority which has the obligation to hold a hearing, must do so before reaching its decision. Inasmuch as it had not done so, and even if it offered to hold a hearing after having reached the decision, it has breached the duty to hold a hearing.
>
> (HCJ 2911/94 **Masalha v. Director of the Ministry of Interior**, IsrSC 48(5) 291, 305).

C. Respondent 1 as the competent authority with respect to prohibiting exit and the scope of his powers

57. Indeed, these rights are not unlimited and they may be restricted for security reasons based on a "probable" threat posed by a person's leaving to go abroad.

The Petitioners wish to provide some detail on these powers, which are **held by Respondent 1 exclusively**, and by no other official, including Respondent 3, whom Respondent 1 may consult before deciding whether and how to exercise his authority.

58. We first recall that Respondent 1 is the commander of the military force which is the trustee in the Area pursuant to international humanitarian law. As such, Respondent 1 is the **only** competent authority in terms of preventing individuals from traveling abroad.

59. The Respondent clearly does not receive his powers from the military legislation which he himself enacts, but rather from international law which forms the only normative foundation for exercising his powers (HCJ 2150/07 **Abu Safiya v. Minister of Defense** (unreported, December 29, 2009).

60. According to international law, the normative premise is that the Respondent has an obligation to allow residents of the OPT to leave their country, as described by Zilbershats:

> Applying general human rights law and humanitarian law as established in the Hauge and Geneva conventions to territories held under belligerent occupation leads to the conclusion that the right to leave a country is granted to residents of territories held under belligerent occupation, whether they are citizens of the power from which the territory was seized or not.
>
> The right to leave a country is also recognized as a customary norm in international law and thus becomes part of Israeli domestic law. The military administration in the Territories, which is subject to the rules of Israeli administrative law as well as the rules of customary international law, must allow residents of the Territories to exercise this important fundamental right.
>
> (Y. Zilbershats, "The Right to Leave a Country", **Mishpatim**, Vol. 23, 69, 86, 5754).

61. Note: the **only** competent authority with the power to allow or forbid a person from leaving the West Bank to go abroad is **Respondent 1**, **the West Bank military commander**. Even if the Respondent decides to avail himself of the professional opinions of various officials in order to reach his decision (such as Respondent 3), ultimately, he must make the decision and must strike a proper balance among all the considerations presented to him.

62. The premise is, therefore, that Respondent 1 decides who is "precluded" from leaving his country and who is not and as such, he always has information about the individuals whom he himself has decided to prevent or not to prevent from traveling abroad.

63. It also follows that a decision which is made by an official or agency other than the military commander is invalid. Thus for example, if a person who is not prevented from traveling abroad by Respondent 1 reaches the Allenby Bridge and is denied exit **under instructions from a different official, such as Respondent 3**, such denial is clearly *ultra vires* (as Respondent 3 can, at most, recommend that Respondent 1 deny exit prior to the latter reaching a final decision). The military commander's reliance on someone else's decision (as opposed to recommendation) is a clear breach of Respondent 1's obligation to use his discretion independently. On this issue, the Court has held:

> The competent authority is not fulfilling its public role appropriately when it consents to become the executor of others' will rather than considering each matter brought before it to the best of its own understanding.
>
> (HCJ 24/56 **Rothstein v. Herzliya Local Council**, IsrSC 10(2) 1205, 1211).

64. The remarks of Justice Shamgar in HCJ 297/82 **Berger v. Minister of Interior** (IsrSC 37(3) 29) are relevant. This judgment addressed how an administrative authority's discretion must be used:

> **The Court's insistence that a decision <u>by a competent authority under the law</u> be preceded by an appropriate decision-making process is the most effective guarantee that the discretion granted by the legislature to any agency of the executive branch is not deficient in such a manner as to empty the purpose of the law of its meaning**.
>
> (Para. 10 of Justice Shamgar's decision, emphasis added, E.C.)

65. The following has been said of Respondent 3's powers as an agency consulting the Minister of Interior on applications for status in Israel:

> The recommendations of the ISA and other security agencies do not constitute the ultimate deciding factor. **The ISA does not have veto powers with respect to approving family unification applications**. Indeed, the ISA's opinion is central to the Respondent's considerations and is duly accorded this central role, but the Respondent must weigh a number of other considerations in deciding on a family unification application.
>
> **So, for example, the Respondent must balance the degree of the security threat against the impingement on the right to maintain a family unit and allowing the parent to live with his children**. This right derives from the supremacy our legal system accords to the "best interest of the child". The best interest of the child is a guiding principle in any case in which the legal system must use its discretion in interpreting and applying statutory provisions.
>
> (AP (Haifa) 1551-06-09 **Nasser v. Ministry of Interior** (unreported), emphases added – E.C.).

66. With the aforesaid as the backdrop, one must wonder what the significance of the Respondent's inability to provide a person who arrives at his offices with an answer is. Beyond the harm to tens of thousands of people whom the procedure is meant to serve, the situation in which a person cannot receive a response upon arriving at the DCO means one of two things:

67. One possibility is that the Respondent does not know whom he decided to prevent and whom he did not. This possibility is absurd as the Respondent, who is the sole competent authority for this purpose, presumably has a full list of individuals he has decided to prevent from traveling abroad at any given time (and, it follows, also individuals regarding whom he has not made that decision).

    This being so, it follows that the Respondent only has partial information regarding his own decision – incomplete and unreliable information. This is clearly a severe systemic failure which must be rectified rather than accepted as a given.

68. The other possibility is that the Respondent arrives at the decision to prevent travel only four days after a person makes an inquiry about it. As known, the Respondent himself explained, both in HCJ 8155/06 and in other cases, that this is not the case and that he has a list of all individuals who are precluded from traveling abroad. This emerges, for example, from the affidavit of a person referred to as "Avi", which was attached to the Respondent's notice of December 9, 2009. The affiant there declares that the Respondents have figures on the number of "precluded" individuals. In fact, if this were not the case, a "prior inquiry" would be entirely pointless as there would be no information about which to inquire at that point.

A copy of the affidavit attached to the Respondents' notice in HCJ 8155/06 is attached hereto and marked **Exhibit P/14**.

69. Moreover, it is clear that it would be outrageous for the Respondent to make decisions on preventing travel only after inquiries are made: deciding to deny a person's right to leave the country must be made on the basis of relevant information in real time rather than retroactively after the person contacts the Respondent to inquire whether or not he would be prevented from traveling. The point of departure is that everyone has a right to leave their country and that should the Respondent decide to prohibit individuals from traveling, he must do so in an active manner and allow them to find out about the prohibition, at least retroactively.

70. Moreover, a situation in which a decision is reached only after an inquiry is made is not just absurd, but also paves the way for exerting pressure on applicants, for example, to collaborate with Israeli security forces. A person who makes an inquiry because he wishes to travel abroad in the near future and whose matter is then brought before security forces for a recommendation is clearly more susceptible to attempts to use his distress for such purposes.

71. In any event, the Respondent is an administrative authority. As such, he must meet the basic tenets of good governance – an appropriate decision-making process and natural justice. Whether the Respondent is not aware of his own decisions or waits for an applicant to make the inquiry in order to commence the decision making process, it is a blatant breach of his obligations that extends beyond the individual case of one applicant or another. It points to substandard operations stemming from a deeply ingrained failing in the administrative authority.

D. The military commander's duties toward protected persons

72. As the commander of the occupied territory, Respondent 1 has a duty to safeguard the residents' rights and ensure their normal lives. Art. 43 of the Hague Regulations sets forth:

> The authority of the legitimate power having in fact passed into the hands of the occupant, the latter **shall take all the measures in his power** to restore, and ensure, as far as possible, public order and safety…(emphasis added)

73. The duty to ensure public order and safety and provide societal needs applies to all aspects of civilian life:

> The first clause of Article 43 of the Hague Regulations vests in the military government the power, and imposes upon it the duty, to restore and ensure public order and safety. This authority is twofold: first, restoring public order and safety in places where they had previously been interrupted; second, ensuring the continued existence of public order and safety. The Article does not limit itself to a certain aspect of public order and safety. It spans all aspects of public order and safety. **Therefore, this authority – alongside security and military matters – applies also to a variety of "civilian" issues** such as, the economy, society, education, welfare, hygiene, health, transportation and other such matters to which human life in modern society is connected.
>
> (HCJ 393/02 **Jam'iat Iscan v. Commander of the IDF Forces in the Area of Judea and Samaria**, IsrSC 37(4) 785, 797 (1983); emphasis added).

74. Elsewhere, the Court held:

> Within the framework of the internalization of humanitarian laws, it should be emphasized that the duty of the military commander is not restricted merely to preventing the army from harming the lives and dignity of the local residents… He also has a 'positive' duty… He must protect the lives and dignity of local residents, all of which subject to the restrictions of time and place.
>
> HCJ 4764/04 **Physicians for Human Rights v. IDF Commander in Gaza**, [2004] IsrLR 200.

75. As the Court has held on more than one occasion, the Respondent is a trustee in the OPT, not a sovereign. All his powers in the occupied territory are vested in him pursuant and subject to international law. The Respondent must abide by the provisions of, *inter alia*, customary international law both humanitarian – as stipulated in the Regulations concerning the Laws and Customs of War on Land which are annexed to the Convention (IV) Respecting the Laws and Customs of War on Land, 1907 and the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War – and human rights.

76. As such, the Respondent has a substantive duty to safeguard the rights of OPT residents and to do everything in his power to facilitate their exercising of these rights. Putting obstacles in the residents' path and devising unreasonable procedures constitute a clear breach of this duty.

77. Note: the Respondent must respect and protect human rights **even if this involves allocating resources**, as stated:

> Human rights rhetoric must be backed by a reality in which these rights are a top national priority. Protecting human rights costs money and a society that respects human rights must be prepared to bear the financial burden.
>
> A. Barak, **Legal Interpretation** (Vol. 3, Constitutional Interpretation, 5754-1994) p. 528.

See also, HCJ 4541/94 **Miller v. Minister of Defense** [1995-6] IsrLR 1, para. 19 of the judgment of Justice Mazza; PPA 4463/94 **Golan v. Prison Service**, [1995-6] IsrLR 1, para. 24 of the judgment of Justice Mazza.

E. The amendment to the procedure – unnecessary and unjustified violation of fundamental rights

78. The premise is that the procedure was devised in order to reduce the harm caused as a result of an unacceptable situation in which hundreds of thousands of individuals who sought to exercise their right to leave their country and the rights that derive from it were prevented from doing so.

79. The amendment to the procedure actually makes matters worse for these individuals by an incomprehensible move. Instead of attempting to make improvements, the amendment creates more and more obstacles that turn prior inquiry into an endless, exhausting and unbearable bureaucratic process for no reason. Answers were provided immediately by the DCOs for over a year. The present change was not introduced for security (or other relevant) reasons. It stems only from the Respondent's unwillingness to take the necessary measures to resolve his failures in implementing the procedure.

80. Procedures are not meant to create bureaucracy per se or complex and illogical processes, nor are they meant to inconvenience those seeking services from the authorities. Honorable Justice

Shamgar's remarks emphasizing public servants' duty to help citizens who turn to them rather than sending them back and forth are relevant to this issue:

> We reiterate, in this context, that a public servant must assist civilians who come to him openly and with good faith and must not send them to and fro if he is able to obtain clarifications on the required solution.
>
> (HCJ 5489/91 **Pop v. Licensing Authority**, IsrSC 92(2), 919 (1992)).

81. This Court has unequivocally expressed the gravity of such conduct in the past:

> The Respondent may not treat the Petitioners – or anyone else –the way he has treated them. The Respondent may not leave their case pending with no pertinent response… The Respondent may not wear out the Petitioners for no purpose, cause them unnecessary expenses and delay his substantive examination of their case. If the Respondent has forgotten the nature of his obligations, the Court has an obligation to reiterate them.
>
> (HCJ 10399/04 **Ben Abdekol v. Ministry of Interior**, TakSC 2005(3) 1608, 1609 (2005)).

82. If this is the case when it comes to specific individuals, it is all the more so when it comes to a procedure which enshrines this conduct and turns a simple inquiry into a complex process which expresses disregard for people's time, plans and needs.

83. By taking every opportunity to evade their responsibility to handle residents' application with proper care, the Respondents are severely violating applicants' rights and gravely breaching their own duties as administrative authorities.

84. The aforesaid procedure was meant to allow people who wish to leave their country to receive information on the Respondent's decision in their matter as they would had they gone directly to the Allenby Bridge. **This information is and/or should be in the Respondents' possession and as such, it must be provided immediately**.

85. This is particularly true in cases of administrative procedures designed to facilitate the right to leave the country. The UN Human Rights Committee's commentary on Art. 12(3) of the International Convention on Civil and Political Rights, 1966 reads as follows:

> **A major source of concern is the manifold legal and bureaucratic barriers unnecessarily affecting the full enjoyment of the rights**... These rules and practices include, inter alia… **unreasonable delays in the issuance of travel documents**… In the light of these practices, **States parties should make sure that all restrictions imposed by them are in full compliance with article 12, paragraph 3**. [emphases added].
>
> (General Comment No. 27, Freedom of Movement (Article 12). UN Document. CCPR/21/Rev.1/Add.9, A/55/40, Vol. I (2000), Annex VI A (p. 128-132), para. 14)

86. The Strasbourg Declaration (1986) also points out that:

> Any restriction on the right to leave shall be clear, specific **and not subject to arbitrary application**… **Procedures for the issuance of the documents [necessary to leave or enter]**… **shall be expeditious and shall not be unreasonably lengthy or burdensome**…
>
> (Hannum H., "The Strasbourg Declaration on the Right to Leave and Return", **American Journal of International Law**, Vol. 81, No. 2 (Apr. 1987), pp. 432-438) [emphases added].

87. Contrary to this clear demand for a reasonable, practicable and logical process, the procedure creates an absurd situation in which the same information that would be provided at the border crossing is not given to individuals applying under the procedure and they have to follow a burdensome, exhausting and senseless process.

    This change is particularly injurious to those who ultimately find out that they are precluded. A person who wishes to plan a trip abroad must take into account almost a week for the initial inquiry, eight more weeks for the appeal, theoretically, and additional time for judicial review if the appeal is rejected.

    Moreover, sending applicants back and forth is particularly injurious considering that despite the time that has elapsed since the procedure was devised, the Respondents' staff is still unfamiliar with it and have not internalized its provisions. Staff members continually breach the procedure's provisions by not providing answers even within the established time frame for responding to appeals (which is sufficiently long), by not having the forms required for processing applications under the procedure and more. See, on this issue, the judgment recently issued in HCJ 4902/10 **al-Mahrik v. West Bank Military Commander** (unreported, delivered on Mach 23, 2011) and HCJ 86/11 **Shalaldeh v. West Bank Military Commander** (unreported, delivered on Mach 3, 2011).

88. The injury to applicants whom the procedure was designed to assist and the absurd "two step" process did not escape the Court in HCJ 8155/06. As stated above, the Court instructed the Respondents to examine the possibility of providing a final answer when the applicant arrived at the DCO thereby creating a single step process which would take no longer than eight weeks. The Respondents announced that they accepted the Court's remarks and followed through on this declaration. The judgment expressing the aforesaid change was given accordingly.

    One might have thought that the issue had been resolved. It is distressing to see that the Respondents have chosen to retract their undertaking and ignore the Court's decisions and judgment.

F. Lack of justification for downgrading the applicants' situation

89. Not only does the amended procedure needlessly injures and inconveniences those who need it; **it does so for no pertinent reason**.

90. As recalled, until very recently, the procedure required that applicants be provided with answers when they arrived at the DCOs. The Respondents suffered no injury as a result of this. In fact, there was no justification – security or otherwise – for changing the procedure and there was no need for the Respondent to do so.

91. The only reason for amending the procedure was the Respondents' inability (or unwillingness) to see to it that their records were correct and up-to-date and to overcome their own internal bureaucratic deficiencies, coupled with their presumption that providing correct answers requires further harm to applicants.

92. The Petitioners contend that this problem could have been resolved without difficulty by providing prior notice to individuals against whom the Respondent intended to issue a travel ban, as the law stipulates with respect to Israeli citizens and residents. The Respondents chose not to take that route, while impeding individuals from exercising their rights. This choice cannot serve as the basis for causing further injury to the rights of these individuals.

93. In the circumstances the Respondents created, they must, at least, provide final responses to residents when they arrive at the DCO rather than profit from their own omissions, hide the information on the security forces' databases from the applicants and inconvenience them further.

94. Clearly, Respondent 1, as the **sole** competent authority with respect to decisions on prohibiting travel abroad (see secs. 59-63 above), is in possession of the relevant information, namely whether or not a person is "precluded". The amendment to the procedure gives the impression that the Respondent has no information at all and must contact a **consulting** agency in order to find out what this agency, **which is not competent to make a decision,** has decided. This situation is clearly unlawful and cannot serve as the basis for continuing to violate applicants' rights.

95. In the absence of any pertinent justification for amending the procedure and given the injury the procedure causes, it cannot be said that this injury serves a proper purpose. It is certainly disproportionate and constitutes a breach of the undertakings made in HCJ 8155/06 and the decision given therein.

Conclusion

96. The subject of this petition has already been reviewed, in HCJ 8155/06. One could have expected the Respondents to uphold the undertakings and representations they made to the Court.

97. Despite this, the Respondents decided to turn back the clock by creating a complicated and cumbersome procedure which was criticized by the Court, without any relevant justification. The only reason for the amendment is the Respondents' reluctance to make the necessary efforts, if such are required, to improve cooperation between them and provide applicants with the same answer they would have received at the Allenby Bridge had they gone there the same day.

98. The Respondents must clearly resolve the issue of incorrect answers at the DCOs with a simple process of improving their operations, which could have been done with a modicum of good will. The Respondents' apathy and disregard for applicants, their time and their requests, cannot justify a downgrading of the procedure.

99. Thus, the amendment to the procedure must be revoked, and concomitant steps must be taken for rectifying the omissions which have led to the deficient implementation of the procedure. These actions should lead to a situation in which applicants who follow the procedure are given **correct answers at the time they arrive at the DCO**.

In light of all the above, the Honorable Court is requested to issue an *order nisi* as sought, and, after hearing the response of the Respondents, render it absolute. The Court is also requested to instruct the Respondents to pay for Petitioners costs and legal fees.

9 June 2011
[file 69151]

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Counsel for the Petitioners