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At the Supreme Court
Sitting as the High Court of Justice

H CJ 10676/04

In the matter of:

1. _____ **Shamlak**
2. _____ **Shamlak**
3. _____ **a minor boy, by his parents**
4. _____ **a minor girl, by her parents**
5. _____ **a minor girl, by her parents**
6. _____ **a minor girl, by her parents**
7. _____ **a minor boy, by his parents**
8. **HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger – Reg. Assoc.**

represented by attorneys Gil Gan-Mor (Lic. No. 37962) and/or Yossi Wolfson (Lic. No. 26174) and/or Manal Hazzan (Lic. No. 28878) and/or Adi Landau (Lic. No. 29189) and/or Leena Abu-Mukh Zuabi (Lic. No. 33775) and/or Shirin Batshon (Lic. No. 32737) and/or Hava Matras-Ivron (Lic. No. 35174) and/or Sigi Ben-Ari (Lic. No. 37566)
of HaMoked: Center for the Defence of the Individual
founded by Dr. Lotte Salzberger
4 Abu Obeidah Street, Jerusalem 97200
Tel. 02-6283555; Fax 02-6276317

The Petitioners

v.

1. **Commander of the army forces in the West Bank**
2. **Commander of the army forces in the Gaza Strip**

The Respondents

Petition for Order Nisi

A petition is hereby filed for an Order Nisi, directed to the Respondents and ordering them to appear and show cause:

- A. Why they do not permit Petitioners 1-7 to return from the Gaza Strip to their homes in the West Bank;
- B. Why the Respondents do not permit Palestinians whose registered place of residence is in the Gaza Strip to change their place of residence the West Bank;

- C. Why the Respondents do not permit Palestinians whose registered place of residence is in the West Bank to change their place of residence to the Gaza Strip.

Preface

This petition involves a family that is situated, against its will, in the Gaza Strip. The Respondents prevent them from returning to live in the West Bank, contending that the parents, Petitioners 1 and 2, are residents of the Gaza Strip.

The Respondents are not impressed by the facts – neither the fact that years ago the family moved its center of life to the West Bank, nor the fact that the parents lawfully changed their registered place of residence, and the change is also indicated in their identity cards.

The Respondents' handling of the Petitioners is improper, to say the least: HaMoked: Center for the Defence of the Individual, which represents the Petitioners, has sent no less than *ten* letters to the Respondents, who have remained totally silent throughout.

This petition also deals with the Respondents' policy to prevent all Palestinians registered in the Gaza Strip to move to the West Bank, and Palestinians registered in the West Bank to move to the Gaza Strip.

The Respondents do not have the authority to implement such a policy, which contravenes the law applying in the Occupied Territories. It also contradicts the consistent position of the Respondents, whereby the West Bank and the Gaza Strip comprise a single territorial unit. This position is incorporated in Israeli common law.

The factual background

The parties

1. Petitioner 1 and Petitioner 2 married on 1994. Both were born in Gaza. Until 1998, the couple lived in the Gaza Strip and were registered in the population registry as residents of the Gaza Strip. In 1998, the couple moved to the West Bank because of Petitioner 2's work. The family lived in Ar-Ram and later in Beituniya. The two of them properly notified the authorities of their change in address, and their address was duly changed in their identity cards. Since August 2000, Petitioner 1 has been staying, against her will, in the Gaza Strip. Petitioner 2, having no option, joined her in early 2003, and has stayed in the Gaza Strip since then.
2. Petitioners 3-7 are the couple's children, who are 8, 7, 5, 4, and one-year old, respectively.
3. Petitioner 8 (hereinafter: HaMoked: Center for the Defence of the Individual, or HaMoked) is a human rights organization, with offices in Jerusalem. The non-profit

association acts, *inter alia*, to ensure the right of residents of the Occupied Territories to choose their place of residence and to alter it as they see fit.

4. The Respondents hold the West Bank and the Gaza Strip pursuant to belligerent occupation. Each of them is responsible, on behalf of the state, for a different territory. The Respondents are required, *inter alia*, to protect the rights of the residents in the territory under their control. These rights include the right of the residents to change their place of residence and the right to family life and protection of the family unit.

Whereas the Petitioners are residents of the West Bank, Respondent 1 is required to respect their right to live in their home in the West Bank.

Respondent 2 is a necessary party, in that the Petitioners are presently situated in the Gaza Strip, and he has the authority to approve their entry into Israel to enable them to return to the West Bank.

Chronology of the forced stay of the family in the Gaza Strip

5. As mentioned above, until 1998, the family lived in the Gaza Strip, and Petitioner 2 and Petitioner 1 were registered as residents of the Gaza Strip. In 1998, the family, which then had four members, moved to the West Bank. The decision to move was motivated by financial reasons. The family's economic situation in the Gaza Strip was poor. Petitioner 2 was offered a job by an acquaintance in Ramallah, so the decision was made to move to the West Bank. At first, they lived in Ar-Ram and later in Beituniya.
6. From the time that the family had arrived in the West Bank, Petitioner 2 endeavored, as required by law, to change his address in the population registry and in his identity card. He submitted the appropriate request to the Ministry of Interior in Ramallah and paid the required fee. The change in registration process took a number of months, and his address was finally changed in the registry on 14 January 2001. Petitioner 1's address was changed some months later.

Photocopies of the identity cards of Petitioner 1 and Petitioner 2 are attached hereto as Appendixes P/1 and P/2.

7. Although the family was living in the West Bank, Petitioner 1 decided to give birth to her children in the bosom of her extended family in the Gaza Strip. Her parents, siblings, aunts, and uncles live there. She gave birth to their third daughter in the Gaza Strip, and wanted to do the same with their fourth daughter.

8. In preparation for giving birth, Petitioner 1 traveled with her children, on 15 August 2000, from the West Bank to the Gaza Strip. After giving birth to her daughter on 28 September, she wanted to return to the West Bank. It was her poor fortune that at that very time, the Intifada broke out in full force. She submitted several requests to the DCO [District Coordination Office] at the Erez checkpoint, but was told each time that there was “no response.” She was “imprisoned” in the Gaza Strip, far from her spouse. Also, Petitioner 2 submitted several requests to the DCO in Ramallah but received no reply.
9. Later, the army contended that, according to its records, Petitioner 1 was a resident of the Gaza Strip, and thus was not allowed to travel to the West Bank. At the same time, the Respondents decided to forbid movement between the West Bank and the Gaza Strip, and to revoke the “safe passage” arrangements.

The fact that the Petitioners had changed their place of residence, which was properly recorded in their identity cards, did not lead the Respondents to alter their position.

10. Petitioner 1 and her children had no choice but to live with her in-laws, the parents of Petitioner 2, in the Ash Sheikh Ajlin neighborhood in Gaza City. Petitioner 2’s father had trouble supporting them. At first, Petitioner 2 was able to send money to his family in Gaza. However, following more severe actions taken by the IDF in the Ramallah area, he had to close, one after the other, two businesses that he had opened. He remained unemployed and could only send minimal sums of money to support his family.
11. The Petitioners, through HaMoked: Center for the Defence of the Individual, also made requests to the Respondents, as detailed below, but the Respondents continuously ignored the requests. As a result, Petitioner 2 reached a point at which he could no longer live alone in the West Bank, far from his wife and children, and he yearned for them. He had not yet seen his baby daughter. So, in early 2003, he went to the Erez checkpoint. He waited hours and begged to be allowed to enter. Finally, the soldiers acceded to his request, and he entered Gaza and joined his family.
12. When Petitioner 2 crossed from the West Bank to the Gaza Strip, he brought to an end his ability to rehabilitate himself and his business, and his family’s financial situation deteriorated. In the West Bank, the family’s finances were relatively good, at least during the first years there. There, he had a reasonable chance to earn a livelihood. Now, they are living in overcrowded conditions with their children in his parents’ home in Gaza. Petitioner 2 barely makes a living from temporary jobs. In

recent months, he has been unable to find any work. The Petitioners want to return to the West Bank.

The Petitioners' requests to the Respondents

13. When the Petitioners saw that their requests fell on deaf ears, they went to HaMoked: Center for the Defence of the Individual. On 6 October 2002, a staff member of HaMoked sent a letter to the public complaints officer of the DCO in Gaza, requesting that Petitioner 1 and her four children be allowed to return to their home in the West Bank.

A copy of the letter of 6 October 2002 is attached hereto as Appendix P/3.

14. On 14 October 2002, a staff member of HaMoked was informed by telephone by an official from the Respondent's public complaints department that, according to information on the terminal of the Population Administration in their office, Petitioner 1 is from Gaza. From this response, it was clear that the change of address had not yet been recorded by the Respondents.
15. On 22 December 2002, HaMoked wrote to Lieutenant Amit Suchman, of the office of the legal advisor for the West Bank, regarding Petitioner 1. The letter requested Lieutenant Suchman to cease the illegal prohibition on Petitioner 1 from returning to her home. The Petitioners' counsel demanded that the registration in the registry be respected, and argued that, in any event, the Respondent did not have the authority to prevent them from moving to the West Bank, unless there were specific security grounds for the denial, in that the West Bank and the Gaza Strip comprised, in the opinion of the Respondents, a single territorial unit.

A copy of the letter of 22 December 2002 is attached hereto as Appendix P/4.

16. On 2 February 2003, a *first* reminder letter was sent.
- On 28 July 2003, a *second* reminder letter was sent.
- On 24 August 2003, a *third* reminder letter was sent.
- On 11 November 2003, a *fourth* reminder letter was sent.
- On 28 December 2003, a *fifth* reminder letter was sent. This letter all contained notice that, because of the delay in responding, Petitioner 2 was left no choice but to leave the family home and his work in the West Bank and join his wife and children in the Gaza Strip.
- On 7 March 2004, a *sixth* reminder letter was sent. The reminder letter was also addressed to the office of the legal advisor for the Gaza Strip.

On 31 May 2004, a *seventh* reminder letter was sent.

On 27 September 2004, an *eighth* reminder letter was sent.

Copies of the said letters are attached hereto as Appendixes P/5 – P/12, respectively.

The legal argument

Breach of the right to change place of residence within occupied territory

17. The residents have a fundamental right to change their place of residence. Life brings many surprises – some people marry, some people are accepted for post high school studies, some are offered jobs, and some want to try their luck in a different place. There are various and sundry reasons to move. Take a person’s freedom to “move to another apartment” and you impair his sense of liberty and dignity as a free human being.

The life of a population, like that of an individual, does not sit idly by, but is in constant movement involving development, growth, and change. A military administration cannot ignore all this. It is not allowed to suspend life (HCJ 393/82, *Jam'iat Askan Elma'almoon v. Commander of the IDF Forces, Piskei Din 37 (4) 785, 804*).

18. This right is recognized in Israeli law and international law, and is enshrined in Article 12 of the International Covenant on Civil and Political Rights, of 1966, as follows:

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.

On the application of this convention in the Occupied Territories, see the opinion of the International Court of Justice, in The Hague, in the matter of the building of the separation fence, pp. 40-43, Paragraphs 102-111.

19. Human rights may be restricted. However, the first condition for restriction of this kind is *lawful statutory authority*. No such empowering legislation exists in the present case.
20. The Respondents, as stated, impose a general and sweeping prohibition on movement between the Gaza Strip and the West Bank. The only case in which the Respondents permit Palestinians to cross from the Gaza Strip to the West Bank is when the applicant’s registered address is in the West Bank. Such a condition, which requires

individuals to request the prior approval of the authorities to change their place of residence, is characteristic of evil regimes of the past. This condition cannot be allowed to stand.

First, *according to the law applying in the Occupied Territories – no prior demand to change a place of residence is required.* According to the law in the Gaza Strip, “place of residence” is not a required detail set forth in the registry. Article 13 of the Order Regarding Identity Cards and Population Registry (Judea and Samaria) (No. 297), 5729 – 1969, the resident is required to inform the competent authority about the change of residence only *after* the change of residence occurs, and within thirty days of the change:

If a change or correction in one of the details set forth in Article 11 occurs, the resident who received an identity card shall give notification of the change within 30 days to the population registry office which has jurisdiction over the area in which his place of residence is situated, as the competent authority shall so determine.

Note well – only notification is required. From the moment that notification is given, the governmental authority must change the registration. Discretion is not involved. This notice is to be given to the competent authority – that is, the Palestinian Authority.

Second, in any event, *changing the registered place of residence is not a realistic possibility* at the present time. There is a complete breakdown in communication between the Palestinian and Israeli authorities, for which reason the Respondents refuse to recognize in practice the powers given by law to the Palestinians.

21. In essence, the Respondents contend that the Petitioners are registered as residents of the Gaza Strip, so they have no right to live in the West Bank. The Petitioners strongly disagree. Even before they changed their address, they had the lawful right to change their place of residence within the occupied territory as they wished. Restriction on this right, which is called *assigned residence*, is only permitted as a preventive measure, for imperative security reasons, based on specific, updated, and reliable facts.

See, on this point, Articles 41-43 and 78 of the Fourth Geneva Convention; H CJ 7015/02, *Ajuri v. Commander of the IDF Forces*, *Piskei Din* 56 (6) 352 (hereinafter: *Ajuri*); H CJ 9535/03, *Diyuq v. Commander of the IDF Forces in the West Bank*, *Takdin Elyon* 2003 (3) 284.

The Respondents' prohibition on the Petitioners to return from the Gaza Strip to the West Bank does not profess to be based on their authority to assign residence. No other legislation empowers the Respondents to impose such a prohibition. Thus, they are acting *without authority*.

22. *It is important to note that the Respondents' consistent position has been that the West Bank and the Gaza Strip are a single territorial unit, having an identical status.*

23. In *Ajuri*, which dealt with assigned residence, the Respondents wanted to transfer from the West Bank to the Gaza Strip members of a family of a person suspected of having carried out a suicide attack. Human rights organizations, which petitioned against that decision, HaMoked: Center for the Defence of the Individual among them, contended that the action was the equivalent of deportation, because the West Bank and the Gaza Strip are, in effect, separate territorial areas.

The Respondents denied this argument outright. They argued before the Court that the West Bank and the Gaza Strip was a single territorial unit, in every aspect, and according to the conceptions of the relevant parties. Therefore, they argued, transfer of a protected resident from the West Bank to the Gaza Strip was not prohibited deportation, but "assigned residence."

24. The Respondents' position in *Ajuri* is supported by Article 11 of the Interim Agreement between Israel and the Palestine Liberation Organization, which states:

The two sides view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which will be preserved during the interim period

25. The Court accepted this argument in its entirety (Ibid., p. 369).

26. The conclusion is clear. *If the Respondents think that the West Bank and the Gaza Strip are a single territorial unit, so long as assigned residence is not involved, Palestinians are entitled to change their place of residence as they wish, also between the West Bank and the Gaza Strip.* Just as any Palestinian is entitled to move from Nablus to Ramallah without a special permit, so, too, is a resident of Gaza entitled to move to Ramallah. The Respondents currently argue that a person registered as a resident of the Gaza Strip is not entitled to move to the West Bank. This argument is not made in good faith and is unjust. The Respondents cannot have the best of both worlds: regarding assigned residence, argue that the territory is one, single, and integral, while regarding freedom of movement in the territory (the mirror image of *Ajuri*), argue that two separate areas are involved.

27. Indeed, contrary to moving from Nablus to Ramallah, moving from Gaza to Ramallah requires a permit to cross through Israel, which comes within the authority of Respondent 2. It is also true that Respondent 2 has the power to deny passage to the West Bank via Israel if he has a concrete fear that stay in Israel will be exploited to harm state security. However, in the absence of such a fear (and no such concern was raised by the Respondents in the present matter), Respondent 2 must allow a resident of the Gaza Strip wanting to move to the West Bank to do so, and Respondent 1 has the same obligation in the reverse situation.
28. In any event, it would be proportionate if the Respondents permitted passage in the framework of special security arrangements, or via Egypt and Jordan.
29. The Respondents are not empowered to prevent such passage for the reason that the individual wanting to move is registered in Gaza, and thus has no right to live in the West Bank. This reason, as we have shown, is unsupported in law and contradicts the consistent position taken by the Respondents.

Obligation of the Respondents to respect the change of residence lawfully made by the Petitioners

30. As stated, the Respondents improperly and unlawfully condition exercise of the right to change place of residence from the Gaza Strip to the West Bank, whereby the person wanting to move must be registered as a resident of the West Bank.
31. And now, in our case, even when the Petitioners properly changed their residence, the Respondents refuse to respect the revised registration. Such refusal by the Respondents is in opposition to the law applying in the Occupied Territories.
32. According to the law applying in the Occupied Territories, *sole* authority to change residence of Palestinian residents lies with the Palestinian Authority. The Palestinian registration is determinative. The validity of the registration is not dependent on Israeli approval. The only thing that the Palestinian Authority has to do is inform the Israeli military authorities about the change in place of residence.

See Part 3 of the Interim Agreement, Annex 1, Article 28, which deals with the population registry and documentation:

28(10)(b) The Palestinian side shall inform Israel of every change in its population registry, including, *inter alia*, any change in the place of residence of any resident.

The Respondents applied the said authority over the Occupied Territories by means of Proclamation No. 7 (Regarding Implementation of the Interim Agreement).

33. The Petitioners notified the Palestinian Authority, which revised the population registry accordingly, and the change was also indicated in their identity cards. Clearly, then, they acted properly and as the law required. Registration of residence also constitutes prima facie evidence of the accuracy of the details of the registration (Article 11 of the Order Regarding Identity Cards and Population Registry (Judea and Samaria) (No. 297), 5729 – 1969). The Petitioners are entitled to rely on the registration and demand that the Respondents respect it.

Infringement of the Petitioners' right to live in their home and to rely on Respondents' policy

34. When Petitioner 1 went to Gaza to give birth to her third child, the Respondents allowed her to travel back and forth between the West Bank and the Gaza Strip. Petitioner 1 relied on this policy when she later traveled to the Gaza Strip to give birth to her daughter.
35. As mentioned above, Petitioner 1 was unlucky and found herself in Gaza at the wrong time – at the start of the Intifada. Even if this change in circumstances was reason for the Respondents to change their policy, they were not permitted to harm a person who had some time before [relied on the policy] and found his situation changed for the worse. Petitioner 1 would not have entered the Gaza Strip had she known that she would not be allowed to return to her husband for such a long time. She fell victim to the change in circumstances and the Respondents' lack of compassion.
36. The Respondents should have understood Petitioner 1's special situation. Rather, they have stubbornly and unlawfully refused to let the said petitioner return to her home.
37. The Respondents' decision to prevent Petitioner 1 to return home infringes *her right to live in her home*. This matter is not a question of registration but of where the individual actually lives:

The fundamental premise is that the displacement of a person from his place of residence and his forcible assignment to another place seriously harms his dignity, his liberty and his property. A person's home is not merely a roof over his head, but it is also a means for the physical and social location of a person, his private life and his social relationships... Several basic human rights are harmed as a result of an involuntary displacement of a person from his home and his residence being assigned to another place, even if this

assigned residence does not involve him crossing an international border... These human rights derive in part from the internal law of the various countries, and are in part enshrined in the norms of international law
(*Ajuri*, p. 365).

Infringement of the Petitioners' family rights

38. The Respondents' decision cause grave harm to the Petitioners. The Respondents' restriction infringes Petitioner 1's right to freedom of movement, thus imposing on the couple a long and harsh separation, right after she gave birth, when Petitioner 1 especially needed Petitioner 2. Petitioner 2 has been unable to see his infant daughter for many months. The children were separated from their father for a long period of time.

Petitioner 1 was compelled to live with her children in the home of relatives, at a financial burden for them. She and her children were kept far away from their home, their surroundings, their friends. Their situation was extremely harsh.

Petitioner 2, who yearned greatly for his family, was forced to leave his home, his work, his property, and go to Gaza and join his family. Now, his income is minimal, obtained from temporary jobs, and he has been unemployed for the past three months. The unemployment rate in Gaza is very high, and he does not know when he will be able to earn a living.

39. The harm suffered by the family conflicts with the Respondents' obligation to respect family life, as set forth in Israeli law and international law.

Israel is required to protect the family unit pursuant to international conventions (HCJ 3648/97, *Stamka et al. v. Minister of the Interior*, *Piskei Din* 53 (2) 728, 787).

See, also, 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; Articles 12 and 16(3) of the Universal Declaration of Human Rights, 1948; Article 12 of the European Convention on Human Rights; Article 27 of the Fourth Geneva Convention; Article 46 of the Hague Regulations.

Handling of the matter by the Respondents

40. Before closing, it is important to discuss the arbitrary handling of the Petitioners' request. *No fewer than ten written requests* were sent to the Respondents, and, except

for one banal verbal response by the public complaints division, the Petitioners received no official reply *for two years*. The Respondents lacked all compassion, despite the grave humanitarian situation of the family members who were separated from each other.

41. It appears that the Respondents forgot their fundamental obligation and the accepted conduct of proper administration – to reply to requests, and the more so, explain the response.
42. If the Respondents act in this way to persons who are represented by an attorney, it is easy to assume the fate of requests sent by persons who are not represented by counsel.
43. We can only protest aloud against such conduct and hope that the Court takes this into account as regards expenses.

Conclusion

The Respondents unlawfully deny, by refusing to allow passage from the Gaza Strip to the West Bank and vice versa, the right of residents to change their place of residence as they wish. This refusal is improper, regardless of whether the person changed his or her address. In any event, the Respondents do not recognize a change in place of residence as reported to them by the Palestinian Authority.

The above is especially true when, as in the case of the Petitioners, the Respondents' decision tears a family apart, or separates children from their father, or a family from their home.

In light of the above, the Honorable Court is requested to issue the Order Nisi as requested, and after receiving the Respondents' response, make it absolute, both as regards the individual relief sought and as regards the general relief. Also, the Court is requested to order payment of the Petitioners' expenses and attorney's fees.

24 November 2004

[signed]

Gil Gan-Mor, Attorney
Counsel for the Petitioners