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Date: November 24, 2015  
In your response please note: 31250

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القدس ٩٧٢٠٠  
هاتف. ٠٢. ٦٢٨٣٥٥٥  
فاكس. ٠٢. ٦٢٧٦٣١٧

Dear Sir,

Re: **Plans by the government and the security establishment to prevent relatives of individuals who perpetrated attacks against Israelis from traveling abroad.**

mail@hamoked.org.il  
www.hamoked.org.il

1. I am contacting you with respect to a measure of punishment and pressure the Government of Israel and the security establishment are considering imposing on relatives of individuals who perpetrated attacks against Israelis. We have learned from the media of a plan to prevent relatives of individuals who have perpetrated attacks on Israelis from traveling abroad. We request your intervention to prevent this measure, as it is a breach of Israeli and international law.
2. The right to exit Israel has been constitutionally entrenched in Section 6(a) of Basic Law: Human Dignity and Liberty 5752-1992.
3. It has been entrenched in case law as well:  

A person's right to exit his or her country of residency and return to it is a 'natural right'. It is a fundamental human right. Restricting this right constitutes a serious violation of a person's rights (HCJ 4706/02 **Salah v. Minister of Interior**, IsrSC 56(5) 695, 704 (hereinafter: **Salah**).
4. The right to leave one's country of residence has been recognized as a fundamental right in a significant number of international covenants and declarations, such as the Universal Declaration of Human Rights (1948), Article 13 and the International Covenant on Civil and Political Rights (1966), Article 12(2).

5. Given the constitutional status of this right, the test employed by the court in order to determine whether it may be restricted for security reasons is the test of “genuine, serious” concern. It consists of two conditions: serious danger that relates to a truly vital interest, and a causal relationship between exercising freedom of movement and the materialization of the risk to national security (**Salah**, paragraphs 7 and 11 of the opinion of Justice Turkel).
6. It is, therefore, unclear how the desire to punish and deter any person whose only sin is being related to an individual who perpetrated an attack satisfies the strict conditions of this test.
7. It is also the normative premise under international humanitarian law that the Respondent must allow residents of the Occupied Palestinian Territories to leave their country, as described by legal scholar Zilbershatz:

The combined application of general human rights laws and the humanitarian law of the Hague and Geneva Conventions to territories held under belligerent occupation leads to the conclusion that the right to exit the country, which is vested in every person under international conventions, is also vested in residents of a territory held under belligerent occupation, whether or not they are citizens of the power from which the territory was taken.

The right to exit the country is also recognized as a customary norm of international law, and therefore becomes part of Israel’s domestic law. The military government in the territories, which is subject to the norms of Israeli administrative law and the norms of customary international law, is obligated to allow residents of the territories to exercise this important fundamental right.

(Y. Zilbershatz, *The Right to Leave the Country*, **Mishpatim**, 23:69, 86 5754 ).

8. This right remains intact during hostilities as well, as stipulated in Article 53 of the Fourth Geneva Convention (1949):

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

(emphases added, A.G.)

9. The scholar Pictet clarifies in his commentary that:

It should be noted that the right to leave the territory is not in any way conditional, so that no one could be prevented from leaving as a measure of reprisals [...]. It is therefore essential for States to safeguard the basic principle by showing moderation and only invoking these reservations when reasons of the utmost urgency so demand.

(Pictet J.S. Commentary: IV Geneva Convention – Relative to the Protection of Civilian Persons in Time of War. P. 235-236 (Geneva, 1958)).

10. In other words, the Convention empowers the military commander to restrict a person's liberty **only when necessary for clear security reasons**, while striking the appropriate balance and on condition that the person's fundamental rights are not violated.
11. In addition to all the aforesaid, a blanket ban on travel abroad imposed on relatives of persons who perpetrated attacks, most of whom apparently have no connection to or involvement in the attacks, constitutes **wrongful collective punishment**.
12. Collective punishment is prohibited under international law, both under the laws of war and under international human rights law. The supreme principle that forbids the use of sweeping, arbitrary punitive measures that harm entire groups of people also constitutes an important part of customary international law.
13. In this context, Article 50 of the Hague Regulations stipulates:

No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.

Article 33 of the Fourth Geneva Convention stipulates:

No protected person may be punished for an offence he or she has not personally committed. **Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.**  
Pillage is prohibited

### **In conclusion**

14. If the State of Israel is, in fact, planning to use this extreme measure of punishment and pressure, which involves a serious violation of the right to freedom of movement and the individual fundamental right to leave one's country, we seek your intervention to prevent its implementation, given the

blatant breach of Israeli and international law entailed, as explained in detail above.

Adv. Anat Gonen  
Legal Department  
Coordinator

CC:  
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