

Disclaimer: The following is a non-binding translation of the original Hebrew document. It is provided by **HaMoked: Center for the Defence of the Individual** for information purposes only. The original Hebrew prevails in any case of discrepancy. While every effort has been made to ensure its accuracy, **HaMoked** is not liable for the proper and complete translation nor does it accept any liability for the use of, reliance on, or for any errors or misunderstandings that may derive from the English translation. **For queries about the translation please contact site@hamoked.org.il**

At the Supreme Court
Sitting as the High Court of Justice

HCJ 1187/15

In the Matter of: **1. _____ Abu Ghararbeh, ID _____**
Resident of the Occupied Palestinian Territories
2. _____ Abu Ghararbeh, ID _____
Resident of the Occupied Palestinian Territories
3. _____ Abu Ghararbeh, ID _____
Minor, by his parents, Petitioners 1-2
4. HaMoked: Center for the Defence of the Individual, founded by
Dr. Lotte Salzberger – RA No. 580163515

All represented by counsel, Nasser Odeh (Lic. No. 68398) and/or Bilal Sbihah (Lic. No. 49838) and/or Hava Matras-Irron (Lic. No. 35174) and/or Sigi Ben Ari (Lic. No. 37566) and/or Anat Gonen (Lic. No. 28359) and/or Daniel Shenhar (Lic. No. 41065) and/or Benjamin Agsteribbe (Lic. No. 58088) and/or Abeer Jubran-Daqwar (Lic. No. 44346)

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. The Military Commander of the West Bank
2. The Coordinator of Government Activities in the Territories

Represented by the State Attorney's Office, Ministry of Justice
29 Salah-a-din Street, Jerusalem
Tel: 02-6466590; Fax: 02-6467011

The Respondents

Petition for Order Nisi

A petition for an *order nisi* is hereby filed which is directed at the respondents ordering them to appear and show cause why they do not allow the Petitioners to travel from the Gaza Strip to the West Bank in order to visit the ailing mother of Petitioner 1 in the West Bank, and to return to the Gaza Strip after the visit ends.

Request to Schedule an Urgent Hearing

The Honorable Court is requested to set a date for an urgent hearing of the petition. The ailing mother of Petitioner 1 resides in the West Bank and suffers from rheumatic heart disease and severe mitral valve stenosis. The mother was hospitalized three times in the past month, most recently on January 19, 2015, at the Al Watani hospital in Nablus in a state of semi-consciousness, and was released to her home on January 22, 2015 in need of further cardiac treatment and monitoring. The Petitioners urgently appealed to the Respondent in order to coordinate the entry of Petitioners 1-3 to the West Bank and their return to the Gaza Strip at the conclusion of the visit. However, despite the urgency of the matter, the Respondent allowed the passage of Petitioners 1 and 3 to the West Bank but refused to arrange their return to the Gaza Strip.

In light of the aforesaid, the Honorable Court is requested to schedule a date for an urgent hearing of the petition and, at the least, to order the Respondent to submit his preliminary response to the petition at the earliest possible time as it may obviate the hearing of this petition.

The Factual Infrastructure

The Parties

1. Petitioner 1 (hereinafter: **the Petitioner**), originally from the West Bank, was born in 1987 in the West Bank, and moved to the Gaza Strip after her marriage in 2012, due to the Respondents' policy which prevents Palestinians from the Gaza Strip from relocating from the Gaza Strip to the West Bank.
2. Petitioner 2 is the Petitioner's husband, a resident of the Occupied Palestinian Territories (OPT), born in 1981. Petitioner 3 is their 10 month-old baby daughter_____ (hereinafter: **the Petitioners**).
3. Mrs. Abu Ghararbeh's mother, Mrs. _____ Suliman Hussein Ramadan, ID_____ (hereinafter: **the mother**), resides in Nablus in the West Bank and suffers from rheumatic heart disease and severe mitral valve stenosis. The mother was hospitalized for week on October 18, 2014 at the Al Watani hospital in Nablus after recurrent episodes of edema in the lungs. She was hospitalized for the second time on December 6, 2014 at the Al Watani hospital due to severe mitral valve stenosis, rheumatic heart disease and recurrent edema of the lungs. The mother was released from the hospital to her home on December 13, 2014 whilst in need of urgent surgery to replace the mitral valve. However, her medical

condition, and particularly her uncontrollable diabetes and high levels of Kiratnin, preclude the procedure at this time. It should be noted that the mother was hospitalized for the third time at the Al Watani hospital in Nablus on January 19, 2015 in a state of semi - consciousness, and was released to her home on January 22, 2015 in need of further cardiac treatment monitoring.

Copies of medical documents are attached hereto and marked **P/1 A-D**.

4. The Petitioner, naturally, wishes to travel from the Gaza Strip to the West Bank with her husband and daughter in order to visit her ailing mother, attend to her, support her and nurse her. In view of the mother's grave condition, the Petitioner fears that this will be the last time she and her mother meet. The Petitioners request to return to their home in the Gaza Strip at the conclusion of the visit.
5. It must be noted, as specified in detail below, that on January 28, 2015, the Respondents granted Petitioners 1 and 3 permission to travel from the Gaza Strip to the West Bank, but **did not** issue a permit for their return from the West Bank to their home in the Gaza Strip at the end of the visit as requested.
6. Petitioner 4 (hereinafter: **HaMoked: Center for the Defence of the Individual** or **HaMoked**) is an association that works for the advancement of human rights in the OPT.
7. Respondent 1 is the Military Commander of the West Bank on behalf of the State of Israel which has held the West Bank under military occupation for more than forty seven years. The Respondent is authorized to permit Palestinians' travel into and out of the West Bank.
8. Respondent 2, the Coordinator of Government Activities in the Territories, is responsible for implementing Israeli policy in the West Bank and the Gaza Strip, and is in charge, *inter alia*, of the Gaza District Coordination and Liaison Administration.

Exhaustion of Remedies

9. On October 27, 2014, the Petitioner submitted an application to the Respondents, through the Palestinian Civil Affairs Committee, requesting to travel to the West Bank through Israel along with her husband and daughter in order to visit, nurse and attend to her ailing mother.
10. On November 6, 2014, HaMoked: Center for the Defence of the Individual wrote the Gaza DCO humanitarian hotline, stressing the mother's grave condition, and requested that a transit permit be granted to the Petitioners urgently.

A copy of HaMoked's appeal of November 6, 2014 is attached hereto and marked **P/2**.

11. As ten days went by without a reply, on November 16, 2014, HaMoked contacted the Gaza DCO humanitarian hotline for the **second time**, again noting the mother's grave condition, and informing them that she had recently been hospitalized at the Al Watani hospital in Nablus due to recurrent

episodes of edema in the lungs and was in need of urgent surgery to replace the mitral valve. HaMoked requested that the transit permit be granted to the Petitioners urgently.

A copy of HaMoked's appeal to the Respondents of November 16, 2014 is attached hereto and marked **P/3**.

12. On November 19, 2014 and November 24, 2014, telephone conversations were held between a representative of Hamoked and a soldier at the at office of the Gaza DCO Public Liaison Officer's, during which the soldier reported that the Respondents' request was still being processed.

13. As no reply was received regarding the matter for a month, on December 3, 2014, HaMoked appealed to the Gaza DCO humanitarian hotline for the **third time**, requesting that a transit permit be urgently issued to the Petitioners to visit the ailing mother.

A copy of HaMoked's appeal to the Respondents of December 3, 2014 is attached hereto and marked **P/4**.

14. On December 8, 2014, HaMoked: Center for the Defence of the Individual appealed to the humanitarian hotline for the **fourth time**. HaMoked indicated the mother's serious condition once more, notified them that she had been hospitalized for the second time at the Al Watani hospital, and requested that a transit payment be urgently issued to the Petitioners.

A copy of HaMoked's appeal to the Respondents of December 8, 2014 is attached hereto and marked **P/5**.

15. On December 9, 2014, December 11, 2014, December 23, 2014 and December 24, 2014, several telephone conversations were held between a representative of HaMoked and soldiers at the Gaza DCO humanitarian hotline during which the soldiers reported that the Petitioners' request was still being processed.

16. On December 25, 2014, the reply of Second Lieutenant Adina Horesh, an officer from the office of the Public Liaison Officer at the Erez Coordination Office, was received, stating that should the Petitioner's application be approved, she would only receive a transit permit from the Gaza Strip to the West Bank, but not a permit for the return trip to her home in Gaza because in the past she entered Gaza through the Rafah crossing.

The reply of the Public Liaison officer of December 25, 2014 is attached hereto and marked **P/6**.

17. In light of the aforesaid, on December 29, 2014, HaMoked appealed for the **fifth time** to the Gaza DCO humanitarian hotline, noting the mother's grave condition and her need for urgent surgery to replace the mitral valve, and requested that the Petitioners be issued an entry permit into Israel in order to travel to the West Bank and return to the Gaza Strip at the conclusion of the visit.

A copy of HaMoked's appeal to the Respondents of December 29, 2014 is attached hereto and marked **P/7**.

18. Two months passed since HaMoked's first appeal, and yet no reply was received. In light of this, HaMoked appealed on January 5, 2015 for the **sixth time** to the Gaza DCO humanitarian hotline requesting a pertinent reply to the appeals concerning the Petitioners' travel.
19. In view of the Gaza DCO's conduct and the urgent circumstances of the matter, on January 19, 2015, the undersigned wrote the Gaza DCO's legal advisor, Adv. Guy Shekel, on behalf of the Petitioners and specified the sequence of the events and the mother's grave medical condition. In the letter, the undersigned emphasized that the refusal of the Civil Administration to allow the Petitioners to travel from the Gaza Strip to the West Bank and back, as had been the practice until that time in cases that met the strict humanitarian criteria, constitutes a highly exceptional precedent that violates the Petitioners' basic rights, and requested that Petitioners be granted permits for transit from the Gaza Strip to the West Bank and from the West Bank to the Gaza Strip without any further delay.

A copy of the appeal of the undersigned to the Gaza DCO's legal advisor of January 19, 2015 is attached hereto and marked **P/8**.

20. On January 22, 2015, a soldier from the office of the Gaza DCO's Public Liaison Officer, reported that the request concerning the Petitioners' matter was still in processing and requested current documents concerning the ailing mother's medical condition.
21. On January 22, 2015, HaMoked appealed to the Gaza DCO humanitarian hotline for the **seventh time** stating that the mother had again been hospitalized at the Al Watani hospital. HaMoked attached current, detailed, medical documents concerning the mother's health to its appeal and requested that the Petitioners be issued entry permits to enter Israel for the purpose of travel to the West Bank and for return to the Gaza Strip at the conclusion of the visit.

A copy of HaMoked's appeal of January 22, 2015 to the Respondents is attached hereto and marked **P/9**.

22. On January 28, 2015, a telephone call was held between a representative of HaMoked and a Gaza DCO soldier during which the latter reported that the security authorities only approved the travel of Petitioners 1 and 3 from Gaza to the West Bank for a visit to the ailing mother, and their return from the West Bank to Gaza at the conclusion of the visit. In light of this, the Petitioner was required to provide the dates she intends to leave the Gaza Strip and return to it.
23. On the same day, a letter arrived from the Respondent in which he stated that after examining the Petitioner's request it was decided to permit only Petitioners 1 and 3 to travel.

A copy of the letter of Warrant Officer Nasraddin of January 28, 2015 is attached hereto and marked **P/10**.

24. Due to the unclear wording of the letter, on January 29, 2015, a representative of HaMoked called Warrant Officer Nasraddin Amer, the Commander of the Israelis Office at the Gaza DCO and Acting Public Liaison Officer, for clarifications regarding the reply. He explained to her that the permit was **only** for the passage of Petitioners 1 and 3 from the Gaza Strip to the West Bank, and that no permit was granted for their return from the West Bank to the Gaza Strip at the conclusion of the visit as had been reported earlier by telephone.
25. Three months had passed since HaMoked's first appeal and the Petitioners' passage had still not been approved. In light of this fact, on February 1, 2015, the undersigned contacted the Gaza DCO legal advisor, Adv. Guy Shekel, once more, again emphasizing the mother's serious medical condition and the fact that she had been hospitalized three times recently. He recalled the sequence of the communications with the Gaza DCO and requested that transit permits from the Gaza Strip to the West Bank and from the West Bank to the Gaza Strip be granted to the Petitioners by February 3, 2015 as otherwise we would be forced to take legal action.

A copy of the letter of February 1, 2015 to the Gaza DCO Legal Advisor is attached hereto and marked **P/11**.

26. On February 2, 2015, a letter written by Captain Zvi Mintz, Head of the Palestinian Department, on behalf of the Head of the International Law Department was received stating that Petitioners 1 and 3 will only be given a permit for travel from the Gaza Strip to the West Bank. It also stated that as the Petitioner is a resident of the West Bank, should she wish to return to the Gaza Strip through Israel at the conclusion of the visit, she would have to submit a request concerning this matter to Civil Administration officials in the West Bank, which would be answered in accordance with the criteria employed there.

A copy of the letter of Captain Mintz's letter February 2, 2015 is attached hereto and marked **P/12**.

27. Under these circumstances, the Petitioners had no choice but to appeal to the Court. The Respondents' policy permitting travel in only one direction is a new policy. The Petitioners wish to leave the Gaza Strip for a short visit in the West Bank and return to the Gaza Strip. The Petitioner wants to retain her ties to her birthplace and to reserve the right to return to the West Bank and to move her family unit there when the Respondents' policy allows it.

The Legal Argument

28. As well known, on November 29, 2012, the UN General Assembly accorded non-member observer State status to Palestine (A/RES/67/19).

It is clear that even after the General Assembly's decision the Military Commander continues to bear all of the obligations imposed upon him by international law as an occupying power in control of the area.

A. The Respondents' Obligation to Ensure the Normal Life of the Petitioners

29. In our case, the Respondent's decision to refuse to grant the Petitioners transit permits from the Gaza Strip to the West Bank and back so they may visit the ailing mother is unreasonable and appears to be tainted with unfairness and even arbitrariness. We will recall that a public authority has a duty to act:

Reasonably, honestly, righteously and in good faith. The state may not discriminate, act out of arbitrariness or bad faith, or be in a position of conflict of interests. It must comply with the rules of natural justice. In short, it must act fairly.

HCI 840/79 **Contractors and Builders in Israel Center v. the Government of Israel** et al, IsrSC 34 (3), 729, 746).

30. It must be noted that the procedure concerning the "Policy on Movement of People between the State of Israel and the Gaza Strip" specifies a series of requirements, conditions and criteria for allowing travel from the Gaza Strip to the West Bank (hereinafter: **the procedure**). Cases where the entry of Palestinians from the Gaza Strip to the West bank is allowed include entry for the purpose of visiting an immediate relative who has a serious disease which is life-threatening or which requires prolonged hospitalization. In light of the mother's grave medical condition as above described, there is no doubt that the Petitioner's request meets the stringent humanitarian criteria specified in the procedure.

A copy of the notice of the Coordinator of Government Activities in the Territories concerning the "Policy on Movement of People between the State of Israel and the Gaza Strip" of May 5, 2011 is attached hereto and marked **P/13**.

31. It must be emphasized that the Respondent's refusal to allow the Petitioners' passage from the Gaza Strip to the West Bank and back to the Gaza Strip, although their case meets the stringent, narrow humanitarian criteria, constitutes a highly exceptional precedent which violates the Petitioners' basic rights. It must be noted that until now, and for years, Palestinians who requested to travel from the Gaza Strip to the West Bank for humanitarian visits did not encounter this type of stipulation which prevents them from returning to their families, their homes and their daily routines at the conclusion of the visit.
32. It must be noted that HaMoked handles, *inter alia*, cases of Palestinians from the West Bank who are married to residents of the Gaza Strip - and were forced to live in the Gaza Strip due to the Respondents' policy which bars Palestinians from the Gaza Strip from relocating to the West Bank, - who seek to travel to the West Bank for short visits in cases that meet the stringent humanitarian criteria set in the procedure. It must be emphasized that to date, in those exceptional humanitarian cases where entry was permitted even in the framework of the extreme separation policy instituted by the Respondent, the latter coordinated the passage of the applicants back and forth from the Gaza Strip and the West Bank while they were still in the Gaza Strip, before they left for the visit.

This was the case in prior appeals of Palestinian women from the West Bank who, like the Petitioner, were forced, as aforesaid, to relocate to the Gaza Strip after their marriage, and whose official address is still in the West Bank. This was the case, for example, of Mrs. _____ Abu Khalub, I.D. _____ whose passage to the West Bank and back for a short visit to nurse her ailing mother was arranged in June 2014. In January 2011, the Respondent approved the passage of Mrs. Abu Khalub to the West

Bank and back after a petition requesting to allow her to visit her ailing mother was filed on her behalf (HCJ 9083/10 **Abu Khalub et. al v. the Military Commander et. al**).

A copy of the permit of June 16, 2014 for return passage is attached hereto and marked **P/13**. [sic]

A copy of the permit of January 17, 2011 for return passage is attached hereto and marked **P/14**.

An additional case is that of Mrs. _____ Hamed, another Palestinian from the West Bank who moved to the Gaza Strip after her marriage and received, in April 2011, a permit to leave and to return in order to visit her ailing father in the West Bank together with her children after submitting a petition to this Honorable Court (HCJ 2963/11 _____ **Hamed et. al v. the Military Commander et.al**).

A copy of the permit of April 18, 2011 for return passage is attached hereto and marked **P/15**.

The Respondent also twice approved the passage of Mrs. _____ Zanun to the West Bank and back in the past several years. The first visit took place in February 2011, after HaMoked submitted a petition to the High Court of Justice on behalf of Mrs. Zanun, requesting that she be allowed to visit her ailing mother. After the petition was filed, the Respondent granted her a permit to leave the Gaza Strip for the West Bank and return (HCJ 1012/11 _____ **Zanun et. al v. the Military Commander et. al**). The second visit to the West Bank took place in November 2011 following a death.

A copy of the permit of November 22, 2011 for return passage is attached hereto and marked **P/16**.

A copy of the notice of the State Attorney Office in HCJ 1012/11 is attached hereto and marked **P/17**.

33. It must be noted that the Respondent's refusal to arrange the Petitioner's return to her home in the Gaza Strip at the conclusion of the visit, **as has been the practice thus far, means that the visit will not take place**. This is due to the fear that at its conclusion the Petitioner will not be able to return to her home in the Gaza Strip and, as a result, she and her daughter will be forcibly separated from the husband and father for an extended period of time through no fault of their own.
34. The Respondents have an active duty to defend the rights of residents, to ensure their normal lives and to protect their rights. Article 43 of the Hague Regulations 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, N.O).

35. The duty to ensure public order and normal life and to take action to serve the needs of society applies to all aspects of civilian life:

The first clause of Regulation 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 Regulation does not limit itself to a certain aspect of public order and safety. It spans all aspects of public order

and safety. **Therefore, this authority – alongside security and military matters – applies also to a variety of “civilian” issues** such as the economy, society, education, welfare, hygiene, health, transportation and other such matters to which human life in modern society is connected.

(HCJ 393/82 **Jam'iat Iscan v. the Commander of the IDF Forces in the Area of Judea and Samaria**, IsrSC 37(4), 785, 797, (1983); (Emphasis added, N.O.).

36. The principles of administrative law apply to the Respondents as an arm of the State, requiring them to exercise their powers in the OPT reasonably and fairly.

Together with the provisions of international law, “the principles of the Israeli administrative law regarding the use of governing authority by a public employee” apply to the military commander... Thus, the norms of substantive and procedural fairness (such as the right to have arguments heard before expropriation, seizure, or other governing actions), the obligation to act reasonably, and the norm of proportionality apply to the military commander... Indeed, “every Israeli soldier carries, in his pack, the provisions of public international law and customary law regarding the laws of war and the basic provisions of Israeli administrative law”.

(HCJ 2056/04 **Beit Sourik Village Council v. The Government of Israel**, IsrSC 58(5), 807, 828).

37. In light of the aforesaid, it appears that the Respondent’s conduct and the restriction of the applicability of transit permits to only one direction, in contrast with past practice, constitutes a drastic change in the Respondent’s policy and a further aggravation of the Gaza West Bank separation policy, which does not take the rights of the Petitioners into account, particularly the right to freedom of movement and the right to family life. The Respondent’s decision not to grant a permit for the Petitioners’ return to their home at the conclusion of the visit is arbitrary and unreasonable, and lacks any justification. The above decision prevents the Petitioners from conducting their lives normally. No one is willing to leave his home without knowing when he will be able to return to it, no parent will leave his children without knowing when he will return to them, and thus the Respondent is contravening his duty to protect the Petitioners’ normal life.

B. Violation of the Petitioners’ Rights

The Right to Family Life

38. The Petitioner seeks to visit her ailing mother together with her husband and daughter, to assist her, support her, attend to her and nurse her. This is a clear expression of the close relationship between a

person and his immediate family. This special relationship between members of the same family unit has earned the recognition and protection of the law under the title of the right to family life.

39. The right to family life is a recognized right in Israeli and international law. In view of this right, it is the duty of the Respondent to respect the family unit.

40. Article 46 of the Hague Regulations that constitute customary international law stipulates:

Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

41. In customary international humanitarian law, under Rule 105 of the International Committee of the Red Cross study it is emphasized that:

Family life must be respected as far as possible.
(Henckaerts J.M. Doswald-Beck L., Customary International Humanitarian Law. Vol. I: Rules. ICRC (2005). pp. 379-383).

The Honorable Court has repeatedly ruled that:

Israel is obligated to protect the family unit under international conventions.
(HCJ 3648/97 **Stamka v. Minister of the Interior**, IsrSC 53(2) 728, 787 (1999)).

See also:

Article 27 of the Fourth Geneva Convention, 1949;
Article 10 of the International Covenant on Economic, Social and Cultural Rights, 1966;
Articles 17 and 23 of the International Covenant on Civil and Political Rights 1966;
Article 12 and article 16(3) of the Universal Declaration of Human Rights, 1948;
Article 12 of the European Convention on Human Rights 1950.

42. Numerous Supreme Court rulings have repeatedly emphasized the vast importance of the right to family life, and especially the judgment that was delivered in the **Adalah** case. (HCJ 7052/03 **Adalah et, al v. The Minister of the Interior** TakSC, 2006(2), 1754 (2006)).

Thus, for example, President Barak writes in paragraph 25 of his judgment:

It is our main 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 [...]

[T]he family relationship ... lie[s] 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.

The Right to Freedom of Movement

43. Every person is entitled to the right to move freely within his own country. The right to freedom of movement is the prime expression of a person's autonomy, his freedom of choice and the realization of his abilities and his rights. The right to freedom of movement is one of the norms of customary international law.

See:

HCI 6358/05 **Vanunu v. The General of the Home Front Command**, TakSC 2006(1) 320, paragraph 10 (2006);

HCI 1890/03 **Bethlehem Municipality et al v. The State of Israel**, TakSC 2005(1) 1114, paragraph 15 (2005);

HCI 3914/92 **Lev v. Regional Rabbinical Court**, TakSC 94(1) 1139, 1147 (1994).

44. The right to freedom of movement is the engine that drives the array of human rights, the engine that enables a person to realize his autonomy and choices. When the right to movement is restricted that "engine" is harmed and as a result thereof some of a person's possibilities and rights cease to exist. His dignity as a person is violated. Hence the great importance attributed to the right of freedom of movement.

45. When restrictions are imposed on a person's freedom of movement within the area of the state or the entity in which he resides, his social life, cultural life, human rights and freedom of choice are violated. This person is restricted in the most spheres of his life: where will he live, with whom will he share his life, where will his children study, where will he receive medical care, who will be his friends, where he will work, what will he occupy himself with, and where he will pray.

46. The right to freedom of movement is also entrenched in international humanitarian law. The Fourth Geneva Convention reinforces the right to freedom of movement as a basic right of protected persons, whether they are in occupied territory or in the territory of a hostile state. Article 27 of the Convention determines that protected persons shall be entitled in all circumstances to humane treatment and to respect of their dignity.

47. It is important to also note articles 41-43 (which apply to the territory of a state that is involved in conflict) and 78 (which applies to occupied territory). These articles concern restrictions on freedom through detention or assigned residence. These means are specific and their employment is likewise specific. This demonstrates that the freedom of movement of protected persons in all other circumstances was very important to the high contracting parties. It is necessary to establish explicit and

specific rules for restricting freedom of movement only where there is, as a general rule, an obligation to respect this right:

Art. 78 of the Fourth Geneva Convention constitutes both a source for the protection of the right of a person whose residence is being assigned and also a source for the possibility of restricting this right. This can be seen, inter alia, in the provisions of art. 78 of the Fourth Geneva Convention that determines that the measures stipulated therein are the measures that the occupying power (i.e., the military commander) may “at most” carry out.

(HCJ 7015/02 '**Ajuri v. IDF Commander in West Bank**, TakSC 2002(3), 1021, 1027).

48. International human rights law is also a binding source which anchors the freedom of movement as a basic human right. Thus article 12(A) of the International Covenant on Civil and Political Rights, which Israel signed and ratified establishes:

Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

49. The aforementioned Article 12 is a mandatory source. For additional sources of interpretation see: Article 13 of the Universal Declaration of Human Rights and Article 2 of the Fourth Protocol (1963) to the European Convention on Human Rights.

C. Passage from the Gaza Strip to the West Bank

50. The Gaza Strip and the West Bank constitute one legal unit. This is entrenched in military legislation: The Military Proclamation regarding the Application of the Interim Agreement (Judea and Samaria), (no. 7) 5756- 1995 anchored the interim agreement between Israel and the PLO (“the Oslo Accord”), which determined – as a fundamental principle – that the West Bank and the Gaza Strip constitute two parts of one territorial unit. This was also recognized by this Honorable Court (HCJ 7015/02 '**Ajuri v. IDF Commander in the West Bank**; TakSC 56 (6) 352.

Changes that have taken place in the scope of Israeli control of the Gaza Strip due to the implementation of the “Disengagement Plan” did not affect this recognition. Indeed, this is a matter of two questions - the question of the scope of the Respondents’ obligation towards the civilian population, and the question of the two geographical areas constituting one political entity (History recognizes other examples of states whose territory was divided among various occupiers, yet they undoubtedly remained one state).

51. It is because of the scope of Israeli control over the Gaza Strip and the West Bank that the Petitioners must receive the Respondents' approval. Therefore, the Respondents have real obligations towards the Petitioners. These were recognized in the rulings of this Court, which determined that Israel has special obligations towards residents of the Gaza Strip. This Court ruled as follows:

In the prevailing circumstances, the main obligations of the State of Israel relating to the residents of the Gaza Strip derive from the state of armed conflict that exists between it and the Hamas organization that controls the Gaza Strip; **these obligations also derive from the degree of control exercised by the State of Israel over the border crossings between it and the Gaza Strip**, as well as from the relationship that was created between Israel and the territory of the Gaza Strip after the years of Israeli military rule in the territory due to which the Gaza Strip is currently almost completely dependent upon the supply of electricity from Israel.

HCJ 9132/07 **al Basyouni et al. v. The Prime Minister et al.**, January 30, 2008, paragraph 12 of the judgment. (Emphasis added, B.S.).

52. As stated, the Respondents' control over the possibilities of travel between the Gaza Strip and the West Bank carries obligations towards the Petitioners. This was recognized in the rulings of this Court. Passage from the West Bank to the Gaza Strip through Israel is the only option available to the Petitioners to realize their right to family life and freedom of movement.
53. It must be noted that the Petitioners do not seek to remain in Israel, only to pass through it due to the circumstances that were imposed upon them by the Respondents.
54. The scope of the right of transit is broader than the scope of the right of entry for the purpose of remaining in a country, and therefore any violation thereof requires more substantial grounds.

Conclusion

55. The Petitioners request to travel from the Gaza Strip to the West Bank in order to visit the Petitioner's ailing mother, assist her, support her attend to her and nurse her and to return to their home in the Gaza Strip at the conclusion of the visit.
56. By refusing to grant the Petitioners permits to travel from the Gaza Strip to the West Bank and back, the Respondents sentence the Petitioners to complete separation from the family's father in the Gaza Strip, and thus harshly breach the Petitioners' right to family life, a fundamental right they are entitled to.

This petition is supported by an affidavit signed before an attorney in the Gaza Strip and sent by fax to the undersigned as agreed by phone. The Honorable Court is requested to accept this affidavit and the powers of attorney which were also sent by fax in consideration of the objective difficulties involved in holding a meeting between the Petitioners and their representatives.

In light of the aforesaid, the Court is requested to issue an *order nisi* as sought and after hearing the Respondent, render it absolute. The Court is also requested to rule that the Respondent bear the Petitioners' expenses and legal fees.

February 17, 2015

Nasser Odeh, Adv.
Counsel for the Petitioners