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For

September 13, 2022

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Hello,

**Subject: Request for Amendment of the "Procedure for Entry and Residence of Foreigners in the Judea and Samaria Area" and Suspension of its Entry into Force, Pending its Amendment**

Our letters dated March 23, 2022; April 2, 2022; May 29, 2022; August 7, 2022; and September 4, 2022;  
Your letter dated April 18, 2022

1. This appeal deals with the amended version of the "Procedure for Entry and Residence of Foreigners in the Judea and Samaria Area", which was published on September 4, 2022 and will come into effect on October 20, 2022 (hereinafter also referred to as: **the amended procedure** or **the procedure**). The appeal is made on behalf of Hamoked: the Center for the Defence of the Individual, a human rights organization that for years assists Palestinians living under occupation, among other things, in regularizing the status of their loved ones in the West Bank.
2. The procedure dated September 4, 2022 is a revised procedure, which was published following objections submitted to you concerning the original procedure, which was published in February 2022. In our letter dated March 23, 2022, as well as in the petition submitted to the Supreme Court (High Court of Justice 4270/22), we stressed a long list of flaws in the original procedure.
3. Despite corrections made in the original procedure in certain places, it seems that many of the objections that appeared in our letter to you, and in the petition, were not evaluated at all. As a result, the amended procedure is still fraught with serious flaws in regards to the procedure for the entry of foreign passport holders into the territories, the extension of the visas granted to them, and the regularizing of their

permanent status in the territories. As detailed below, as a result of the entry into force of the procedure, the regular work of various academic and educational institutions will be disrupted, and many paid or volunteer workers, holders of foreign passports, will not be allowed to work regularly in the territories.

4. Worst of all, thousands of families where one of the spouses is a foreign citizen, are likely to be negatively impacted, utterly despondent as the foreign spouse will not be permitted to stay in the territories legally. In our letter dated March 23, 2022, we explained extensively about the expected problems for these families. Nevertheless, the revised procedure completely ignored this issue, and as a result, will likely bring an immediate separation between spouses, between parents and their children, or even to an exile of many families from the territories, plain and simple.
5. We will refer below to a non-exhaustive list of problems in this context.

## **Objections regarding Part 1 of the procedure (General)**

### **Refusal to approve requests from citizens of countries that maintain diplomatic relations with Israel**

6. In our letter dated March 23, 2022, as well as in the context of the petition submitted to the Supreme Court (High Court of Justice 4270/22), we argued that your refusal to approve requests from citizens of countries that maintain diplomatic relations with Israel, and those listed in Appendix E (Appendix F in the previous version of the procedure) discriminates against the citizens of those countries, and their family members, residents of the territories. In addition, it is not consistent with the provisions of the Israeli-Palestinian Interim Agreement.
7. Thus, in accordance with the provisions of Section 28(14) of the Protocol on Civil Affairs in the 1995 Israeli-Palestinian Interim Agreement and in accordance with the state's commitment to the High Court of Justice (see High Court of Justice 5990/16 **Mahmoud Odeh v. Coordinator of Government Activities in the Territories**), citizens of countries that maintain diplomatic relations with Israel may enter the territories using an Israeli entry visa.

8. Nevertheless, according to Section 2(F) of Part 1 of the updated procedure, citizens of the countries of Jordan, Egypt, Morocco, Bahrain and South Sudan - even though they maintain diplomatic relations with Israel - are not allowed to submit applications according to this procedure. These citizens are directed to submit an application according to the "Procedure for issuing visit permits for foreigners in the Palestinian Authority" (hereinafter: **visit permit procedure**). In the updated procedure, you even went so far as to add that those for whom these are the countries **of origin** - whatever the meaning of this phrase may be - are also not allowed to submit applications according to this procedure, even if they are not citizens of these countries at all.
9. Let us remind you that there is a significant difference between the "visit permit procedure" and the procedure that is the subject of this letter. Firstly, Section 1(B) of the "visit permit procedure" states that "visit permits will be approved in humanitarian and exceptional cases". Secondly, Section 9(A) of the "visit permit procedure" states that "as a rule, the extension of visit permits of foreigners visiting the area is not approved." Thirdly, according to Section 9(D) of the "visit permit procedure", the total period during which a foreign citizen is allowed to stay in the territories will not exceed 7 months from the day of his entry into the territories. Fourthly, a visit permit allows only a visit. It does not allow the entry of those who wish to work, volunteer, teach or study in the territories.
10. What is more: the procedure actually prevents a foreign citizen who holds citizenship of a country listed in Appendix E of the procedure (which is referred to the "visit permit procedure") from living in the territories with his spouse and children, since a family visit does not constitute a "humanitarian and exceptional case". If that spouse is prohibited from obtaining a visit permit and entering the territories, he/she is unable to submit an application for formalizing his/her status. In Section 3(G)(5) of Part 4 of the procedure, it is however stated that a visit permit can be issued instead of a resident permit for staying in the territories with a spouse ( "a spouse resident permit") in cases where it is determined that the same spouse is allowed to stay with his partner in the territories. However, this will never happen - it is impossible to approve a prolonged stay in the territories if the spouse is denied entry to the territories in the first place.

11. Even given the many flaws in the new procedure, as detailed below in this document, the situation of a foreigner directed to submit an application according to the "visit permit procedure" is doubly difficult - the chances of his application being accepted are much smaller, as are the chances of a request to extend the validity of the visit permit.
12. This is consequently discrimination against citizens of the countries listed in Appendix E and their families, harming those of them who wish to study or teach in the territories, , as well as harming their employers, residents of the territories. This, contrary to what is stated in the agreements and court rulings.
13. Furthermore, even citizens of countries that maintain diplomatic relations with Israel and are not excluded according to Section 2(F) of the updated procedure, are not allowed to submit applications according to the procedure if they also hold citizenship of the countries listed in Appendix E of the procedure (or, as mentioned, their origin is in these countries). For example, an American citizen, who has lived all her life in the United States, and who at the same time also holds Jordanian citizenship - will not be able to get a permit according to this procedure, nor will she be able to work, volunteer, teach or study in the territories. Thus - without any justification - these people and their family members who live in the territories are discriminated against.
14. **Unfortunately, our appeal to you on this matter dated March 23, 2022, as well as our arguments in the matter of High Court of Justice 4270/22, fell on deaf ears. We will therefore demand again that the new procedure apply to citizens of all countries that maintain diplomatic relations with Israel and that this be explicitly stated in the procedure. In addition, we request that it be determined that if at least one of the citizenships held by a person is of a country that maintains diplomatic relations with Israel - that person be allowed to submit an application according to this procedure.**

#### **Requirement to deposit a guarantee**

15. The procedure authorizes setting very high guarantees for entering the territories. Thus, according to the procedure, the head of the Documentation and Registration Department at COGAT may, according to the procedure, demand a bond up to NIS 70,000, and the

Head of Operations Department at COGAT may even demand a guarantee higher than that.

16. It should be noted that setting a bond as a condition for granting a permit is a measure that must be taken in a proportionate and limited manner, certainly when the limited financial resources of the residents in the territories are taken into account (for the matter of reducing the use of economic obstacles and barriers, which prevent the individual from exercising his fundamental rights, see for example: CA 733/95 **Arpel v. Klil Industries**, CR 51(3) 577, 630d; CA 3833/93 **Levin v. Levin**, CR 48 (2) 862, 874).
17. In our appeal to you dated March 23, 2022, we emphasized that the procedure does not include any clear criteria regarding the authority to determine a financial guarantee as a condition for entry into the territories, that is, in which cases it is possible to demand the deposit of a guarantee, according to the various steps set forth in Section 5(B) of Part 1 of the procedure. Therefore, we demanded to establish clear rules in regard to this matter.
18. We regret that our demands have also been ignored. We therefore return and insist on it now.

#### **Extension of permit validity**

19. Section 6 of Part 1 of the procedure deals with requests to extend the validity of permits held by those who are staying, as of the time of submission of the request, in the territories. Section 6(D) establishes a list of criteria according to which the application will be considered. In our petition, we argued that some of the criteria are extremely problematic and have no place in these types of requests. For example:

- A. **The need for extension (Section 6(D)(1)):** After the inviting party submitted the request to extend the validity of the invitee's permit and attached the required documents to it, it is not the role of the authorized party at COGAT to discuss the degree of the invitee's "necessity". Thus, for example, it would be unthinkable for COGAT to examine the degree of necessity of an expert employee in a particular company or of a lecturer or student at a university. Any other conduct shall be considered an illegal interference in the freedom of occupation of companies in the

territories and their employees and in the academic freedom of educational institutions, etc.

**B. "Risk of becoming entrenched in the area" (Section 6(D)(2)):** As you know, in accordance with the provisions of international law, you have no right to consider immigration considerations in relation to the occupied territory and its inhabitants. The very fact of settling in the West Bank, if it is done legally and with permission, cannot be a consideration for not extending the validity of a permit. Also, "risk of becoming entrenched in the area" cannot be a consideration in the decision to require a guarantee from an applicant for entry to the territories. In our experience, as of today, "risk of becoming entrenched" is a central consideration that stands behind many COGAT's decisions to refuse requests for permit extensions and to demand a deposit of a guarantee.

**C. Periods spent abroad by the inviter (Section 6(D)(7)):** The fact that the inviter was abroad at the time of submitting the request to extend the validity of the invitee's permit cannot be a criterion for not extending the validity of the permit. As you know, many of the applications for extending the validity of permits are submitted for the spouses of residents of the territories. As is the case everywhere, the spouse resident of the territories must go abroad from time to time - either for work or for other needs, while the other family members remain in the territories - and it is unthinkable that only for this reason COGAT would refuse to extend the validity of the foreign spouse's permit. This constitutes a significant harm to the life of the family that will be forced to uproot itself and leave the territories just because of this, even if the children are in the middle of the school year and even if the foreign spouse works in the territories.

20. In light of all the above, we demanded to cancel sections 6(D)(1), 6(D)(2) and 6(D)(7) of Part 1 of the procedure. This demand of ours was also ignored. We therefore insist on it now.

## Multi-use permits

21. Section 7(B) of Part 1 of the amended procedure allows the granting of multi-use permits for entry to the territories. However, this possibility is limited, and it applies only to those who receive a designated permit based on the reasons listed in Part 3 of the procedure, as well as to those whose application for family reunification by virtue of their marriage to a spouse who is a resident of the territories, was rejected for political reasons ("spousal permit", Part 4 of the procedure).
22. Thus, **spouses who do not meet the limited criteria for receiving a "spousal permit", other relatives of residents of the territories, journalists, and other people whose affairs are regulated in other parts of the procedure - cannot receive permits of this type, and when they are required to leave the territories, even for a short period, they will have to submit a new application to enter the territories.**
23. Those who are allowed to apply for a multiuse entry permit are required to submit their application 45 days in advance and "prior to arriving in the area". In their requests they must state the "reasons for the request" and attach all the references that ground the "need" for multiple entries (Part 1, Section 7C) and (D)).
24. The group most affected by the ban on receiving multi-use entry permits automatically are foreign spouses. The very fact that a mother with small children who has lived in the territories for many years is required to leave the territories and only then submit an application 45 days in advance and convince COGAT that there is a "need" for multiple entry renders this section meaningless.
25. It should be noted that only one group is allowed to receive a multiple-entry permit without the need for individual submission - "experts and consultants in unique disciplines and senior employees with permits to work". (Part 3, Section 6(E)(6).
26. All recipients of permits for entry to the territories of any type should therefore be allowed to receive multiple-entry permits if they so desire. In addition, multiple-entry permits should also be allowed as part of submitting an application to extend the validity of the permit and not only before arriving in the area (as appears in Section 7(C) of Part 1 of the procedure).

### **Changing the purpose of the visit**

27. According to Section 8 of Part 1 of the procedure, a foreign citizen can apply to change the type of permit he has. In the amended procedure, the possibility was added in Section 8(B) to simultaneously submit a request to extend the validity of the current permit.
28. However, the provision of Section 8(B) somewhat contradicts the provision in Section 8(C), according to which in the event that the competent authority delays issuance of the decision, the foreigner must leave the territories. As we argued in our first application, this provision in the procedure is illogical and unjustified, and it will disrupt the lives of the applicants, while imposing significant costs associated with the requirement to leave the territories and wait abroad until a new decision is made.
29. It should be noted that a similar problematic provision appears in Section 4(C), where it is stipulated that it is prohibited to stay in the territories after the expiration of the permit, without reference to the case where a request for a permit extension was submitted on time, and no decision was made regarding it through no fault of the applicant.
30. We would therefore like to clarify that in cases in which the competent authority delays issuance of the decision to change the type of permit or a decision to extend a permit, the validity of the current permit held by the foreigner be extended until a new decision is made in his/her case.

### **Objection to refusal of granting permit or extending it**

31. As you know, the administrative authority has the duty to grant the right of hearing and the right of argument to anyone who may be harmed by its decision. In order for the option given to the applicant to submit an appeal against a decision to refuse the issuance of permit or its extension (Section 11 of Part 1 of the procedure) to be real and effective, the relevant documents in your possession must be forwarded to the applicant before he submits his appeal. Thus, **COGAT must submit for the applicant's review of the inquest conducted in his case at the Allenby border crossing and the protocol of the interview conducted at the Beit El Civil Administration when examining an application for extending the validity of permit, as the case may be. COGAT must also forward any other documents in his personal file for the applicant's review.**

32. In addition, **a person who arrives at the Allenby border crossing and is refused entry on the spot must be allowed to submit an objection and receive an immediate response.** There is no justification for discriminatory treatment of a person who is denied entry at the Allenby border crossing compared to a person denied entry at the Ben-Gurion Airport who has the right to immediately apply to the Appeals Tribunal and request the cancellation of the denial of entry together with the right to file a motion for an interim order prohibiting him from boarding the plane while the appeal in his case is ongoing. Today, a foreigner whose entry is refused at the Allenby border crossing is returned to Jordan without any possibility of challenging the refusal on the spot. And what is more: there is no monitoring of the number of denials of entry at the Allenby border crossing, and the person denied does not receive any document explaining the reason for the denial and the possibility of submitting an appeal. We also demand that a person whose request to extend the validity of the permit is refused receive a denial letter with clear reasons for the denial in a language he understands. As of today, denials of permit extensions are given on a note only, in which the reason for the refusal is listed only in general terms without detailed reasoning. These notes are written in Hebrew without translation, a language most applicants cannot read.

## **Objections regarding Part 2 of the procedure (permits to visit the area)**

### **The categories of foreigners who are allowed to receive permits to visit the territories**

33. Despite our inquiries on the matter, the categories of foreigners who are allowed to receive permits to visit the territories - remain extremely limited. (Part 2, Section 1(D)). This will result in denial of entry, among others, of the following foreigners:

- A. Relatives of residents of the territories who fit the definition "spouses and first-degree relatives of residents of Judea and Samaria" but whose relatives do not live in the territories or are abroad at the time of their visit;
- B. Relatives of residents of territories who do not fit the definition "spouses and first-degree relatives of residents of Judea and Samaria": first of all, it is not clear who is included in this category (for the sake of comparison, it should be noted that "a foreigner with family relationship to residents of Judea and Samaria", according to

Part 1 of the procedure, is a "foreigner who has a spouse, parents, children, or siblings who are residents of Judea and Samaria"). Secondly, other relatives of residents of the territories, such as grandfathers, grandsons, uncles, etc. - are not allowed, on the face of it, to receive a visit permit. Relatives of foreign spouses of Palestinian residents, which include parents-in-law, siblings-in-law and nephews and nieces of residents of the territories are also not allowed to receive a visit permit.

It should be noted that a significant portion of the people who wish to enter the territories for short visits are those who were born in the territories and their descendants. Some of them left the territories before 1967, some left after 1967 but for some reason did not receive identity cards or received identity cards that were later revoked by Israel.

- C. Tourists, pilgrims, or people who have friends or acquaintances in the territories - are not allowed, according to the procedure, to visit the territories.
  - D. Foreign journalists employed by Palestinian media.
  - E. Other foreigners who wish to visit the territories for short periods: lecturers or those who participate in a short-term conference or course, whether at a university or otherwise; workers who come to the territories for short periods engaged in occupations that have not been defined as "unique" by COGAT; artists who come to the territories to take part in festivals, workshops and performances (musicians, dancers, directors, etc.); athletes.
34. It should be noted that the provision that according to this part COGAT has the authority to approve the granting of a permit to foreigners who do not belong to the categories in Section 1(D) does not solve this problem, since the granting of a permit that does not meet the criteria will only be approved "in exceptional circumstances and for special humanitarian reasons that will be registered" (Part 2 , Section 1(E)).
35. The circle of those entitled to enter the territories must therefore be significantly expanded in accordance with the checks that are carried out at the border.

### **Other problematic provisions regarding permits to visit the area**

**36. Entry into the territories of those who were denied entry in the past:** apparently, according to Section 2(B) of Part 2 of the procedure, any foreigner who was refused entry in the past - even if the denial was many years ago - is required to submit an application in advance, before entering. This is a provision devoid of logic, especially in those cases where the same foreigner entered the territories after the refusal and has met the conditions of his permit ever since.

In our letter dated March 23, 2022 and in the petition, we demanded that this provision be canceled and replace it with a more balanced one. Unfortunately, this demand was not met in the amended procedure, and we stand by it again.

**37. Entry into the territories through the Ben-Gurion Airport:** for an unknown reason, the possibility of the recipients of the procedure to enter the territories through the Ben-Gurion Airport was omitted from the revised procedure. This possibility existed in the wording of the procedure dated February 20, 2022 (see Part 2, Sections 1(B), 2(D)), as well as in the "Procedure for the Entry of Foreigners into the territories of Judea and Samaria", which preceded the procedure that is the subject of this appeal. Thus, in the "Procedure for the Entry of Foreigners into the territories of Judea and Samaria", which preceded the procedure that is the subject of this appeal. Thus, in the "Procedure for the Entry of Foreigners into the territories of Judea and Samaria", holders of foreign citizenship who meet the criteria of the procedure are allowed to enter the territories through the Ben-Gurion Airport without restriction. It should also be noted that this is a violation of Section 28(14-13) of the Protocol on Civil Affairs in the Israeli-Palestinian Interim Agreement.

**38.** The amended procedure therefore worsens the existing and legal state of affairs without any justification. As you know, in 1967, after the war, contrary to the provisions of international law, Israel annexed a large area of the West Bank, including the airport in Qalandia. Later, Israel shut down the operation of the airport altogether, and today there is no air entry route to the West Bank. In these circumstances, the absolute denial to those who carry foreign passports to enter the West Bank through the Ben-Gurion Airport is

also a violation of minimal decency obligations and a cynical use of the fruits of the violation of international law.

39. Crossing the land border at the Allenby bridge is not suitable for every person and in every situation - especially in cases of medical and mobility limitations. For these and other reasons, the recipients of this procedure in many cases need to enter the territories through the Ben-Gurion Airport. We therefore demand that this option be restored immediately so that it will be possible for holders of foreign passports to enter the territories also through the Ben-Gurion Airport, regardless of the reason for the visit.

### **Objections regarding Part 3 of the procedure (Permits issued for specific purposes)**

#### **Entry of lecturers and researchers in the field of higher education**

40. As you know, according to the interim agreement, the Palestinian Authority is currently in charge of education, as a whole, in the occupied territories. Since the Authority was also granted the privilege to approve work licenses in the territories, all decisions regarding the entry of lecturers, teachers and students into the territories should be made in accordance with the interests of residents of the territories - and the Palestinian Authority, as their representative. This does not absolve you of your obligations according to international law, in the sense that you must allow the existence of a proper education system, which the Palestinian education authorities seek to design.
41. Nevertheless, from the provisions of the procedure it appears that COGAT takes over the powers, which should be given to the Palestinian Authority, over its educational institutions. Despite changes made in the previous version of the procedure, in all that was said about the entry of lecturers and researchers into the territories, the essence remains the same: **an intolerable violation of freedom of the educational institutions in the Palestinian Authority to choose themselves, and according to their own criteria, the lecturers who will teach in them.** This concept is expressed in Section 3(D)(1) of Part 3 of the procedure, which states that: "Applications for a permit under this section will be approved if it is proven, to the satisfaction of the certified COGAT official, that the lecturer meets the conditions and requirements detailed later in this Part."

This is actually the essence of the intervention in the internal affairs of the Palestinian Authority and the higher education institutions in the territories, and the provisions of the new procedure, unfortunately, do not oppose this concept.

42. The serious damage to the operation of the universities is expressed, among other things, in the following provisions of the procedure:

- The requirement that the lecturers/researchers hold a doctorate degree. A deviation from this provision will only be accepted when the matter concerns researchers or lecturers, with regard to whom the certified COGAT official is convinced that they have "unique expertise in their field" (Part 3, Section 3(d)(2)).
- The stipulation that after 27 months of the permit expire, the lecturer must go abroad, and only then submit a new application, while being abroad (Part 3, Section 3(D)(3)).
- The stipulation that when the permit expires and the lecturer leaves the territories, he may not submit a new application for this type of permit for a period of 9 months. As explained in our previous application, this restriction is unacceptable, and it will deal a severe blow to universities, regular studies, and students (Part 3, Section 3(D)(3)).
- The stipulation that the lecturer's total stay will not exceed 5 years, and in exceptional cases – will last for up to 10 years. The authority and justification for this restriction is not clear. (Part 3, Section 3(D)(4)).
- A minimum age of 25 is set for obtaining a lecturer's permit. With regard to this matter, the justification for this kind of intervention in the discretion of the universities is also not clear.
- As detailed above, in this way it is impossible to receive a multiple-entry permit automatically. It is clear that this is a serious blow to universities and lecturers, who will not be able to leave the territories - not even in urgent and unexpected cases - and return to their work immediately afterwards.
- In addition, similar to the previous version of the procedure, the provisions of the new procedure also do not regulate the entry into the territories of lecturers or those

participating in a short-term conference or course, whether in a university setting or otherwise.

43. All of the aforementioned restrictions on issuing permits to lecturers and researchers must therefore be abolished, and the necessary changes made, as indicated above, in order to prevent serious damage to the work of the universities, which will have difficulty recruiting lecturers who will agree to these restrictions, and to their academic freedom.

### **Entry of students in the field of higher education**

44. As was done with regard to the lecturers, and despite the changes made in the previous version of the procedure, the provisions of this procedure in this category also seriously harm the operation of the universities, their ability to recruit students from abroad, and their academic freedom to determine which students will be accepted for studies. Thus, with regard to the following provisions of the procedure:

- The stipulation that students can be interviewed at the Israeli embassy in their country of origin before a decision is made on their request to enter the territories (Part 3, Section 4(B)(3)).
- The stipulation that the visa is granted for one year, and can be extended up to 27 months, at the end of which the student will be forced to leave and only then submit an application. (Part 3, Section 4(B)(4)). This limitation remains the same in the amended procedure and may cause a great delay in studies, and the loss of many months during the studies for a degree.
- The stipulation that the application for a student permit can be submitted until April 1 of the previous academic year (Part 3, Section 4(B)(1)). Students are often only accepted to educational institutions after April 1, and a significant number of them are accepted to study programs only a few weeks before the beginning of the semester.
- The stipulation that the applications can only be submitted with an official invitation from the Palestinian Authority (Part 3, Section 4(B)(1)). It is not clear why this is required, when the student wishes to study at an academic institution, and not at a government office.

45. All of the aforementioned restrictions on issuing student permits must therefore be abolished. These provisions are totally unjustified, and they seriously harm the academic freedom of the universities, and their regular work.

### **Entry of volunteers to the territories**

46. In this section of the amended procedure, there were almost no changes compared to the earlier version, and it seems, unfortunately, that the goal of the drafters of the procedure was and still is to reduce as much as possible the possibility of holders of foreign passports to volunteer in the territories. In this context, we will indicate the following points:

- It is not clear based on what criteria COGAT will determine that a certain organization in the territories may, or may not, invite volunteers (Part 3, Section 5(A+D(3))). On the face of it, it seems, for example, that educational institutions that request the help of volunteers - will be met with refusal. **Educational institutions, government ministries and bodies, and civil society organizations should therefore also be allowed to submit applications for a volunteer visa, and not limit the bodies that invite volunteers only to certain fields.**
- In addition, **a visa found in this category is granted for one year only, with no possibility of extension, and it is possible to return to volunteer work in the territories only at the end of a year from the date of departure by submitting a new application, besides exceptional cases** (Part 3, Section 5(B(2))). Under these circumstances, it is likely that many places will refrain from inviting volunteers since they will only be able to use them for a short period of time.
- Another outrageous provision is the requirement that the inviting body undertakes in writing that it is responsible for the volunteer's departure at the end of the permit's validity. (Part 3, Section 5(C(4))). Clearly, the inviting body does not have enforcement powers, so there are no issues for this kind of commitment. There is a fear that COGAT will use this commitment as a whip against the inviting body, and if the volunteer does not leave on time - this will affect the possibility of that institution to receive volunteers in the future.

- The procedure also stipulates an arbitrary provision, according to which volunteering will be considered as such only if the invitee receives a salary equivalent to \$9,000 per year, or less. Although this is the correction of the provision that appeared in the previous version of the procedure (which set the amount of \$6,000 per year). However, why does this kind of provision exist at all? This matter is at the sole discretion of the inviting body, and is therefore an arbitrary intervention without any need for this discretion.
- It is not clear why the stipulation was added that the applications can only be submitted with an official invitation from the Palestinian Authority (Part 3, Section 5(C)(1)) in cases where the inviting bodies are associations and other organizations that are not affiliated to the Palestinian Authority.
- In addition, it is not clear why the stipulation was added that the applications must be submitted no less than 60 days in advance, when in other cases it is possible to do so only 45 days in advance.

47. All the aforementioned restrictions on issuing visas to volunteers should therefore be abolished.

### **Specialists and consultants in unique professions and senior employees with a work permit**

48. Despite changes in the amended version of the procedure, the provisions in regard to obtaining permits in the category still make it difficult for companies and organizations to employ foreign personnel.

- It is not clear why the restriction remains that permits of this type be granted for a maximum period of 27 months (Part C, Section 6(C+E (7))), at the end of which they will be forced to leave the territories and submit a new application for entry - This restriction does not exist today and is totally unjustified. This provision will greatly harm various projects that are underway in the territories, which will have difficulty recruiting employees and investors, since in many cases projects take many years, during which the foreign expert or investor must accompany the project during the entire period. There is no obstacle for experts to continue to submit applications, while in the territories, for the

extension of a permit granted to them, which will be examined according to their circumstances.

- In this category also remains the arbitrary provision, according to which it is possible to request another permit only 9 months after leaving the territories, five years after receiving a permit. This restriction did not exist in the previous procedure, it is not clear what purpose it serves, and it should be cancelled. (Part 3, Section 6(E)(7)).
- Regarding employees of international organizations (Int Org) - The visa according to this section is given only to "a professional in a required field" and "for a limited period of time to perform his duties in his field of expertise". - (Part 3, Section 6(D)(1)). Thus, the procedure does not regulate the issuance of permits to "regular" Int Org employees, and it is not at all clear if it will be possible for them to stay in the territories, as is done today.
- Also, regarding this category, the inviting body must commit in writing that it is responsible for the expert's departure at the end of the permit's validity. In this case, it is explicitly stated that if the expert does not leave at the end of the permit period - This will be a consideration for the ordering body's duty when examining future applications (Part C, Section 6(f)(5)). As mentioned above, the ordering body has no enforcement powers, so there are no issues for this kind of commitment.
- In this category there is no reference to governmental organizations and interstate organizations and consultants, contractors or suppliers acting on their behalf. It should be noted that although the title of this category is called "specialists and consultants in unique professions and senior employees with a permit to work", there is no reference to external consultants or other experts who are not "employed" by the inviting body. The only invitees in this category are employed people, who submit employment contracts along with their application.
- It is the authorized official in COGAT who will determine which companies are "participating in projects of importance for the development of the area", what the "unique fields" in which specialist workers are employed are, what "projects of importance to the region" are, who the doctors who proved that their expertise "is of

importance to the area" are, and what the economic criteria are that will allow businessmen and investors to be invited (Part 3, Section 6).

- It is not clear why the stipulation remains that the applications can only be submitted with an official invitation from the Palestinian Authority (Part 3, Section 5(E)(1)) in cases where the inviting bodies are companies or other institutions, some of them private, which are not necessarily affiliated to the Palestinian Authority.
- In addition, it is not clear why the determination remains that the applications must be submitted no less than 60 days in advance. This, when in other cases it is possible to do so only 45 days in advance.

49. The above restrictions therefore be abolished. COGAT must allow the employment of invitees with foreign passports as long as their work is required by the inviting entities; the "cooling off period" between the periods of the permits given to these people should be cancelled; entry and stay in the territories of all Int Org employees should be regulated; and Palestinian companies, organizations, and institutions should be allowed to determine for themselves the degree of necessity of the foreigners.

**Additional problematic provisions in Part 3 of the procedure.**

50. All applications under this part of the procedure must be accompanied by a "CV and family ties in the area questionnaire".

**This questionnaire was not attached to the procedure, and it is not clear what purpose it serves and what the invitee should provide as part of it, beyond the details on the permit application form.**

51. Many of the inviting institutions or organizations in this part of the procedure, are not affiliated with the Palestinian Authority, so it is not clear why an official invitation from the Palestinian Authority is required. **It is therefore possible to be satisfied with an invitation letter on behalf of the ordering body.**

52. In addition, the instruction of the procedure according to which "permits according to this part are **not** intended for foreigners who are married to residents of the area or who are in a relationship with a resident of the area" (emphasis in the original). (Part 3,

Section 2 (B)). There are situations in which foreigners married to residents of the territories will not be allowed to receive "spousal residence permits" or ask not to submit applications to regulate the status of the foreign spouse, because the center of their lives is not permanently based in the West Bank (regarding the problematic nature of obtaining these permits - see below). There is no justification for the marital relationship to the resident of the territories to prevent the issuance of a designated permit of any type, as detailed in Part 3 of the procedure.

### **Objections regarding Part 4 of the procedure (requests for the regulation of status in the area and spousal residence permits)**

53. The amended procedure hardly improves the situation of foreign passport holders who wish to live in the territories with their spouses, residents of the territories. As will be detailed below, the possibility of receiving permanent status in the territories is subject to Israel's "policy" decisions, which can at will refuse all requests forwarded to it from the Palestinian Authority without any individual examination, while violating the right of residents of the territories to family life, and contrary to the Israeli-Palestinian interim agreement. Thus, the spouses of residents of the territories remain dependent on obtaining residence permits in the territories, the possibility of receiving which has been greatly reduced by the current procedure. As a result, many families are currently in legal limbo and become increasingly anxious about the amended procedure coming into force.

54. We will detail these matters below.

### **Entry into the territories of those who are married to residents of the territories**

55. Except for very specific cases (see below), the procedure treats the spouses of residents of the territories as tourists, who receive regular visit permits (Part 4 of the procedure, Section 3(A). As mentioned, according to the new procedure, including the amended one, **permits will be granted to spouses of residents of the territories for a period of 3 months only**. The validity of the permits can only be extended for three additional months, but only in exceptional cases. "The extension of a permit for a period exceeding 180 days will depend on the approval of the authorized COGAT official, for special

reasons that will be registered, and in any case, a permit will not be extended according to this procedure for a period exceeding 27 months" (Part 2 of the amended procedure, Section 4(A)).

In any case, the possibility of extending the validity of the permit for spouses of residents of the territories - does not exist because you do not regard a family relationship - not even between spouses or parents and children - as a special interest (Part 4 of the procedure, section 3(D)(2)(H)). Moreover: since these are spouses who wish to live together in the territories, the chances of their application for an extension being accepted are further reduced, because this concerns "settlement in the area" - a phenomenon that you think should be shunned, and is grounds for refusing to approve applications for extending the validity of permits (Part 1 of the amended procedure, section 6(D)(2)).

56. This is a actual deterioration in relation to the current procedure, in which the validity of the 3-month permit given upon entering the territories can be extended by two additional years.
57. Of course, this is causing serious harm, especially to those who need a permit the most - spouses of residents of the territories. Even if it is possible to apply for the regulation of permanent status in the territories of the foreign spouse, this arrangement is not suitable for every family and at any time. There are, for example, those who wish to test their intent to settle in the territories for several years, before applying for permanent status. This should be allowed for couples, and their right for family life should not be harmed in such a severe way.

In addition, since the possibility to get a spousal permit depends on the transfer of the request for settlement from the Palestinian Authority to you - a bureaucratic procedure which created many problems over the years in many cases due to the refusal of the Israeli side to accept the requests - after all, many families may become victims of the bureaucracy while they themselves acted faultlessly.

58. This will especially harm families where the foreign spouse has lived in the territories for many years, with a permit, however a decision has not yet been made on his/her

request for to the regulation of his/her status. If this spouse will not be eligible to receive a spousal permit - although he/she submitted a request to regulate his/her status many years ago - he/she will be forced to leave the territories, and with him/her the whole family.

59. We take seriously COGAT's disregard for the humanitarian need to exclude these foreign couples from the provisions of the procedure, who have previously submitted applications for permanent status, and have been living for many years in the territories with their spouses.
60. The drafters of the procedure went ahead and stipulated in it the following provision: "A visit permit is intended for the purpose of visiting only and does not allow settling in the territories or taking any other action to establish a life in the territory, including registration for studies of any kind, work in the area, lease, purchase or rental of immovable property for a period exceeding the validity of the visit permit, etc. (Part 4, Section 3(A)(2)).

In this context, the authority of the military commander to determine for any person - certainly in areas A and B in the territories, whether he is allowed to rent or buy property, and for what period, whether he or his children are allowed to enroll in studies, etc.

61. Considering all that has been said, it should be allowed to grant residence permits in the territories to spouses and close family members of residents of the territories for longer periods (of one year at a time, as was the case in the past); Allow the extension of these permits by virtue of the family relationship to residents of the territories, and cancel section 3(A)(2) of this Part.

### **Submitting applications for family reunification and obtaining status in the territories ("application for formalization")**

62. The 1995 Israeli-Palestinian Interim Agreement states that a family relationship between family members justifies the granting of permanent residency status in the territories and gives the Palestinian Authority the power to approve the granting of the status. Section 28(1) of the protocol on civil matters in the interim agreement opens the chapter dealing

with the population register and documentation. In the same section it is stipulated that powers in the population registry in the territories will be transferred from the military government and the civil administration - to the Palestinian side. The fields in which these powers will be transferred are indicated below. One of them is the matter of granting the status of a permanent resident in the territories.

63. Thus, this field is currently under the authority of the Palestinian Authority, and it is entitled to determine who will be granted status in the territories, according to the parameters set in Sections (A-C) of Section 28(11) of the protocol on civil matters, and in Section 28(13)(B) thereof. These sections, however, state that Israel has the authority to refuse a certain request, but it is clear from the wording of the sections that the examination of the submitted requests and making decisions on them - is the responsibility of the Palestinian Authority.

64. It also appears from the rulings of the Supreme Court that a decision on a request for family reunification rests first and foremost with the Palestinian Authority (See: High Court of Justice 8078/01 **Abdullah v. the State of Israel** (verdict dated November 13, 2001); High Court of Justice 4332/04 **Odeh Nancy v. the Commander of the IDF forces** (verdict dated May 20, 2004). Israel has the authority to refuse the request, but this case should be an exception.

65. Despite all that has been said, it appears from the new procedure that the approval of an application for granting status in the territories ("Application for formalization", according to the procedure) is a matter that Israel considers according to its interests. Although the right to family life has been recognized in Israeli and international law as a fundamental right, as part of the autonomy of the individual, the new procedure establishes Israel's illegal position according to which this right is a political tool, which can be traded, including through the use of quotas. Thus, the procedure states that "an application for formalization" will not be approved, if it is not consistent with the directives of the political level, including in the case where there is no available quota". (Part 4, Section 3(D)(2)(D)).

66. Also, regarding the actual examination of applications, it turns out that COGAT took upon itself - contrary to the interim agreement - the powers of the Palestinian Authority, and it examines the requests, from top to bottom, when most of the families live in areas where there is Palestinian civil control. Thus, COGAT decides whether the relationship between the couple is true and genuine, if the case is 'sufficiently humanitarian', if the center of the couple's life is in the territories, etc. (Part 4, Section 3(C and D)).

67. As for how the applications are examined, the following defects can be listed, among others:

- Nowhere in the procedure is it listed which documents need to be attached to the "application for formalization".
- Although there is no prohibition on bigamy marriages in the territories, the procedure applies it to requests of this type - here too, while interfering with the discretion of the Palestinian Authority. (Part 4, Section 3(D)(2)(D)).
- According to the procedure, it is possible to refuse a request to grant status to the foreign spouse even when there is allegedly criminal information against the **applicant** (that is, a resident of the territories), even when there is no information about the foreign spouse. (Part 4, Section 3(D)(2)(F)). This is totally unjustified. For comparison, in accordance with the "procedure for comments on factors in applications for status based on a marital relationship in Israel" of the Population and Immigration Authority, which deals with requests for family reunification in Israel, this type of request can be refused only in extreme cases, when the applying spouse is serving a long prison sentence, and the spouses are effectively denied the possibility of living together.
- A foreigner whose application for formalization was refused may submit a new application for formalization only after five years. This provision is also unjustified and contradicts, for example, the procedures regarding those who submit requests for unification in Israel, in which it is possible to submit a new application within a year from the day of the refusal, and sometimes even without a "cooling off period" at all.

68. **Although these defects appeared in our first letter dated March 23, 2022, and despite your obligation to re-examine the provisions of the procedure - no changes have been made, and the amended procedure remains exactly as it was, word for word. We therefore continue standing by our objections.**
69. Another major problem with the procedure is that it does not deal with other foreigners at all, who are not family members of the residents of the area. In accordance with sections 28(11)(A) and 28(13)(B) of the protocol on civil matters in the interim agreement, the Palestinian Authority has the authority, with Israel's consent, to approve applications for permanent resident status for those who hold foreign passports and invest or work in the territories. Nevertheless, the procedure completely ignores this issue. **This matter was also raised in our previous application, and it also did not receive any response.**
70. **Considering all that has been said, it must be determined as follows:**
- Approval of requests for granting status in the territories will not be conditioned on any "political consideration" of one kind or another by Israel, and no quotas will be set in this regard. Each request will be examined separately.
  - The procedure for examining the request will be carried out by the Palestinian Authority. The Israeli side will retain the right to refuse a specific request, and only in a serious security prevention case, which refers to invitees only, and overrides the right to family life.
  - The children of residents of the territories, who have passed the age of 16 and have not yet been registered in the territories, must be allowed to submit requests for status adjustment. Other family members of residents of territories (for example, their children from previous marriages of invitees), or others – should be allowed to submit requests for formalization.
  - Another group of foreign citizens should be allowed to submit applications for status formalization: those who were born or lived in the territories but left them before 1967; those who lived in the territories in 1967 but for some reason did not receive the permanent resident status; and those who received the permanent resident status

after 1967 but the status was denied by Israel, in accordance with the policy that existed before the signing of the Israeli-Palestinian interim agreement in 1995.

- Investors and workers in the territories, even if they have no relatives in the territories, should be allowed to submit applications for formalization of their permanent resident status in the territories.
- The provision according to which a foreigner whose application for formalization was refused and can submit a new application for formalization only after five years, should be canceled, and it should be allowed in such cases to submit a new application at any time after the refusal.
- Section 3(d)(2)(d) of Part D regarding the prohibition of applying for regulation for more than one invitee should be repealed.
- Notice of a decision on the application will also be given to the applicants themselves and/or their attorney. If the applicant wishes to submit an appeal against a decision to refuse his application, his complete personal file must be forwarded to him for review, including hearings if they took place.
- The documents required to examine applications of this type must be published. It should be emphasized that there is no reason to demand from the applicants documents that go beyond identification documents. As mentioned above, the examination of the request should be carried out by the Palestinian Authority.

**Residence permits for those in whose case the "application for formalization" was submitted (spousal permit)**

71. While the possibility of obtaining permanent status in the West Bank remains extremely limited, the spouses of residents of the territories and other foreigners are forced to rely on residence permits in the territories for long periods. However, the current procedure has greatly reduced the possibility of receiving long-term permits. **Although this matter was described in detail in our previous letter and in the petition filed on the matter, the amended procedure did not refer to it at all.** As a result, many families - certainly

those who have lived in the West Bank for many years - are currently very anxious before the amended procedure enters into force.

72. As a rule, granting a permit, while an application for formalization of permanent status is being examined, is a necessary and self-evident thing. However, the problem is, as mentioned, that the granting of the permit is conditional on the Palestinian Authority submitting a request in the case of the invitee to the Israeli side - a bureaucratic procedure which, as was mentioned, created many problems over the years, in many cases due to the refusal of the Israeli side to accept the requests. In addition, there are those who are not necessarily interested, at any stage, in applying to settle in the territories. Those people will be denied the opportunity to receive a "spousal permit", and they will be able to get a short-term permit only (as a rule, 3 months), which will seriously harm their right to family life.
73. To receive, according to the new procedure, a permit to stay in the territories with a spouse (spousal permit), guarantees that the following cumulative conditions will be met: 1. The resident of the territories submitted to the Palestinian Authority a request for settlement for his spouse. 2. The Palestinian Authority forwarded the request to the Israeli side. 3. The Israeli side refused the request "in accordance with the policy of the political echelon at the time" (Part 4 of the new procedure, Section 3(G)(1)) - all within 90 days from the day the foreign spouse entered the territories.

**In any other situation, in which all the cumulative conditions are not met** (for example, the request has not yet been transferred from the Palestinian Authority to Israel; the request is still considered by the Israeli side; the request was rejected for non-political reasons) - **foreign spouses, who are currently staying on a permit in the West Bank, will not be allowed, to remain in their home, and they will be forced to leave the territories, in order not to remain without a valid permit. In order not to be separated from the foreign spouse, many of residents of the territories, and their children, will also be forced to leave the territories, even if it concerns those who work and make a living in the territories, whose children study in the territories, and who do not have a home anywhere else in the world.**

74. In Section 3(G)(5) of Part 4 of the procedure it is stated that a visit permit can be issued instead of a spousal permit in cases when the country of citizenship of the invitee does not maintain diplomatic relations with Israel. However, it is written there that "the authorized COGAT official will not approve a foreigner that is a citizen of an enemy country staying in the territory." Since the visit permit issued in this case is limited to the territories only, there is no mention that this is a citizen of an enemy state (it is the undersigned's assumption that this is an "enemy state" of Israel...). And as proof, even today one can find visit permits to the territories for citizens of countries defined by Israel as 'enemies'.

75. It should also be emphasized that there is no reason to limit the maximum period of granting a spousal permit to 27 months. There is no justification for the invited spouse to be forced to leave the territories, submit a new application - which will be considered for weeks and months - and be torn apart from his/her family members for an extended period.

**76. Considering all the above, it must be determined as follows:**

- Long-term permits must be granted to anyone who has a family relationship with a resident of the territories, regardless of application for formalization.
- Alternatively, if there is a special category according to which a long-term permit is found for relatives of residents of territories who have applied for formalization, proof that an application for settlement has been submitted to the Palestinian Authority must be sufficient, and not condition the permit on the transfer of the application by the Palestinian Authority to Israel - an action over which the applicants have no influence.
- A spousal permit must be granted even when an application for formalization has been submitted and a decision has not yet been made.
- The possibility of COGAT to establish a dedicated quota for the issuance of spousal permits should be abolished.

- If the category of special permits that go to those who applied for formalization remains, these permits must be granted to anyone who has applied for formalization, including those who are not spouses of residents of the territories (including other relatives, investors, foreigners working in the territories, etc.).
- In cases where a foreign spouse is directed to apply for a visit permit in accordance with Section 2(F) of Part 1 of the procedure, COGAT must approve an application for a visit permit when it is submitted for the purpose of status formalization.
- In cases where a visit permit is issued, a spousal permit has expired, the issuance of the permit must also be approved in cases where citizens of 'enemy countries' are concerned.
- The restriction according to which the spousal permit will be granted up to a period of 27 months must be abolished, and to state that when the foreigner leaves the territories, his entry will not be conditioned on submitting a new entry application in advance, to avoid a long-term separation of the family.

### **Objections regarding the publication of the amended procedure**

77. In addition to publishing the procedure in Hebrew, the procedure was published in English, but not in Arabic. As we know, the new procedure affects the lives of tens of thousands of people – most of whom, if not all, do not speak Hebrew. Therefore, we demand an official translation into Arabic and English, **completely identical to the original Hebrew version.**
78. From a cursory reading of the amended procedure in the English version, it appears that there are several contradictions between the Hebrew version and the version translated into English.
- Part 1, Section 2(F) (p. 6 in the English version) - in the English version it is written that the group of foreigners, who must submit applications for a visit permit includes "passport holders of countries listed in Annex F", even though this group was removed from the amended procedure. Also, in Hebrew you added a group of

foreigners whose "place of origin" is in one of the countries listed in Appendix F when the English version refers to "place of birth" instead of "place of origin".

- Part 1, Section 7(F) - in the English version there is no reference to the fact that it is possible to request entry through the Ben-Gurion airport, which will be approved under exceptional circumstances.
- Part 1, Section 6(D) - in the Hebrew version, it is written that visit permits issued under Part 2 "for exceptional reasons can be extended for a maximum period of 3 additional months at the most" after that, the permit can be extended for a period exceeding 180 days with the approval of the authorized COGAT official, "for special reasons that will be registered". In the corresponding section in the English version (p. 14) it is written that after the first 3 months, the permit can be extended (without specifying "exceptional reasons") and then after 180 days, it is required to present "exceptional reasons that will be registered". That is, according to the English version, it is possible to stay in the territories according to chapter 2 for 180 days without the need to prove "exceptional reasons".
- Part 3, Section 6(D)(2) and (4) (p. 47-46) - In the English version it is not written, that the "authorized COGAT official" is the one who decides "at his discretion" whether it is about hiring experts "in unique fields" or doctors specializing in a specialty "of importance to the area". In English, the reference to the stipulation of the "authorized official" is missing.

79. The publication of the procedure on COGAT's website does not constitute legal "publication". After the "Procedure for the Entry of Foreigners into the Judea and Samaria Areas" was in effect for 15 years, the changes in the current policy must be disseminated widely and in an orderly manner. Thousands of victims of the amended procedure should not be expected to be aware of the existence of a cumbersome procedure that extends over 90 pages and to learn it. The entry into force of the procedure must be published in the local and international media (especially in the territories), including in the press in English and Arabic and through other channels. Also, the changes must be published in the various bureaus of the Ministry of Civil Affairs in the Palestinian Authority, in the Civil Administration in Beit El, at the Allenby border crossing, and at the Ben-Gurion airport.

### Summary - and a request to freeze the implementation of the procedure

80. Considering everything detailed above, it is clear that the new procedure in its current form cannot enter into force on the designated date, i.e., October 20, 2022, without the necessary changes being made to it.
81. The procedure seriously harms the rights of spouses and other family members of residents of the territories to live together in the territories. The right to family life has been recognized as a fundamental right in Israeli and international law. Thus, in the High Court ruling 7052/03 **Adallah v. Minister of the Interior** Civil Case 1754(2) 2006, majority of the Supreme Court judges stated that a person has the right to a family life, and in addition to this right, he has the right, in the case of a relationship with a foreign spouse, to establish a family in the country of citizenship. A person must not be put before the choice of whether to live in the land of his citizenship or with his spouse. It was further determined that this right is constitutional.
82. Furthermore, by virtue of international humanitarian law, Israel has the duty to ensure normal public life in the occupied territory, including protecting the family unit of the protected residents. This duty is imposed on the military commander also by virtue of international human rights law.
83. In addition, the procedure will harm various employers - companies, organizations, and institutions - and their employees, their right to exercise freedom of occupation and earn a living with dignity. It is known that the right to work and live with dignity was recognized by the Supreme Court as part of human dignity, enshrined in the Basic Law: Human dignity and freedom, (See High Court 366/03 **Commitment to Peace and Social Justice Association v. Minister of Finance**, and see also civil appeal 4905/98 **Gamzo v. Ishayahu**, verdict 54(3) 360, 375).
84. As mentioned, there will also be serious damage to the right to education of residents of the territories and to the academic freedom of the educational institutions. The provisions of the procedure constitute a gross interference by the Israeli side in the ability of the educational institutions in the territories to hire lecturers and choose the foreign students who will study in them. The importance of the right to education has long been recognized in Israeli law, not only as essential for the success and prosperity

of each and every individual, but also for the existence of a society, where people live and work to improve their well-being and thus contribute for the well-being of the entire community. (See, for example, High Court 1554/95 **Shoharey GILAT Association v. Ministry of Education, Culture and Sports**, verdict 50 (3)2, 16).

85. **In light of all of the above, we demand that the "Procedure for entry and residence of foreigners in the Judea and Samaria area" be amended in all the matters mentioned above.**
86. **In addition, we demand that the entry into force of the new procedure be frozen immediately in order to be able to correct it before irreversible damage is caused to the lives of many families in the territories, as well as educational institutions, lecturers, students, researchers and businessmen.**
87. **The procedure has not yet been published in Arabic precisely when it concerns the private lives of residents of the territories, Arabic being their mother tongue. We therefore demand that the entry into force of the procedure be delayed until a full Arabic translation is published. In addition, as mentioned, there are gaps and errors in the translation of the amended procedure into English. We therefore demand that these errors are also corrected before the procedure enters into force.**
88. **In light of the urgency of the matter, we would appreciate your reply as soon as possible.**

Sincerely,

Yotam Ben-Hillel, Adv.

