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**At the District Court in Jerusalem**  
**Sitting as the Court for Administrative Affairs**

**AP -09-20**

- In the matter of:
1. \_\_\_\_\_ **M'aali, ID No.,** \_\_\_\_\_  
Resident of the Occupied Territories
  2. \_\_\_\_\_, **ID No.,** \_\_\_\_\_  
Minor, through his mother, petitioner 1
  3. \_\_\_\_\_, **ID No.** \_\_\_\_\_  
Minor, through his mother, petitioner 1
  4. **HaMoked: Center for the Defence of the Individual,  
founded by Dr. Lotte Salzberger – RA 580163517**

All represented by counsel, Adv. Aaron Miles Kurman (Lic. No. 78484) and/or Maisa Abu Saleh-Abu Akar (Lic. No. 52763) and/or Daniel Shenhar (Lic. No. 41065) and/or Benjamin Agsteribbe (Lic. No. 58088) and/or Nadia Daqqa (Lic. No. 66713) and/or Tehila Meir (Lic. No. 71836)

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 Area**
2. **Coordinator of Government Activities in the Areas**

Represented by the Jerusalem District Attorney's Office –  
Civil, Ministry of Justice  
7 Mahal Street, Jerusalem  
Tel: 073-3928012; Fax: 02-6468053

**The Respondents**

**Administrative Petition**

The honorable court is requested to direct the respondents:

1. To permit petitioners 1-3 to travel from the west bank to Jordan through Allenby bridge, to enable them to return to their home in the United Arab Emirates and unite there with the father of family;
2. To show cause why they would not permit the departure to Jordan through Allenby bridge of Palestinians who were born in the west bank, were properly registered in the population registry of the west bank by the Palestinian Authority, hold a valid

Palestinian passport but are not registered in the Israeli copy of the population registry of the west bank due to the discontinuation of the civil coordination between the state of Israel and the Palestinian Authority.

The honorable court is requested to direct the respondents to respond to the petition as soon as possible, in view of the violation of the most fundamental rights of petitioners 1-3. In this context it should be noted, that following the outbreak of the corona virus and the discontinuation of the civil coordination between the Palestinian Authority and respondents' representatives, petitioners 1-3 were prevented from travelling together from the west bank to unite with the father of the family in their home at the United Arab Emirates, since petitioner 3 was born in Nablus by the end of March. The magnitude of the violation of the rights of petitioners 1-3 to freedom of movement and family life increases for so long as the respondents keep preventing them from traveling abroad together. As stated the Supreme Court:

With respect to the magnitude of the violation of the right – or the 'proportionality' of the violation – the duration of the limitation should also be considered. The longer the limitation the greater the magnitude of the violation is. Limiting the right to exit Israel for a few days is different than limiting it for a few months or even years.

(HCJ 4706/02 **Saleh v. Minister of the Interior**, IsrSC 56(5) 695, 705A (2002); and see also: HCJ 6358/05 **Vanunu v. GOC Home Front Command**, TakSC 2006(1) 320, 331; and HCJ 1890/03 **Bethlehem Municipality v. State of Israel**, 59(4) 736, 757, 759 (2005)).

### **The honorable court's jurisdiction to adjudicate the petition**

This petition concerns a specific decision of respondent 1 regarding the departure of petitioners 1-3, west bank residents, from the west bank to Jordan according to the "Departure of Palestinians traveling via Allenby Bridge Procedure", a procedure established by the Civil Administration and respondent 2 (the Civil Administration is subordinated to respondent 2).

Pursuant to section 5A(a)(1) of the Courts for Administrative Affairs Law, 5760-2000, together with item 3(f) of the fourth addendum, the honorable court is vested with the local and subject matter jurisdiction to adjudicate this decision.

## **Factual Infrastructure**

### **A. The Parties**

1. Petitioner 1 (hereinafter: the **petitioner**), borne in 1994 in Jenin, is a resident of the occupied territories and is registered in the population registry of the west bank with an address in 'Ajah. For over three years the petitioner has been living in the United Arab Emirates together with her husband, \_\_\_\_\_ 'Amer (ID No. \_\_\_\_\_) (hereinafter: the **husband**, the **father** or the **father of the family**), who was born in Kadum village in the west bank and is registered in the population registry of the west bank. The petitioner and her husband (hereinafter: the **spouses**) have two minor children.
2. Petitioner 2 (hereinafter: the **eldest son**) is the eldest son of the spouses, who was born in Nablus on April 29, 2018 and has been living with them ever since in their home in the United Arab Emirates.
3. Petitioner 3 (hereinafter: the **baby**), is the second son of the spouses who was born in Nablus on March 26, 2020, while his mother and brother were in a family visit in the west bank and his father was in the United Emirates.

4. Like their parents, petitioners 2-3 (hereinafter: the **sons**) are both registered in the population registry of the west bank, which according to the Oslo Accords is managed and updated by the Palestinian Authority. Nevertheless, petitioner's departure with her two sons from the west bank to Jordan was prevented by respondents' representatives at the Allenby bridge on July 22, 2020, arguing that the baby was not registered in the Israeli copy of the population registry of the west bank. Petitioners 1-3's request (hereinafter: the **petitioners**) is that their departure from the west bank to Jordan, via Allenby bridge, be permitted, so as to enable them to return to their home in United Emirates and unite there with the father of the family, that the baby has not yet met.
5. Petitioner 4, **HaMoked Center for the Defence of the Individual** (hereinafter: **HaMoked Center for the Defence of the Individual** or **HaMoked**) is a not-for-profit association located in Jerusalem which acts for the promotion of human rights of Palestinians residents of the Occupied Palestinian Territories.
6. Respondent 1 (hereinafter: the **military commander**) is the military commander in charge of the west bank area on behalf of the state of Israel, holding the west bank under belligerent occupation for more than fifty three years.
7. Respondent 2, Coordinator of Government Activities in the Areas (hereinafter: **COGAT**), is responsible for implementing the civil policy of the government of Israel in the west bank areas and toward the Gaza Strip, and for the coordination and communication with the Palestinian Authority and the Palestinian population in the west bank and in the Gaza Strip. The civil administration and the district coordination offices (DCOs) work under and are subject to COGAT.

**B. The petitioner has been living in the United Arab Emirates with her husband for more than three years**

8. As aforesaid, the petitioner was born in Jenin, in the west bank, on March 17, 1994 and is registered in the population registry of the west bank with an address in 'Ajah.

A copy of petitioner's identification card is attached and marked **P/1**.

9. On July 7, 2017, the petitioner got married with her husband, who as aforesaid, is also registered in the population registry of the west bank. A few years before the wedding, petitioner's husband, originally from Kadum village in the west bank, had moved to the United Arab Emirates. He received residency status in the United Emirates and currently works as an engineer with the local authorities over there.

10. Therefore, shortly after the wedding, which had been celebrated in west bank, the petitioner departed the west bank via the Allenby Bridge and moved the center of her life to the United Arab Emirates. On August 13, 2017, residency visa was issued to the petitioner in Dubai by the United Emirates, and since then the petitioner has been living together with her husband in a rented apartment in the Emirate of A-Sharjah. It should be noted that a resident identification card (ID No. \_\_\_\_\_) was also issued to the petitioner by the authorities of the United Arab Emirates.

A copy of petitioner's Jordanian passport is attached and marked **P/2**.

A copy of the residency visa which was issued to the petitioner by the United Emirates on August 13, 2017, is attached and marked **P/3**.

A copy of the resident identification card which was issued to the petitioner by the United Emirates is attached and marked **P/4**.

**C. Petitioner's two sons were born in the west bank and are registered in the population registry of the west bank**

11. Since the petitioner had relocated to the United Emirates more than three years ago, she returned to the west bank four times, each time with her husband, for family visits.
12. On February 2018 the spouses came to the west bank, via Allenby Bridge, for their first visit. During said visit, on April 29, 2018, the spouses' eldest son was born in a hospital in Nablus. As aforesaid the eldest son is registered in the population registry of the west bank. In May 2018, a Jordanian passport and a residency visa in the United Arab Emirates were issued to the eldest son. In said month, the spouses, together with their son, travelled from the west bank to Jordan, via Allenby Bridge, and returned from there to their home in the United Arab Emirates. It should be noted that a resident identification card (ID No. \_\_\_\_\_) was also issued to the eldest son by the authorities of the United Arab Emirates.

A copy of the eldest son's Jordanian passport is attached and marked **P/5**.

A copy of the residency visa which was issued to the eldest son by the United Emirates on May 24, 2018, is attached and marked **P/6**.

A copy of the resident identification card which was issued to the eldest son by the United Emirates is attached and marked **P/7**.

13. A few months later the spouses and their eldest son visited the west bank for about a week, in which they have attended a wedding of a family member.
14. In March 2019, the petitioner, her husband and their eldest son, returned to the west bank for another family visit. Similar to the two previous visits, the family members entered and departed the west bank via Allenby Bridge.
15. On January 19, 2020 the petitioner together with her husband and their eldest son came for her fourth visit in the west bank since her relocation to the United Emirates. About 10 days after the family members had entered the west bank via Allenby Bridge, the father of the family departed, via the same path, and travelled to their home in the United Emirates, to get back to work. The petitioner, who has already been in advanced stages of pregnancy, stayed in the west bank with her son, expecting to go back to the United Emirates to unite with the father of the family shortly after the birth.
16. As aforesaid, on March 26, 2020, the petitioner gave birth to her second son, petitioner 3, in a hospital in Nablus. However, as a result of the outbreak of the corona virus and the lockdowns and limitations imposed by the Palestinian Authority to slow down the spread of the virus in the west bank, the petitioner had to wait almost two months before she could go to the offices of the Palestinian Ministry of Interior to register her baby.
17. Finally, on May 17, 2020, the petitioner managed to get to the Palestinian Ministry of Interior in Qalqilia, where representatives of the Palestinian Authority registered the baby in population registry of the west bank and issued to the petitioner the baby's birth certificate, bearing the stamp of the Palestinian Ministry of Interior. At the same time, the representatives of the Palestinian Ministry of Interior have also revised the addendum of petitioner's ID Card adding the baby's identification details thereto (see Exhibit **P/1**).

A copy of the baby's birth certificate is attached and marked **P/8**.

**D. Respondents' representatives at Allenby Bridge prohibited the baby's departure from the west bank on July 22, 2020 arguing that he was not registered in the Israeli copy of the population registry of the west bank**

18. To be able to unite with her husband and to enable him to meet their baby, the petitioner returned to the offices of the Palestinian Ministry of Interior in Qalqilia and filed an application for a Palestinian passport to the baby. A representative of the office who took petitioner's application warned her that even after the issue of the passport, the baby's departure from the west bank may be prohibited by the representatives of the state of Israel, in view of the fact that due to the discontinuation of the civil coordination between Israel and the Palestinian Authority, the baby's identification details, which had been properly registered on the Palestinian side, were not updated on the Israeli side.
19. Despite said warning, the petitioner went back to the Palestinian Ministry of Interior to pick up the Palestinian passport (No. \_\_\_\_\_) which had been issued to the baby on June 30, 2020, and continued to do whatever she could for the purpose of returning home to the United Emirates together with her two boys. Accordingly, the spouses filed an application with the authorities of the United Arab Emirates for an entry visa ("eVisa") to baby for the purpose of regulating his residency therein; The requested visa was issued to the baby on July 16, 2020.

A copy of the baby's Palestinian passport is attached and marked **P/9**.

A copy of the eVisa which was issued to the baby by the United Arab Emirates is attached and marked **P/10**.

20. In addition, after the petitioner had picked up the baby's passport, she contacted by phone the representatives of the Palestinian Ministry of Foreign Affairs, to register for one of the coordinated "shuttles" between the Palestinian Authority and the Kingdom of Jordan for the departure of Palestinians from the west bank abroad via Allenby Bridge.
21. It should be noted that upon the outbreak of the corona virus, the Kingdom of Jordan closed its borders, thus closing the Jordanian border-crossing at Allenby Bridge in mid-March 2020. Currently, the passage of Palestinians via Allenby Bridge requires coordination in advance between the Palestinian Authority and the Kingdom of Jordan, and, in general, their passage is carried out solely by "shuttles" organized by the Palestinian Authority in coordination with the Jordanians.
22. Following her communications with the Palestinian Ministry of Foreign Affairs, the petitioner and her two sons were assigned to the "shuttle" which was scheduled for July 22, 2020, and thereafter for the flight from Jordan to the United Emirates on that day. The representative of the Palestinian Ministry of Foreign Affairs, who notified the petitioner of same, did not mention at all the issue of the baby's registration, and only told her that she would have to obtain an exit card from the Palestinian side at Allenby Bridge enabling them to cross over to the Israeli side.
23. Accordingly, on July 22, 2020 an exit card (bearing the number \_\_\_\_\_) was issued to the petitioner, for her and her two sons, by representatives of the Palestinian Authority at Allenby Bridge. Passport photos of each one of the three petitioners were attached to the exit card, bearing the names of each one of the petitioners, inscribed in Hebrew letters, as well as their ID Numbers and dates of birth. In addition, the card includes a statement, in Hebrew and Arabic, whereby "the holder of this card may stay abroad an unlimited period of time".

A copy of the exit card which was issued to the petitioners on July 22, 2020 is attached and marked **P/11**.

24. After having received the exit card from the Palestinian side, the petitioners continued to the Israeli border-crossing at Allenby Bridge, where the petitioner presented to respondents' representative her and her sons' passports. Respondents' representative took the passports and disappeared for a few minutes.
25. Thereafter, the petitioners were approached by another representative of the respondents, who introduced himself as the "supervisor". Said Israeli representative asked the petitioner why the baby was not registered in the Israeli copy of the population registry of the west bank. The petitioner explained that the baby was born when the Palestinian institutions were closed due to the outbreak of the corona virus, and that when said institution re-opened and when she finally managed to go to the Palestinian Ministry of Interior and register the baby, the coordination between the Palestinian Authority and the state of Israel was stopped. The Israeli representative acted as if he was surprised, and said that nevertheless the baby may not leave the west bank unless a representative of the Palestinian Authority contacted the Israeli side and requested that the identification details of the baby be registered. The Israeli representative recommended and advised the petitioner to contact the Palestinian passage director at Allenby Bridge.
26. The petitioner protested and noted that a valid Palestinian passport had been issued to the baby and that his identification details were registered in her identification card, and in exit permit which had been issued to her earlier that day by representatives of the Palestinian Authority at the bridge. The Israeli representative, who has already reviewed said documents, insisted on his refusal to allow the baby's departure, and noted that the only solution could be provided by petitioner's government.
27. The petitioners were required to wait until they were transferred back to the Palestinian side of the bridge, together with another Palestinian woman and her baby, whose departure was also prevented by the same Israeli representative due to the fact that the baby's details were not registered in the Israeli records. According to the recommendation of the Israeli representative, the petitioner requested to speak with the director on the Palestinian side. However, she was told by the Palestinian officers at the bridge that the matter exceeded their authority.
28. Hence, respondents' representatives at Allenby Bridge prevented the petitioner from travelling to Jordan, with her two sons, on July 22, 2020.
29. On the following day, July 23, 2020, petitioner's father in law contacted, on her behalf, the Qalqilia DCO in an attempt to solve the problem and obtain a permit allowing the baby's departure abroad. However, the Qalqilia DCO referred petitioner's father in law to the Jenin DCO, since petitioner's address is register in the Jenin district.
30. Later that day, the petitioner and her father in law came together to the Jenin DCO, described the chain of events, presented all relevant documents and requested that the baby's identification details be registered in the Israeli copy of the population registry of the west bank, thus enabling his departure therefrom. Respondents' representative at the Jenin DCO denied their request and claimed that respondents' representatives at the Jenin and Beit El DCOs were not vested with the authority to accept such a request. Like respondents' representative at Allenby Bridge, respondents' representative at the Jenin DCO explained that in order to obtain a permit for the baby's departure abroad a formal application should be submitted by the Palestinian Authority to add the baby's identification details to the Israeli copy of the population registry.

- E. Notwithstanding their repeated requests, the petitioners have not yet been given a clear confirmation in writing that the baby's departure from the west bank abroad would be permitted
31. On August 11, 2020, HaMoked contacted the civil administration public liaison officer (hereinafter: the **public liaison officer**) and requested to enable and coordinate the departure of the petitioner and her two sons from the west bank to Jordan via Allenby Bridge, to enable them to return to their home in United Emirates and unite there with the father of the family as soon as possible. In his said request, HaMoked explained that the baby was born in the west bank on March 26, 2020, while the petitioner and her eldest son were visiting their family in the west bank. HaMoked added that as a result of the lockdown which had been imposed in the framework of the attempt to stop the spread of the corona virus, the petitioner was able to register the baby in the Palestinian population registry only on May 17, 2020, about two months after his birth. HaMoked emphasized further that in view of the current situation and the discontinuation of the civil coordination between the Palestinian Authority and the state of Israel, the petitioners had to stay in the west bank, far from their home and the father of the family, for about five months. Copies of petitioner's identification card, the baby's Palestinian passport and the eVisa which had been issued to him by the United Emirates were, inter alia, attached to said request (attached to this petition as Exhibits **P/1**, **P/9** and **P/10**, respectively). In addition, the documents attached to this petition as Exhibits **P/2**, **P/3**, **P/5**, **P/6** and **P/8** were also attached to the request.

A copy of HaMoked's request dated August 11, 2020 is attached and marked **P/12**.

32. On the following day, HaMoked was informed by respondents' representative that reference number 87813 was assigned to its request.

A copy of the e-mail notice on behalf of the respondents dated August 12, 2020 is attached and marked **P/13**.

33. In the absence of pertinent response to its request that petitioners' departure from the west bank to Jordan via Allenby Bridge be allowed and coordinated, HaMoked sent, on August 20, 2020, a reminder to the public liaison officer.

A copy of HaMoked's reminder dated August 20, 2020 is attached and marked **P/14**.

34. On the same day, HaMoked was informed by respondents' representative that reference number 90243 was assigned to the above reminder.

A copy of the e-mail notice on behalf of the respondents dated August 20, 2020 is attached and marked **P/15**.

35. On August 23, 2020, a letter was sent to HaMoked by respondents' representative on behalf of the public liaison officer (dated August 19, 2020), consisting of the civil administration's response to several requests of HaMoked in matters of different Palestinian applicants. With respect to the request concerning petitioners' matter, it was stated that "after examination with the relevant bodies the applicants may arrive to the Allenby Bridge for passage purposes. As of the date of this letter, the crossing is open Sunday-Thursday between 08:00-17:30 (subject to changes according to corona directives in Israel). Nevertheless, the applicant must verify with the Jordanian side that she has permit to enter Jordanian territory, otherwise the resident and her children shall not be allowed to enter Jordan." It should be noted that the ID numbers of all three petitioners are specified in the letter, including the baby's ID number.

Copies of respondents' letter (dated August 19, 2020 and the e-mail notice dated August 23, 2020 to which it was attached, are attached and marked **P/16**.

36. It should be emphasized that in their response, the respondents have completely failed to refer to the reason that caused their representatives at Allenby Bridge to prevent the baby's departure on July 22, 2020, namely, the fact that the baby's identification details were not registered in the Israeli copy of the population registry of the west bank. Therefore, HaMoked sent the public liaison officer on August 26, 2020, another letter in petitioners' matter, and explained that its first letter in connection with said matter dated August 11, 2020, was sent following petitioner's unsuccessful attempt to depart, together with her two sons, the west bank to Jordan via Allenby Bridge in July 22, 2020.
37. In its said letter dated August 26, 2020, HaMoked emphasized that petitioners' entering Jordan on July 22, 2020 had been approved in advance by the Jordanian side, in coordination with the Palestinian Authority, and that accordingly the representatives of the Palestinian Authority had issued to the petitioner an exit permit (namely, an exit card), which was in her possession when she arrived to the Allenby Bridge on that day. However, HaMoked noted that at the Bridge, respondents' representatives prohibited the baby's departure from the west bank arguing that he was not registered in the copy of the population registry in their possession. In addition, HaMoked noted that the fact that the baby's identification details were not registered in respondents' records – which did not reconcile with the mere fact that both birth certificate and Palestinian passport had been issued to him by the Palestinian Authority, in charge of the population registry of the west bank – probably stemmed from the fact that the baby was registered in the population registry by the Palestinian Authority when the coordination between the latter and the state of Israel was stopped.

To avoid a situation whereby the baby's departure from the west bank would be prevented by respondents' representatives at Allenby Bridge once again, HaMoked requested to receive written confirmation that the baby's departure to Jordan via Allenby Bridge, together with his mother and brother, would be allowed.

A copy of HaMoked's letter dated August 26, 2020 is attached and marked **P/17**.

38. Reference number 91494 was assigned to HaMoked's letter dated August 26, 2020, as HaMoked was informed later that day by respondents' representative.

A copy of the e-mail notice on behalf of the respondents dated August 26, 2020 is attached and marked **P/18**.

39. In the absence of written confirmation on behalf of the respondents that petitioner's departure, **together with her two sons**, to Jordan via Allenby Bridge, would be permitted, and to avoid court proceedings, HaMoked sent to the public liaison officer yet another reminder in petitioners' matter on September 2, 2020.

A copy of HaMoked's letter dated September 2, 2020 is attached and marked **P/19**.

40. On September 6, 2020, a reminder was sent by HaMoked representative to the public liaison officer through the WhatsApp application, that a response to HaMoked's letter dated August 26, 2020 in petitioners' matter has not yet been received.

41. Thereafter, on September 9, 2020, another reminder concerning this matter was sent to the public liaison officer, in which HaMoked demanded to immediately receive a response in writing to its letter dated August 26, 2020 in which, as aforesaid, HaMoked requested to receive written confirmation that the baby's departure, together with the petitioner and her eldest son, to Jordan via Allenby Bridge would be allowed. A copy of said reminder was sent by HaMoked, via facsimile, to the legal advisor of the west bank area.

A copy of HaMoked's letter dated September 9, 2020 is attached and marked **P/20**.

42. However, as of the date hereof, a pertinent response to HaMoked letter dated August 26, 2020, in petitioners' matter has not yet been received and the petitioners are still waiting for written confirmation on respondents' behalf that the baby's departure abroad, via Allenby Bridge, together with his mother and older brother, would be allowed. In the absence of any clear indication that a solution was found to the problem, which had led, according to respondents' representatives at Allenby Bridge, to prevent the baby's departure abroad by the end of July – namely, the fact that the baby's identification details were not registered in the Israeli copy of the population registry of the west bank – there is no reason for the petitioners to travel again to Allenby Bridge without the requested written confirmation that the departure of the three would be allowed. Meanwhile, and in fact until the requested 'new notice' is received, the petitioners are stuck in the west bank, disconnected against their will from their home in the United Emirates and from the father of the family that the baby has not yet met.
43. In view of all of the above, and to enable them to unite with the father of the family in their home in the United Emirates as soon as possible, the petitioners have no other alternative but to apply to this honorable court.

### **The Legal Argument**

#### **A. The normative framework: departure of Palestinians west bank residents to Jordan via Allenby Bridge according to respondents' procedure and according to the Israeli-Palestinian Interim Agreement**

44. As known, each person has the right to exit his country. It should be emphasized that the decisions of the military commander to violate this right in an occupied territory are governed by **international law**, which is the **sole source** from which the military commander imbibes his powers, by virtue of which the military commander is obliged to protect the residents of the occupied territory, and specifically, the right to exit the country.
45. It should be noted that according to military legislation in the territories no permit is required to depart to Jordan. For this issue see paragraphs 23-26 of the response on behalf of the respondents dated July 25, 2007 in HCJ 8155/06 **Association for Civil Rights in Israel v. Commander of IDF Forces in Judea and Samaria**, whereby: "[...] with respect to departure abroad [via Allenby crossing], respondent's policy is to enable Palestinian residents wishing to do so, to travel abroad without permit... Since the commander of the area decided not to issue individual permits for travelling abroad, the residents of Judea and Samaria were not required to submit prior applications".

A copy of the relevant part of the response on behalf of the respondents dated July 25, 2007 in HCJ 8155/06 is attached and marked **P/21**.

46. The above policy is currently valid. As established in the updated version of "Unclassified Status of Authorizations for the Entry of Palestinians into Israel, their Passage between Judea and Samaria and the Gaza Strip and their Travel abroad" (its updated version as of September 6, 2020)(hereinafter: "**Status of Authorizations**"), a document published by respondent 2, and revised from time to time according to changes in the policy of the state of Israel, "as a general rule, for residents [of the west bank]..., departure abroad via Allenby Bridge is approved and requires no prior coordination" (The above Status of Authorizations, paragraph 9(B), chapter A).

A copy of the relevant parts of the "Unclassified Status of Authorizations for the Entry of Palestinians into Israel, their Passage between Judea and Samaria and the Gaza Strip and their Travel abroad" (its version dated September 6, 2020, as published on COGAT's website) is attached and marked **P/22**.

47. The same policy is also manifested in the "Departure of Palestinians traveling via Allenby Bridge Procedure" (hereinafter: the **procedure**), a procedure established by COGAT and the Civil Administration as published on COGAT's website on February 11, 2020, for the purpose of "providing a professional solution and handling the passage of Palestinian residents via Allenby Bridge" (the above procedure, paragraph 2). According to paragraph 1 of the procedure "as a general rule, residents of Judea and Samaria may travel (entry/departure) abroad via Allenby Bridge."

A copy of the "Departure of Palestinians traveling via Allenby Bridge Procedure" (its version as published on COGAT's website on February 11, 2020) is attached and marked **P/23**.

48. The procedure provides further that "a Palestinian resident travelling through the Allenby Bridge terminal for the purpose of departing [the west bank to Jordan] may pass through with the following documentation: a. exit card + identification card [**or**] b. valid Palestinian passport (the above procedure, paragraph 3). However, paragraph 4(b) of the procedure provides "that the passage of Palestinian residents requires an accurate and updated registration of the passenger's registration details in the Israeli copy of the population registry with an active resident status." According to paragraph 4(c) of the procedure "inquiries regarding residency status shall be made vis-à-vis Head of Registry Documentation Department or vis-à-vis the Population Registry Staff Officer."
49. It should be noted that according to the Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip (1995) Treaty Series 1071 (hereinafter: the **Interim Agreement**, the **Oslo Accords** or the **Agreement**), the provisions of which were absorbed into the military law which applies in the occupied territories by virtue of the Decree Regarding Implementation of the Interim Agreement (Judea and Samaria)(No. 7), 5756-1995)(see HCJ 1661/05 **Hof Aza Regional Council v. Knesset of Israel**, IsrSC 59(2) 481, 522-523 (2005)), the responsibility to administer the population registry of the west bank was transferred from the civil administration to the representatives of the Palestinian Authority.
50. According to Article 28 of the First Addendum to Annex III of the Interim Agreement: "Powers and responsibilities in the sphere of population registry and documentation in the West Bank and the Gaza Strip will be transferred from the military government and its Civil Administration to the Palestinian side. The Palestinian side shall maintain and administer a population registry and issue certificates and documents of all types, in accordance with and subject to the provisions of this Agreement" (Paragraphs 1-2). However, the Interim Agreement provides that "The Palestinian side shall inform Israel of every change in its population registry, including, inter alia, any change in the place of residence of any resident".(Ibid., paragraph 10).
51. Among the authorities transferred to the Palestinian Authority according to the Interim Agreement, is the authority to register in the population registry of the west bank children born in the west bank to a west bank resident. As set forth in the Agreement "The Palestinian side shall have the right to register in the population registry all persons who were born abroad or in the Gaza Strip and West Bank, if under the age of sixteen years and either of their parents is a resident of the Gaza Strip and West Bank." (Ibid., paragraph 12)

52. In addition, according to the Interim Agreement, the Palestinian Authority is vested with the authority to issue a Palestinian passport to a west bank resident, and Israel should allow the travelling abroad of any resident holding a valid Palestinian passport. It was expressly and unequivocally stated that **"Israel recognizes the validity of the Palestinian passports/travel documents issued by the Palestinian side to Palestinian residents of the West Bank and the Gaza Strip** in accordance with the Gaza-Jericho Agreement and this Agreement. **Such passports/travel documents shall entitle their holders to exit abroad through the passages** or through Israeli points of exit." (*Ibid.*, paragraph 7 (emphases added)).

53. According to the Interim Agreement, the exit abroad of a person holding a valid Palestinian passport as aforesaid, shall not be limited, unless he was duly apprehended by either party's representatives according to the Agreement at the border crossing, or if a restraining order was issued against him by the competent authorities on either the Palestinian or Israeli side, as stipulated in paragraph 4(b) of Section I of Appendix 5 to Annex I of the Interim Agreement:

A passenger shall be denied exit abroad in the following circumstances:

(1) if the passenger has been duly apprehended in accordance with the Agreement;

(2) if the passenger is not in possession of the required documents to travel abroad pursuant to Appendix 1 to Annex III of the Agreement, or

(3) if a restraining order has been issued with respect to the passenger pursuant to paragraph 5 of Article II of Annex IV to the Agreement.

54. The events in which respondents' representatives at the Allenby Bridge may apprehend a Palestinian holding a valid Palestinian passport and prevent him from departing to Jordan, according to paragraph 4(b)(1) of Section I of Appendix 5 to Annex I of the Interim Agreement (above), are defined in paragraph 3(e) of Article VIII of Annex I of the Agreement, which stipulates as follows (emphases added):

**In the event of suspicion regarding a passenger..., each side may question such passenger in its closed checking area. Suspicion justifying questioning in the closed checking area may be one of the following:**

(1) the passenger was involved, directly or indirectly, in criminal or planned criminal activity, or in terrorist or planned terrorist activity, and is not a beneficiary of the amnesty provisions of this Agreement;

(2) the passenger conceals arms, explosives or related equipment;

**(3) the passenger holds forged or non-valid documentation or the details included in the documentation are inconsistent with those included in the population registry (in case of a resident) or in the data base (in case of a visitor), except that questions relating to such inconsistency will initially be raised at the counter and the passenger will be questioned in the closed checking area only if the suspicion has not been removed; or**

(4) the passenger acts in an obviously suspicious behavior during the passage via the terminal.

**If, at the conclusion of this questioning, the suspicion has not been removed, such passenger may be apprehended, after the other side has been notified.** In case of a Palestinian suspect being apprehended by the Israeli side, a Palestinian policeman will be asked to meet with the suspect. Following notification to the Liaison Bureau, any further treatment of the apprehended person will be in accordance with Annex IX.

55. **"In order to ensure efficient passage procedures and to avoid discrepancies** and with a view to enabling Israel to maintain an updated and current registry", it was established in paragraph 10 of Article 28 of Appendix 1 of Annex III of the Interim Agreement as follows:

The Palestinian side shall provide Israel, on a regular basis through the CAC, with the following information regarding passports/travel documents and identity cards:

- a. With respect to passports/travel documents: full name, mother's name, ID number, date of birth, place of birth, sex, profession, passport/travel document number and date of issue and a current photograph of the person concerned.
- b. With respect to identity cards: identity card number, full name, mother's name, date of birth, sex and religion and a current photograph of the person concerned.

56. It should be noted that according to the Interim Agreement, when a Palestinian, resident of the west bank, arrives to the Allenby Bridge to travel abroad, his passport and identity shall be examined by representatives of both sides (namely, respondents' representatives and representatives of the Palestinian Authority) Interim Agreement, paragraph 2, Section I of Appendix 5 of Annex I). However it should be emphasized that it was expressly stated that "the Palestinian official shall compare the passenger's identity card number with the population registry records of the West Bank and the Gaza Strip residents" (*Ibid.*, paragraph (a)(2)); On the other hand, the Interim Agreement does not expressly provide that the passenger's identity shall be examined and compared with the (Israeli copy of) the population registry by the representatives of the state of Israel (see *Ibid.*, paragraph (a)(4) and (a)(5)).
57. Therefore, it should be emphasized that the provisions of paragraph 4(b) of respondents' above procedure "that the passage of Palestinian residents requires an accurate and updated registration of the passenger's registration details in the **Israeli copy** of the population registry with an active resident status" does not reflect the provisions of the Interim Agreement and is even contrary thereto (emphases added). As aforesaid, the Interim Agreement provides that the state of Israel should enable a Palestinian, resident of the west bank holding a valid Palestinian passport, travel abroad via the Allenby Bridge, unless a restraining order was issued against him or unless he was apprehended at the border crossing according to the provisions of the Agreement. The above Israeli obligation is not subject to the Palestinian Authority's fulfillment of its obligations under said Agreement to update the Israeli side with respect to changes made by it in the population registry of the west bank and with respect to passports and identification cards which were issued, updated or renewed by it. Namely, the mere fact that the Palestinian Authority does not update the Israeli side of such changes does not relieve the Israeli side of its obligation to enable the departure to Jordan of a west bank resident holding a valid Palestinian passport.

58. The Interim Agreement does indeed authorize respondents' representatives to question Palestinians, west bank residents wishing to travel to Jordan if the "details included" in their valid Palestinian passport and/or other documentation in their possession "are inconsistent with those included in the population registry" (Interim Agreement, paragraph 3(e)(3) of Article 8 Annex I). However, in this context the Agreement makes no reference to the **Israeli** collection or copy of population registry, but rather to the population registry itself, which, as aforesaid, is being administered and updated according to the Agreement by the Palestinian Authority. Accordingly, the obligation to compare "the passenger's identification number with the records of the population registry of west bank and Gaza Strip residents" applies to the representatives of the Palestinian Authority at the Allenby Bridge rather than to their Israeli counterparts (Ibid., Article 2(a)(2) Section I of Appendix 5 to Annex I).
59. Furthermore, only if the suspicion that respondents' representatives at the Allenby Bridge had with respect to inconsistency between the documentation in the possession of the Palestinian passenger and the details included in the **original** population registry (namely, the registry administered by the Palestinian Authority) has not been removed after the passenger had previously been questioned at the counter and thereafter in the closed checking area – only in this case can respondents' representatives at the Allenby Bridge prevent the passenger's departure to Jordan due to said suspicion, and the above, only if said representatives decide to apprehend the passenger, involve a Palestinian policeman in the matter and treat him according Annex IV of the Agreement. Namely, if a Palestinian resident who was questioned at Allenby Bridge regarding inconsistencies between the documentation in his possession and the details included in the population registry is not apprehended by the conclusion of the questioning, then, there is no basis for respondents' decision to prevent his departure due to the suspicion concerning his documentation.
60. Moreover. Contrary to respondents' procedure, the relevant question – even for respondents' representatives at the bridge – is not the consistency between the documentation in the possession of the Palestinian passenger and the details included in the Israeli copy of the population registry of the west bank, but rather the consistency between said documentation and the details included in the original copy of the population registry of the west bank, as administered and updated by the Palestinian Authority. Therefore, where the details included in a valid and authentic Palestinian passport which was issued by the Palestinian Authority to a minor passenger are consistent with the details included in the annex of the valid and authentic identification card which was issued to his mother by the Palestinian Authority, with the details included in the original birth certificate which was issued to him by the Palestinian Authority and with the details included in the exit card which was issued to his mother by the Palestinian Authority – in such circumstances, which are the circumstances of petitioner 3 in the case at hand, it is inconceivable that precisely the inconsistency between said details and the details included in the Israeli copy of the population registry of the west bank can substantiate a reasonable, serious and genuine suspicion with respondents' representatives that identical details included in four separate formal documents issued by the Palestinian Authority are inconsistent with the details included in the original population registry of the west bank, as administered and updated by the same Palestinian Authority.
61. The basic assumption should be that the inconsistency between the details included in the Israeli copy of the population registry of the west bank and the details included in formal documentation referring to a child who was born in the west bank to a parent who is a west bank resident and which was issued by the Palestinian Authority during – or shortly before – the current period, in which the Authority does not update the Israeli side of changes made in the original population registry of the west bank and in

documents issued by it to west bank residents, arises from the above discontinuation of the civil coordination between the Palestinian Authority and the Israeli side, and neither raises nor substantiates a suspicion that the details included in the original and valid Palestinian documentation are inconsistent with those included in the original population registry which is updated by the Palestinian Authority – all the more so when identical details are registered in several separate formal documents which were issued by the Palestinian Authority.

62. Therefore, the petitioners are of the opinion that even if there was a justification for their questioning by respondents' representative at the Allenby Bridge concerning the fact that the baby's details were not registered in the Israeli copy of the population registry of the west bank, a review of the relevant documents (including the baby's Palestinian passport, his birth certificate, the annex of petitioner's identification card, and the exit card which was issued to her) should have removed any serious and reasonable suspicion concerning the consistency between the details included in said Palestinian documents and the details included in the original population registry. Therefore, there was no reason which justified the prevention of the baby's departure to Jordan, a conclusion which also arises from the mere fact that after petitioners' questioning the petitioners were not apprehended by respondents' representatives.

**B. International humanitarian law obligates the respondents to protect and maintain petitioners' human rights, including their fundamental rights to freedom of movement and family life**

63. As specified above, respondents' decision to prevent the baby's departure abroad relies on their erroneous interpretation of the Interim Agreement, as reflected in paragraph 4(b) of the above procedure. The mere fact that no less than four formal documents which were issued by the Palestinian Authority, including the baby's passport and the updated annex of the identification card of his mother the petitioner, contain the same identical details concerning petitioner 3, also indicates that these details are consistent with the details registered in the original population registry of the west bank, as the latter is administered and updated by the Palestinian Authority. On the other hand, considering the fact that the Palestinian Authority has stopped updating the Israeli side of changes made by it in the original population registry, and considering the fact that the Israeli side has no yet started enabling Palestinian residents to submit individual applications to update the Israeli copy of the population registry, or to alternatively, update the copy of the registry of its own initiative, the inconsistency between the details of the baby as they appear in valid Palestinian documentation in petitioners' possession and the details registered in the Israeli copy of the population registry does not substantiate a reasonable and serious suspicion that there is inconsistency between the details included the Palestinian documentation and the details included in the original population registry, and therefore is not one of the reasons which justifies, according to the Interim Agreement, the prevention of the baby's departure via the Allenby Bridge.
64. Moreover. As aforesaid, the mere fact that the Palestinian Authority fails to comply with its obligation, under the Interim Agreement, to update the Israeli side of changes made in the population registry and of formal documentation issued to west bank residents, does not relieve the respondents of their obligation, according to the same agreement, to enable Palestinians holding a valid Palestinian passport, to travel to Jordan via Allenby Bridge.
65. However, even if we adopt an erroneous interpretation of the Interim Agreement, leading to the conclusion that the fact that the baby's details are not registered in the Israeli copy of the population registry justifies, according to the Interim Agreement, the prevention of the baby's departure to Jordan vial the Allenby Bridge, it should be

emphasized that said conclusion does not exonerate the military commander of the obligations imposed on him by virtue of international humanitarian law, including his obligation to protect petitioners' rights to freedom of movement and family life, and their right to leave their country in order to return to their home abroad and unite with the father of the family. Is it conceivable that the United Emirates, which is a foreign country having no obligations by virtue of international humanitarian law towards petitioner 3, would enable him to enter its borders and even live there based on his Palestinian passport, while the respondents, which are obligated to maintain the baby's fundamental rights, do not enable him to leave the occupied territory on the basis of the same passport?

66. As is known, "Israel holds the territories of the region through belligerent occupation" (HCJ 7862/04 **Abu Daher v. Commander of IDF Forces in Judea and Samaria**, IsrSC 59(5) 368, 375 (2205)). Respondent 1 is not the sovereign in the occupied territories, but rather acts as a trustee thereof. The entire authorities of the military commander as trustee of the occupied territory is vested in him by virtue of international law, and subject thereto (see for instance HCJ 2150/07 **Abu Safia v. Minister of Defense**, IsrSC 63(3) 331, paragraphs 16-17 of the judgment of Justice Vogelmann (2009)).

67. In the area of international humanitarian law, maintaining and protecting fundamental rights and freedoms, including the right to freedom of movement and family life, constitutes part of the basic obligations – both active and passive – of the occupying power towards the occupied population. In his position as the military commander in charge of the occupied territory, respondent 1 has an **active obligation** to protect the rights of Palestinian residents who are registered in the original population registry of the west bank area, to secure their ability to lead their life in an orderly manner and to maintain and protect their rights in all areas of civil life. Article 43 of The Hague Convention respecting the Laws and Customs of War on Land (Hague 1907) (hereinafter: **Hague Convention (1907)**) stipulates:

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].

68. Israeli judicial precedent recognizes the applicability of said Article, for instance in HCJ 393/82 **Jam'iat Iscan Al-Ma'almoun Al-Tha'auniya Al-Mahduda Al-Mauliya, Cooperative Association Legally registered at the Judea and Samaria Area Headquarters v. Commander of IDF Forces in the Judea and Samaria Area**, IsrSC 37(4) 785, 798 (1983) (hereinafter: **Jam'iat Iscan Al-Ma'almoun**), where it was held that Article 43 applies to all areas of public life:

The first part 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... The Article does not limit itself to a certain aspect of public order and safety. It applies to all aspects of public order and safety. Therefore, this authority – alongside security and military matters – applies also to a variety of 'civil' issues such as, economic, **social**, educational, **welfare**, hygienic, **health**, transportation and such other matters to which human life in modern society is connected [emphases added].

69. The Supreme Court has expanded the meaning of Article 43 of the Hague Convention (1907) in the above **Abu Daher** and held that by virtue thereof it is incumbent upon

respondent 1 to maintain and protect human rights of Palestinians residents of the occupied territories, namely:

**The Hague Convention authorizes the Area Commander to operate in two main spheres: one – ensuring the legitimate security interest of the occupier, and the other - ensuring the needs of the local population in an area under belligerent occupation.** The first is a military need and the other is a civil-humanitarian need. The first focuses on the security of the military force and on maintaining order, security and the rule of law in the area; **the other – concerns the responsibility for maintaining the inhabitants' safety and welfare. In maintaining the above welfare it is incumbent on the Area Commander not only to maintain the inhabitants' order and security but also to protect their rights, particularly their constitutional human rights. 'The concern for human rights lies at the heart of the humanitarian considerations which the commander must consider'.... In protecting the constitutional rights of the inhabitants of the area the military commander is also subject to principles of public Israeli law, including the fundamental principles of human rights.**

(The above **Abu Daher**, page 376 )citing the words of Justice Procaccia in HCJ 10356/02 **Haas v. Commander of IDF Forces in the West Bank**, IsrSC 58(3) 443' 456 (2004) (Emphases added) (References omitted)).

70. In the framework of his above obligation the military commander cannot disregard social, technological, political and other developments affecting the nature and scope of the fundamental and protected rights of west bank residents. Relevant to this issue are the words of Justice Barak (as then titled) in **Jam'iat Iscan Al-Ma'almoun** concerning a long term belligerent occupation:

In establishing the scope of the powers of the military government according to the formula regarding "public order and safety," it is appropriate to take into consideration the distinction between short term military government and long term military government... This distinction between a short term military government and a long term military government has significant influence over the content which is to be infused into securing 'public order and safety'... **in long term military occupation, the needs of the local population receive extra validity... The life of a population, as the life of an individual, does not stand still but is rather in constant motion which includes development, growth and change. A military government cannot ignore all these. It may not freeze life...** Therefore, the power of the military government extends to taking all necessary measures to ensure growth, change and development.

(The above **Jam'iat Iscan Al-Ma'almoun**, pages 800-801, 804 (emphases added)).

71. Considering the fact that the west bank has been held under belligerent occupation by the military commander and the state of Israel for more than 53 years, the respondents cannot "disregard" significant changes in circumstances affecting the life and rights of the local population, including those which have occurred over the last few months following the outbreak of the coronavirus pandemic and the discontinuation of the civil coordination between the Palestinian Authority and the state of Israel (*Ibid.*). The respondents "may not freeze" their policy, while failure to update it aggravates severe

violations of human rights of Palestinians, west bank residents, which anyway take place, due to changes in circumstances (*Ibid.*)

72. The discontinuation of the civil coordination between the Palestinian Authority and the state of Israel – including the discontinuation of current updates by the Palestinian side to the Israeli side of changes made in the original population registry of the west bank by the Palestinian Authority and of passports and identification cards which were issued, revised and/or renewed by it – does not relieve the military commander of his obligation to maintain and protect human rights of west bank residents, including their right to leave their country. Given the new circumstances, respondents' policy, whereby, as a general rule, the departure of Palestinians, residents of the west bank, to Jordan via Allenby Bridge, requires "accurate and updated registration of the passenger's registration details **in the Israeli copy of the population registry** with an active resident status" – while the registration details of west bank residents may be updated in the Israeli collection of the population registry by the respondents only pursuant to official communications on behalf of the Palestinian Authority – results in the sweeping denial of the right to travel abroad of thousands of babies who were born in the west bank in recent months – let alone the right to travel abroad of their parents who are do not wish to leave them, as well as their minor siblings (the above procedure, paragraph 4(b) (emphasis added)). As part of their obligation "[ ] to secure public order and life" in the occupied territories, the respondents must take "all measures in [their] power" to enable the travelling abroad of all west bank residents, including those registered in the original population registry of the west bank and holding a formal and valid Palestinian passport, but whose details do not appear in the Israeli copy of the registry (Hague Convention (1907), Article 43).

73. As specified below, respondents' obligation to maintain and protect petitioners' right to freedom of movement and family life also arises from Article 27 of The Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949) (hereinafter: the **Fourth Geneva Convention**). It should be emphasized that according to Article 47 of the Fourth Geneva Convention, an occupying power may not by any agreement concluded with the local authorities of the occupied territories, deprive protected residents in that territory of the benefits and rights conferred on them by the convention:

Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.

74. According to Article 47 of the Fourth Geneva Convention as interpreted by the scholar Pictet, the purpose of said Article is to apply the provisions of Article 7 of said convention concerning special agreements concluded between state parties, to agreements concluded between occupying powers and the local authorities in the occupied territories:

Agreements concluded with the authorities of the occupied territory represent a more subtle means by which the Occupying Power may try to free itself from the obligations incumbent on it under occupation law; the possibility of concluding such agreements is therefore strictly limited by Article 7, paragraph 1, and the general rule expressed there is reaffirmed by the present provision.

(Oscar M. Uhler et al., Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War 274 (Jean S. Pictet ed., Ronald Griffin & C. W. Dumbleton trans., International Committee of the Red Cross 1958) (emphasis added)).

75. Paragraph 1 of Article 7 of the Fourth Geneva Convention provides as follows (emphasis added):

In addition to the agreements expressly provided for in Articles 11, 14, 15, 17, 36, 108, 109, 132, 133 and 149, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. **No special agreement shall adversely affect the situation of protected persons, as defined by the present Convention, nor restrict the rights which it confers upon them.**

76. According to Article 7 of the Fourth Geneva Convention, as interpreted by the scholar Pictet:

It will not always be possible to decide at once whether or not a special agreement 'adversely affects the situation of protected persons'. What is the position, for instance, if their situation is improved in certain ways and made worse in others? Some of the agreements . . . may have appeared to bring them advantages at the time of conclusion; the drawbacks only became apparent later. The criterion 'adversely affect the situation' is not, therefore, in itself an adequate safeguard. That is why the second condition is of value.

In what sense should the words 'rights conferred by the Convention' be understood? . . . Should the words be understood to apply solely to provisions which refer directly to protected persons? By no means. . . . The reference is, therefore, to the whole body of safeguards which the Convention affords to protected persons.

These safeguards follow from the whole of the provisions of the Convention, save perhaps the purely formal clauses contained in the last section.

In the final analysis, each rule of the Convention represents an obligation on the States party to the Convention. The sense of the expression 'restrict the rights' then becomes clear: the States may not by special agreement restrict, i.e. derogate from their obligations under the Conventions. On the other hand, nothing prevents them from undertaking further and wider obligations in favour of protected persons. Obligations under the Geneva Convention must, in fact, be considered as representing a minimum.

(Uhler et al., *supra*, at 70-71).

77. Therefore, according to Articles 7 and 47 of the Fourth Geneva Convention as interpreted by the scholar Pictet, an agreement concluded between the occupying power and the local authorities in the occupied territory cannot relieve the occupying power of any obligation imposed on it by virtue of the convention or adversely affect the situation of protected persons in the occupied territory. Hence, the provisions of the Interim Agreement cannot justify violation of the rights and benefits conferred upon protected residents in the west bank, such as the petitioners, by the Fourth Geneva Convention, or relieve respondent 1 of the obligations imposed on him by the convention. All the more so, the circumstances which were created as a result of the

breach by the local authorities in the occupied territory of their obligations according to an agreement concluded between them and the occupying power, cannot relieve the occupying power of the obligations imposed on it by virtue of the Fourth Geneva Convention or to justify the deprivation of protected rights under the convention from protected residents. An in the case at hand, the discontinuation of the coordination between the Palestinian Authority and the respondents cannot relieve respondent 1 of its obligations under the Fourth Geneva Convention, including its obligation according to Article 27 of the convention to respect the family life and freedom of movement of protected residents.

78. It should be emphasized that respondents' policy which led to the deprivation of petitioner's right to go abroad together with her two sons, adversely affects, in a discriminatory manner, the protected rights of babies and their mothers, completely contrary to the provisions of the Fourth Geneva Convention, which on the one part, prohibit discrimination between protected residents, and on the other validate and grant special rights to minor children and their mothers, the above, in a bid to honor, as stated by the scholar Pictet in his interpretation of Article 50 of said convention:

. . . one of the most sacred of human laws – the law that children must be protected, since they represent humanity's future.

(Uhler et al., *supra*, at 284).

79. Article 27 of the Fourth Geneva Convention prohibits adverse distinction between protected residents:

Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion.

Therefore, when, as a general rule, the respondents enable protected residents of the west bank to travel abroad via Allenby Bridge, they cannot deprive this right of a group of protected residents who are not registered in the Israeli copy of the population registry of the west bank as a result of a political change which is not under their control, all the more so in view of the fact that the respondents offer these residents no possible alternative to register in the Israeli collection. The above constitutes adverse distinction between protected residents based on age, in view of the fact that in general, the right to travel abroad is formally deprived of those who were born in the west bank during the last six months (and in fact also of their parents, and in certain cases, like in the case at hand, of their siblings).

80. Article 50 of the Fourth Geneva Convention imposes on the occupying power the obligation to take all necessary measures to facilitate the identification of children and the registration of their parents, and prohibits the occupying power from hindering the application of any preferential measures which may have been adopted prior to the occupation in favor of children and their mothers:

The Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage. It may not, in any case, change their personal status . . . . The Occupying Power shall not hinder the application of any preferential measures in regard to food, medical care and protection against the effects of war, which may have been adopted prior to the occupation in favour of children under fifteen years, expectant mothers, and mothers of children under seven years.

81. According to Article 50 of the Fourth Geneva Convention as interpreted by the scholar Pictet:

If a State has already adopted an identification system before its territory is occupied, the Occupying Power is bound to allow that system to continue and to facilitate its working.

On the other hand, if no steps have been taken, it is hard to imagine an Occupying Power itself organizing a complete system of identification. Consequently, the Diplomatic Conference merely laid down that the Occupying Power was to take all necessary steps to facilitate the identification of children and the registration of their parentage by the authorities of the occupied State; in other words, the Occupying Power must not do anything to hamper the normal working of the administrative services responsible for the identification of children, in particular newly born infants. The register offices must therefore continue to play their part, which is essential to the legal life of the community and individuals and to the administration of the country (the drawing-up of official documents, preservation of original records and certificates, the keeping of registers of births, deaths and marriages, etc.).

. . . [T]he extreme importance of having a system for identifying children, especially very young children, must be emphasized. . . . The responsibility for taking the necessary measures will rest with governments. . . .

The second sentence of paragraph 2 forbids the Occupying Power to change the family or personal status of children, or their nationality. Both the children and the parents are thus provided with a most valuable safeguard. Expressed in this way, the principle of the inviolability of the child's personal status represents a most desirable addition to the essential principles enjoining respect for the human person and for family rights which were set forth in Article 27.

. . .

Paragraph 5 [sanctioning special protections for children and mothers of young children] covers persons who on account of their weakness are particularly deserving of protection and in general enjoy preferential treatment under wartime legislation.

(Uhler et al., *supra*, at 287-90).

82. According to Article 50 of the Fourth Geneva Convention, the respondents should take all necessary steps to facilitate the identification of babies who were born in the west bank and their registration in the population registry of the west bank. If the Palestinian Authority which administers the population registry, does not update the respondents of changes in the registry, it is incumbent upon the respondents to adopt alternative measures to ascertain that the registration of the children is not adversely affected and that the failure to update by the Palestinian side does not lead to the violation of protected rights of said babies and their immediate families. All the more so in view of the fact that in the past, prior to Interim Agreement, the identification and registration system of protected residents who were born in the west bank was administered and maintained by the respondents.

**C. The respondents violate petitioners' right to freedom of movement**

83. As aforesaid, respondents' representatives at the Allenby Bridge prohibited petitioner 3's departure abroad on July 22, 2020, arguing that he was not registered in the Israeli copy of the population registry of the west bank, and to date they have not clarified that his departure from the west bank would be allowed. Hence, the petitioners were prevented from leaving their country, from returning to their home in United Emirates and from uniting there with the father of the family. Preventing the petitioner from travelling abroad, together with her two sons, constitutes, first and foremost, a severe violation of petitioners' right to freedom of movement, a right which embodies the main expression of a person's autonomy, the freedom to make his own choices and to realize his capabilities. The great importance of the right to freedom of movement stems from the fact that the freedom of movement is the engine which drives the entire body of a person's rights. When the freedom of movement is limited it necessarily results in the violation of additional human rights relating to all aspects of life. In the case at hand, the severe violation of petitioners' right to family life is the direct and inevitable consequence of the prohibition to travel abroad imposed on petitioner 3.
84. The residents of the occupied territories have the right to leave their country and "[the] military administration in the OPT, which is subject to the rules of Israeli administrative law and to the rules of international customary law, is obligated to allow the residents of the OPT to exercise this important fundamental right" (Yaffa Zilbershats "The Right to Leave the Country" **Mishpatim** 23 69, 86 (5744)).
85. In Israeli administrative-constitutional law, the right to freedom of movement is entrenched in section 6 of the Basic Law: Human Dignity and Liberty. It is recognized as a basic right which "is in the first rank of human rights" and is "on the very highest level of the scale of rights in Israel" (HCJ 1890/03 **Bethlehem Municipality v. State of Israel**, IsrSC 59(4) 736, 754 (2005) (citing the words of president Barak in HCJ 5016/96 **Horev v. Minister of Transport**, IsrSC 51(4) 1, 51, 53 (1997)).
86. In international human rights law the right to freedom of movement is entrenched, *inter alia*, in Article 12 of the International Covenant on Civil and Political Rights (1966), Treaties Series 1040 (hereinafter: the **Covenant on Civil Rights**), which was signed by Israel in 1966 and ratified by it in 1991; in Article 13 of the Universal Declaration on Human Rights (1948); and in Article 2 of the Fourth Protocol of the Convention for the Protection of Human Rights and Fundamental Freedoms (1963).
87. The right to freedom of movement includes **a person's right to leave and return to his country**. This right was recognized in Article 13(2) of the Universal Declaration on Human Rights (1948):

Everyone has the right to leave any country, including his own, and to return to his country.

Similarly, a person's right to leave his country has also been recognized by Israeli judicial precedent:

A person's right to leave the country in which he resides and to return to it is a 'natural right'. It is one of a person's fundamental rights. The limitation of the right severely violates his rights (HCJ 4706/02 **Saleh v. Minister of the Interior**, IsrSC 56(5) 695, 702 (2002)).

88. According to the scholar Pictet, the rule underlying the obligation of the occupying power to respect the persons of protected residents, established in Article 27 of the Fourth Geneva Convention, is that the personal liberties of protected civilians in occupied territories, including their freedom of movement, are maintained and are not deprived:

**The right to personal liberty, and in particular, the right to move about freely . . . is not . . . included among the other absolute rights laid down in the Convention, but that in no wise means that it is suspended in a general manner. Quite the contrary: the regulations concerning occupation . . . are based on the idea of the personal freedom of civilians remaining in general unimpaired.**

(Uhler et al., *supra*, at 201-02 (emphasis added)).

**D. The respondents violate petitioners' right to family life, thus aggravating the violation of their right to freedom of movement**

89. The magnitude of the violation of petitioners' right to freedom of movement is aggravated by the fact that said right essential for their ability to return to their home in United Emirates and to unite there with the father of the family. In other words, the violation of petitioners' right to go abroad is aggravated by the fact that it concerns a severe violation of their right to family life. As stated by the Supreme Court in **Saleh**:

How do we weigh the individual's right to leave Israel – which, as recalled, derives from the right to freedom of movement and the right to liberty - against the public's right to security? ... The magnitude of the violation of the individual's right is examined... [] also in accordance with the personal interest of the person whose departure was prevented in leaving the country... The purpose of the travel and its destination are important considerations in measuring the magnitude of the violation of the right. **Limiting the right to depart the country of a person whose departure is necessary and important is liable to increase the magnitude of the harm inflicted on him.**

(The above **Saleh**, pages 704-705 (emphasis added)).

90. The right to family right derives , inter alia, from the right to human dignity and is one of the natural, fundamental and most important rights. As was held by Justice Procaccia in **Dobrin**:

The Basic Law: Human Dignity and Liberty entrenches the human rights to dignity and liberty... Within the scope of the right to human dignity lies the right of a person to have a family... The right to family is one of the most basic elements of human existence. It is derived from the protection of human dignity, from the right to privacy and from the realization of the principle of the autonomy of the will of the individual, which lies at the very essence of the concept of human dignity.

(HCJ 2245/06 **Dobrin v. Israel Prison Service**, para. 12 of the judgment of Justice Procaccia (reported in Nevo, June 13, 2006)(references were omitted)

91. These special relations between the members of the same family circle are recognized and protected by the law. As stated by the then President of the Supreme Court in **Adalah**:

**It is our initial and basic duty to preserve, nurture and protect the most basic and ancient family unit in the history of mankind, which was, is and will be the element that preserves and ensures the existence of the human race, namely the natural family'... the**

**family relationship, and the protection of the family and its basic elements... lie at the basis of Israeli law. The family has an essential and central purpose in the life of the individual and the life of society. Family relationships, which the law protects and which it seeks to develop, are some of the strongest and most significant in a person's life.**

(HCJ 7052/03 **Adalah Legal Centre for Arab Minority Rights in Israel v. Minister of the Interior**, IsrSC 61(2) 202, para. 25 of the opinion of Justice Barak (2006)(Emphasis added)(References were omitted)).

92. As aforesaid, and in view of the supreme importance of the "family relationships... in the life of the individual and in the life of society", every person is vested with the right to family life, both according to Israel and international law (*Ibid*). In view of this basic and essential right, the respondents have the obligation to respect petitioners' family circle. Since, as was held by the Supreme Court "Israel is obligated to protect the family unit by virtue of international covenants (HCJ 3648/97 **Stemka v. Minister of the Interior**, IsrSC 53(2) 728, 787 (1999)).

93. Article 46 of the Hague Convention (1907), constituting international customary law, stipulates, inter alia, as follows:

Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated.

94. In addition, Article 27 of the Fourth Geneva Convention provides that:

**Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs [emphasis added].**

95. The comprehensive study of the International Committee of the Red Cross which was published in 2005, in a bid to identify the rules of international humanitarian customary law, recognizes the obligation of the state to protect family life as one of these rules:

Family life must be respected as far as possible.

(Jean-Marie Henckaerts & Louise Doswald-Beck, [1 Rules] Customary International Humanitarian Law 379-83, Rule 105 (Int'l Comm. Red Cross ed., 2005, Cambridge University Press 2009)).

96. The obligation of the state to protect the family unit and the right to family life are also recognized by other international sources, including: Article 10 of the International Covenant on Economic, Social and Cultural Rights (1966), Treaties Series 1037, which was signed by the state of Israel in 1966 and ratified by it in 1991; Articles 17 and 23 of the above Covenant on Civil Rights; Article 12 and Article 16(3) of the Universal Declaration on Human Rights (1948); and Articles 8 and 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

**E. By preventing petitioners 1-3 from travelling abroad and uniting with their father, the respondents violate the principle of the child's best interest**

97. As has already been held in CA 209/54 **Steiner v. The Attorney General**, IsrSC 9, 241, 250 (1955), "No principle is superior to the principle of the child's best interest".

The existence of the Convention on the Rights of the Child (1989), Treaty Series 1038, which was ratified by the state of Israel in 1991 and the enactment of the Basic Law; Human Liberty and Dignity have reinforced the status of the child as an independent holder of rights, and as an independent legal entity.

98. It was often emphasized by judicial precedent that when the child's best interest is discussed said consideration should be given considerable weight. "Since the legislator ascended to the level of the modern approach – a modern approach that the scholars of Israel have been taking for ages – that the child is not an 'object'... but is rather a 'subject', he himself is a 'litigant'... and his interests may not be disregarded under any circumstances whatsoever (*Ibid*).
99. However, it seems that the respondents "[d]isregarded the interests" of petitioner 3 when they have prevented his departure to Jordan via Allenby Bridge, and continue to disregard them until this very day, since they have not yet responded to petitioners' repeated requests to receive a clear written confirmation that the baby's departure abroad would be allowed (*Ibid*).

The respondents do not give the proper weight to the supreme interest of the baby to meet his father, for the first time in his life, and to live and grow up in the custody of his two parents in their home in the United Emirates.

100. In addition, the respondents do not give the proper weight to the supreme interest of the baby's brother – who is also stuck in the west bank as a result of the preclusion imposed of the baby's departure therefrom – to return to his home in the United Emirates and unite with his father, who the two and a half years old eldest son has not seen for almost eight months.

## **Conclusion**

101. The petitioners are protected residents in the occupied territories, registered in the original population registry of the west bank, as the latter is administered and updated by the Palestinian Authority. The petitioner requests to permit her to travel, together with her two sons, from the west bank to Jordan via Allenby Bridge, to enable them to return to their home in the United Emirates to unite there with the father of the family, that the baby has never met and that petitioners 1-2 have not seen for almost eight months.
102. The departure of the petitioners abroad was prevented by respondents' representatives at the Allenby Bridge by the end of July 2020, once they prohibited the baby's departure arguing that he was not registered in the Israeli copy of the population registry of the west bank. However, even according to the provisions of the Interim Agreement, said argument does not justify the severe violation of petitioners' rights to freedom of movement and family life, which are protected by international humanitarian law.
103. Since the circumstances which led to that the baby's registration in the original population registry of the west bank was not included in the Israeli copy of the same registry, the petitioners requested respondents' written confirmation that the baby's departure would be allowed. This request has not yet been answered, and until it is received, it seems that the respondents continue preventing the petitioners from leaving their country thus, aggravating the violation of their fundamental rights.

In view of all of the above, the honorable court is requested to direct the respondents to act as requested in the beginning of the petition and obligate them to pay costs of trial and attorneys' fees.

This petition is supported by an affidavit which was signed before an attorney in the west bank and was sent to HaMoked via the WhatsApp Application, coordinated by phone. The honorable court is requested to accept this affidavit and the power of attorney which was also sent by WhatsApp, considering the objective difficulties involved in a meeting between the petitioners and their legal counsels.

September 22, 2020

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