

At the Supreme Court
Sitting as High Court of Justice

HCJ 5649/12

In the matter of:

1. _____ **Hamdan, ID** _____
2. _____ **a-Qadim, ID** _____
3. _____ **Mubaraq, ID** _____
4. _____ **Mubaraq, ID** _____
5. _____ **Aliwa, ID** _____
6. _____ **Darwish, ID** _____

7. HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – Registered Association

By counsel Advs. Nimrod Avigal (Lic. No. 51583) and/or Ido Blum (Lic. No. 44538) and/or Hava Matras-Irron (Lic. No. 35174) and/or Sigi Ben-Ari (Lic. No. 37566) and/or Daniel Shenhar (Lic. No. 41065) and/or Noa Diamond (Lic. No. 454665) and/or Benjamin Agsteribbe (Lic. No. 58088) and/or Talia Yehuda (Lic. No. 56918)

Of HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger

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The Petitioners

- v. -

8. **[sic] OC Southern Command**

9. **[sic] Defense Minister**

10. **[sic] The State of Israel**

The Respondent

Petition for Order Nisi

A petition for an *order nisi* is hereby filed which is directed at the Respondent ordering him to appear and show cause:

- a. Why citizens and residents of the State of Israel, together with their spouses and children, should not be allowed to visit their relatives residing in the Gaza Strip, in the coming Islamic holiday of Id Al-Fitr;
- b. Why he should not allow the departure of Petitioners 1-6 from Israel to the Gaza Strip, in order to celebrate Id Al-Fitr with their relatives;
- c. Why he should not allow citizens and residents of the State of Israel an alternative visit to their relatives in the Gaza Strip, should the Respondent be unable to arrange for a visit on Id Al-Fitr this year.

Application for an Urgent Hearing

The Court is asked to schedule an urgent hearing of the petition.

This year Id Al-Fitr is expected to occur during the second half of August, depending on the appearance of the moon. The holiday it lasts three days.

Introduction

1. In Islam, Id Al-Fitr (holiday of the breaking of the fast), is the holiday signifying the end of the month of Ramadan, the month of fasting.
2. This holiday is meant to express feelings of appreciation and thanks to God for helping the devoted to successfully fulfill the commandment of fasting. During the holiday it is customary to give charity to the poor, visit the sick, give gifts to children and consume sweets.
3. Id Al-Fitr is a holiday of forgiveness, peace, community and comradeship. Therefore, throughout the holiday, Muslims visit their relatives, families gather to share meals after the long fast, and it is an opportunity to settle quarrels and disputes. This holiday, therefore, is of primary importance to the family.
4. The holiday lasts for 3 days and is expected to occur this year between August 19, 2009 and August 21, 2009 [sic] (depending on the appearance of the moon).

Substance of the petition

5. This Petition concerns allowing residents and citizens of the State of Israel, among them Petitioners 1-6, to visit their relatives who reside in the Gaza Strip, during Id Al-Fitr.
6. This Petition is based on the obligation of the State, which was repeatedly given before this Honorable Court (in HCJ 10043/03, HCJ 552/05, HCJ 10135/05 and HCJ 8451/06), to allow regular holiday visits in the Gaza strip, as described in detail below. Between the years 2003-2007, the Respondents allowed such visits even in times of security unrest, in accordance with the State's obligation.
7. However, **for the past five years**, since 2007, the Respondents have completely prevented citizens and residents of Israel from visiting their relatives in the Gaza Strip and have not allowed the holiday visits.
8. Thus, for five long years, family members are torn apart, **parents, children, grandparents, grandchildren, brothers and sisters**, do not see each other (unless a family member passes away or becomes seriously ill etc., or in the case of a married couple).
9. Due to the harsh and disproportionate impingement on human rights, and due to the tearing apart of immediate family members for over five years, family visits in the coming Id Al-Fitr should be allowed again.

Entry of Israelis into the Gaza Strip

Respondent's policy

10. The respondent's main policy, regarding the entry of Israelis into the Gaza strip, was preset in the Respondents' response of August 27, 2004 to the petition submitted by HaMoked in this matter (HCJ 1004/03 **Abajian v. IDF Commander in the Gaza Strip** (not published)).
11. In response to the petition, the Respondent acknowledged that he must respect the family rights of the residents of the Gaza Strip and their relatives in Israel, and announced inter alia that **even during the armed conflict** the entry of Israelis into the Gaza Strip is generally permitted, **within a clear set of criteria** and in the absence of an individual security preclusion. In general, the Respondent informed that:

In light of the wish to take into consideration, where possible, the needs of PA residents, as well as the wishes of the citizens and residents of Israel, to visit their relatives residing in the Gaza Strip, the Respondent approves, even during the armed conflict and in the absence of individual security reasons, the entry into the Gaza Strip of immediate family members requesting to visit the Gaza Strip, for the purpose of an exceptional humanitarian need (**wedding, engagement, serious illness, funeral etc.**). Allowed as well is, in the absence of an individual security preclusion, entry into the Gaza Strip of Israelis married to a person living there [...]

Additionally, the Respondent allows, in the absence of an individual security preclusion, **entry into the Gaza Strip of Israelis wishing to visit their immediate family members** whom they did not see during the last year, **provided that the requested visit is during one of the holidays – Id Al-Adha, Id Al-Fitr (for Muslims) or Christmas (for Christians).**

It should be further noted, that Israelis to whom a visit permit to Gaza Strip was given, may include their immediate family members who are younger than 18 years; (emphasis added).

A copy of the Respondents' response of August 27, 2004 is attached and marked **P/1**.

12. In a letter dated August 30, 2004, HaMoked requested the correction of many flaws in the criteria listed in the Respondents' response (above), including the fact that the procedure mentions only three holidays, refers to one annual visit, makes inclusion of accompanying spouses on holiday visits redundant and more. In a reply letter, of November 25, 2004 Adv. Chorin of the State Attorney's Office said that **the arguments raised by HaMoked had been taken into consideration and the Respondents announced the expansion of the criteria** as follows:

An Israeli who has been allowed to enter the Gaza Strip [...] during the holidays [...] may include **as accompanying his spouse and children**, in the absence of a security preclusion.

In addition, **holiday visits are not limited to one visit per year**, therefore as a general rule, Israelis will be entitled to visit their immediate family members living in the Gaza Strip during Id Al-Adha and Id A-Fitr (for Muslims) or Christmas and Easter (for Christians).

Anyone permitted to enter the Gaza Strip on humanitarian grounds will be entitled to visit his relatives [...] during the holidays as well [...]; (emphasis added).

A copy of the reply letter of November 25, 2004 is attached and marked **P/2**.

13. As detailed below, the Respondents allowed holiday visits in 2004-2007, even during times of security unrest. Nevertheless, since 2007, the Respondents have absolutely and sweepingly refused to allow the visits.

2003-2007: Allowing holiday visits during times of security unrest

14. Shortly before Id Al-Fitr of 2004, Yasser Arafat, Chairman of the Palestinian Authority, passed away. The Respondents used his death as an excuse to prevent holiday visits to the Gaza Strip. As recalled, **the Respondents' assessments concerning riots and anarchy in the Gaza Strip did not materialize** – and this was clear already on the eve of Id Al-Fitr. Because of time constraints, the decision of the Respondents could not be brought to a judicial review before the holiday. In a motion for urgent remedy of November 14, 2004 (in HCJ 10043/03 and HCJ 1034/04), the Petitioner informed that:

During last week and the past few days **HaMoked: Center for the Defence of the Individual was flooded with requests from Israelis, waiting for the holiday hoping to see their loved ones in the Gaza Strip**. No answer as to whether or not the visits would take place could be given to them. Now they can only pray that the volatile reality will not bring another event close to Id Al-Adha... which will foil the possibility of visiting until next year.

Whether the decision of the Defense Minister is justified or not – and this question is not suitable for judicial clarification by this instance - it requires a change in the Respondent's position: Among other things, **such that visiting family in the Gaza Strip is not restricted only to one or two times during the year** (emphasis added).

A copy of the motion for urgent remedy of November 14, 2004 and the Court decision of November 15, 2004 are attached and marked **P/3** and **P/4**.

15. Further to the aforementioned, the Petitioner submitted a Petition, on January 17, 2005, in the case of that year's Id Al-Adha visits (HCJ 552/05).

Following submission of the petition, the Respondents announced that although it was not possible to have the Id Al-Adha visits as usual, in the absence of security circumstances, **the Respondents would inform about an alternative time to visit**. The parties submitted a notice by consent to the Court and a request to cancel the hearing and repeated the same in an updated notice of March 3, 2005 as follows:

In general, in cases where the visit is not possible on the planned date due to security circumstances, an alternative visiting period shall be determined (emphasis added).

A copy of the updated notice on behalf of the Respondent of March 3, 2005 is attached and marked **P/5**.

16. **The Respondent repeated his commitment to these criteria in an additional updated notice, which was submitted to this Honorable Court within HCJ 552/05 on July 7, 2005, according to which:**

Indeed, an alternative visiting period took place in mid February and according to the information kept with the Respondent, many hundreds of Israelis used the visiting period to visit their relatives. In addition, the **Respondent has decided that as a rule, in cases where the visit is not possible on the planned date due to security circumstances an alternative visiting period shall be determined** (emphasis added).

A copy of the updated notice on behalf of the Respondent of July 7, 2005 is attached and marked **P/6**.

17. The Petition in HCJ 552/05 was deleted as per the Petitioner's request (and with the Respondent's consent), on September 22, 2005. In its notice, the Petitioner indicated that:

It is clear, in the Petitioner's opinion, that the Respondent's undertakings on this subject in this Petition and in previous petitions (HCJ 10043/03 and HCJ 1034/04) continue to be incumbent upon him (and the State) in his capacity as OC Southern Command as well in accordance to Section 24 of Disengagement Plan Implementation Law, 5765-2005, as they were incumbent upon him when his power to issue permits was under military legislation in the Gaza Strip (emphasis added).

The Respondent did not dispute it.

A copy of the Petitioner's notice of September 22, 2005 is attached and marked **P/7**.

18. And now, even after the implementation of the "Disengagement Plan", the State of Israel continues to control the crossings to the Gaza Strip including the Erez checkpoint. Less than two months after

the completion of the Disengagement Plan, in the beginning of November 2005, Id Al-Fitr was celebrated.

19. As the holiday drew near, and the Respondent had not yet announced the holiday visit procedure, the Petitioner had to bring another petition before this Honorable Court (HCJ 10135/05). In this Petition, the Petitioner asked that the respondent comply with his undertaking given in HCJ 10043/03, HCJ 1034/04 and HCJ 552/05 and allow the visit to the Gaza Strip on Id Al-Fitr, according to the criteria which had been formulated up to that point.

20. In a preliminary response to the Petition, dated October 31, 2005, the Respondents announced that:

During the holiday of Id Al-Fitr, **500 Israelis** wishing to visit immediate relatives **will be permitted to enter Gaza each day (during the four days of the holiday)**. In addition, the entry of non immediate Israeli relatives in humanitarian cases shall be examined, above the mentioned quota. Of course, the aforesaid rule is subject to the absence of an individual security preclusion (emphasis added).

A copy of the Respondent's response of October 31, 2005 is attached and marked **P/8**.

21. In an updated notice by the Respondent dated November 1, 2005, the Respondents informed that following an additional examination it was decided **to remove the above quota** as follows:

The respondent wishes to inform the Honorable Court that following an additional examination it was decided to remove the above quota. Therefore, the entry of Israelis into the Gaza Strip to visit immediate family members shall be permitted without quota [...] and in the absence of an individual security preclusion (emphasis added).

A copy of the updated notice of November 1, 2005 is attached and marked **P/9**.

22. At Christmas of December 2005 and Id Al-Adha of January 2006, the entry of citizens and residents of Israel to visit immediate family members in the Gaza Strip, in accordance with the criteria formulated in the above mentioned Petitions, was possible.

The procedure of the visits was made public by the Gaza Coordination and Liaison Administration, and the service to the Israeli visitors who contact the Israeli Desk [of the administration] and waiting to enter Gaza at the Erez checkpoint improved.

A copy of the letter of the Legal Advisor for the Gaza Strip of December 21, 2005 (Christmas 2005 visits) is attached and marked **P/10**.

A copy of the Petitioner's letter of February 19, 2006 (after the Id Al-Adha 2006 visits) is attached and marked **P/11**.

23. As is known, following the elections for the Palestinian Authority, after which a Hamas government was sworn in, on March 25, 2006, the Government of Israel passed [Resolution No. 4700](#) on April 11, 2006.
24. Resolution 4700 determined, inter alia, that in light of the fact that the Hamas government does not recognize the existence of the State of Israel and the agreements signed with it and “has not disavowed the path of terrorism....the State of Israel and all its official representatives will not hold ties with the Palestinian Authority and its elements” (hereinafter: **Government Resolution**).
25. **Nevertheless**, and despite the clear position of the Government of Israel about severing relations with the Palestinian Authority and even more so with the governing bodies in the Gaza Strip, **the Respondents continued allowing holiday visits to the Gaza Strip according to the criteria established in the state’s announcements and undertakings** (part of HCJ 10043/03, HCJ 552/05, HCJ 10135/05 and HCJ 8451/06 mentioned above), **even in times of security unrest, as detailed below**.
26. Thus, at the end of April and beginning of May 2006, when the Catholic and Greek Orthodox Easter were celebrated, Lieutenant Meital Zarihan of the Office of the Legal Advisor for the Gaza Strip informed in a letter dated April 9, 2006 (in response to a letter from HaMoked: Center for the Defence of the Individual dated March 6, 2007[sic]), that family visits during Easter of 2006 were approved by the Respondents, as follows:

I hereby acknowledge receipt of your letter referenced above and answer as follows: **A Christian Israeli seeking to leave Israel** to visit immediate family members **in the Gaza Strip during Easter**, can submit an orderly application to the “Israeli Desk” at the Coordination and Liaison Administration at “Erez” [...] **The IDF Spokesman has issued a press release** regarding humanitarian relaxation of restrictions granted to the Palestinian population on the occasion of the Christian holidays in April [...] (emphasis added).

A copy of the response letter of April 9, 2006 is attached and marked **P/12**.

27. Following the aforesaid and shortly before Id Al-Fitr of 2006, in a letter dated October 15, 2006 (in response to a letter from HaMoked: Center for the Defence of the Individual dated September 11, 2006), Ms. Osnat Mandel, Director of the State Attorney's HCJ Petitions Department stated that the Respondents would not allow Id Al-Fitr visits, as follows:

[...] I am hereby responding as follows: After the letter was examined by the security officials and came to the attention of the Defense Minister, **it was decided not to allow** the entry of Israelis into the Gaza Strip for holiday visits. This, among other things, is due to the inability to coordinate the entry of visitors with the Hamas government (emphasis added).

A copy of the response letter of October 15, 2006 is attached and marked **P/13**.

However, after HaMoked submitted a petition to this Honorable Court (HCJ 8451/06), the Respondents retracted their decision and announced that family visits to the Gaza Strip would be held as usual during Id Al-Fitr of 2006.

28. This is the place to emphasize, that the Respondents' decision, as presented in the Respondents' notice (in HCJ 8451/06 above), was given due to **political considerations** and the security reasons, which are listed by the Respondents using identical wording in each and every one of their submissions to the Court in response to petitions in which the requested remedy is the entry of Israelis into Gaza Strip, and yet, **despite these sound words**, they allow the entry of Israeli citizens and residents into the Gaza Strip to visit their families during the 2006 Id Al-Fitr holiday, as follows:

During Id Al-Fitr, entry into the Gaza Strip will be allowed for Israelis wishing to visit their immediate family members for 48 hours during the holiday [...]

According to the assessment of security officials, the entry of Israelis into the Gaza Strip and travel by Israelis between the Gaza Strip and Israel create significant security risks, both due to a real threat to their personal safety, given the anarchy currently present in Gaza Strip, and due to real concern that they would become involved with or used by, terrorist elements. In light of the prevailing security situation and intelligence assessments about highly motivated Palestinian terror organizations wishing to carry out serious terror attacks, it was decided to limit current border crossings by Israelis between Israel and the PA territories in Gaza [...] (emphasis added).

A copy of the Respondents' notice of October 19, 2006 is attached and marked **P/14**.

In this regard, it is important to note that **the withdrawal of Respondents' decision**, in October 2006 as mentioned, and **their decision to comply with the undertakings they had given in their submissions to the court** regarding the criteria for entry of Israelis into the Gaza Strip and the holding of regular holiday visits to immediate relatives , **following which** some 2,300 Israelis **entered Gaza** and realized their rights to family life, freedom of worship and freedom of movement, **were made after** the abduction of Gilad Shalit (on June 25, 2006), **and against the backdrop of "Operation Summer Rains"**— a time when **IDF units were deep inside the Gaza Strip in combat positions!**

29. Thus, notwithstanding the importance of the political considerations and security reasons, the **Respondents did allow the holiday visits on Id Al-Fitr 2006** (subject to the restrictions of immediate family relations with spouses and minors, for 48 hours during the holiday), all according to the criteria established in the State's notices and its undertakings (in HCJ 10043/03, HCJ 552/05, HCJ 10135/05 and HCJ 8451/06) mentioned above.

30. On December 13, 2006 and following a letter sent the Respondent by HaMoked on November 30, 2006 in order to allow family visits on Id Al-Adha and Christmas (at the end of 2006 and beginning of 2007), the Respondent replied that he would allow family visits in Gaza on Id Al-Adha holiday as usual:

On the occasion of Id Al-Fitr, the defense authorities shall allow entry of Israelis, immediate family members, to visit their relatives residing in the Gaza Strip. Entry will be allowed between December 29, 2006 and January 1, 2007, from 08:00 A.M. to 6:00 P.M. (emphasis added).

A copy of the notice of the Erez Coordination and Liaison Administration spokesman of December 12, 2006 is attached and marked **P/15**.

31. On December 17, 2006 Lieutenant Haim Sharvit of Office of the Legal Advisor for the Gaza Strip, told a HaMoked staff member in a telephone conversation **that Christmas visits during January 2007 would also take place as usual.**

32. The same was true for Easter in April 2007.

In a letter dated March 6, 2007, HaMoked contacted the Respondents requesting them issue notice that Easter 2007 visits would be held as usual. **When no response was received**, HaMoked was forced to petition this Honorable Court (HCJ 2823/07).

Indeed, following the submission of the Petition, the Respondents informed the Honorable Court that in accordance with the State's undertakings in the above mentioned Petitions, the entry of Israelis to visit their families in the Gaza Strip for Easter had been allowed, as follows:

The entry of Israeli citizens and residents into Gaza as part of the Easter holiday visits between April 29, 2007 and March 31, 2007 has been **approved by the Defense Minister, in accordance with the State's undertakings given in HCJ 10043/03, HCJ 552/05, HCJ 10135/05 and HCJ 8451/06** (emphasis added).

A copy of the Respondents notice of March 30, 2007 in HCJ 2823/07 is attached and marked **P/16**.

September 2007 to date: Prevention of visits on holidays

33. In the beginning of September 2007, before Id Al-Fitr, HaMoked, contacted the Respondents and requested that they once again announce regular Id Al-Fitr visits. On October 1, 2007, Lieutenant Colonel Uri Singer, Head of Operations in the Gaza District Coordination and Liaison Office, informed HaMoked's representative that a decision had not yet been made by the Defense Minister regarding visits during the coming holiday.

34. On October 3, 2007, considering the fast approaching holiday, HaMoked filed a Petition to the High Court of Justice (HCJ 8250/07), in which the Respondents were asked to explain why holiday visits

to Gaza by Israeli residents and citizens are not permitted and this in accordance with the undertakings given by the Respondents in HCJ10043/03, HCJ 552/05, HCJ 10135/05, HCJ 8451/06 and HCJ 2823/07 **and why they should not provide for an alternative visit if the visit on Id Al-Fitr was not possible, and this in accordance with the Respondents' notice in HCJ 552/05 to which the Respondents are committed.**

35. In their preliminary response to the Petition, the Respondents claimed that the entry of Israelis into Gaza and their travel to and from the Strip “create significant security risks” and therefore it is impossible to allow the visit on Id Al-Fitr. The Respondents based their response on “the special security situation since Hamas took over the Gaza Strip (control which also has political aspects)” and informed that it was decided “not to allow at this time entry of Israeli residents and citizens into Gaza during Id Al-Fitr”. However, they also informed, on which the Court relied in its judgment that “this decision is and will be examined in the future, and the issuance of permits for entry into Gaza to Israelis shall be considered when security circumstances permit”.
36. In the hearing of October 9, 2007, in light of the special and exceptional security situation (immediately after Hamas took over the Gaza Strip and before it was possible to predict the situation) the Petitioners accepted the Honorable Court’s comments and withdrew their Petition and it was deleted as per their request on October 10, 2007.
37. After two years, in August 2009, HaMoked contacted the Respondents again with a request to allow family visits during the holiday as in the past. When Respondents failed to respond to repeated requests, HaMoked filed a Petition to the High Court of Justice (HCJ 7235/12) in which the Respondents were asked to explain why they should not allow holiday visits during Id Al-Fitr and why they should not allow an alternative visit if the visit in Id Al-Fitr was not possible, in accordance with the Respondents’ notice in HCJ 552/05.
38. In their preliminary response to the Petition, the Respondents continued to refuse allowing holiday visits and alleged that “at this time the entry of Israelis into Gaza and travel by Israelis between Gaza and Israel create significant security risks”. The Respondents emphasized again that “this decision is and shall be examined in the future, and the issuance of permits to Israelis for entry into Gaza shall be considered if and when security circumstances permit”, a claim on which the Court based its judgment, as mentioned again below.
39. In its judgment of September 9, 2009, the Court rejected the Petition, holding that: “There is no denying that a prohibition on family visits, which mainly encompasses Arab citizens of Israel, impinges on protected rights and the harm it causes is severe. However, considering the real dangers that lie in permitting the visits and given the fact that the Respondents examine their policy from time to time, we do not think that this impingement is excessive”.
40. And so, for five long years the Respondents have been preventing Israelis from visiting their loved ones in Gaza and many families have been torn apart: parents and children, siblings, grandparents and grandchildren, except for extremely rare cases meeting the criteria which were formulated in the

State's undertakings as aforesaid (the entry of immediate family members wishing to visit Gaza due to "an exceptional humanitarian need" such as a wedding, engagement, serious illness, funeral etc.).

41. It is important to emphasize again these **limited and literal criteria** for the entry of Israelis into Gaza **were established on that regular holiday visits take place** – this fact cannot be denied. Without these regular visits – the criteria become draconian and entirely unreasonable and disproportionate.
42. The pain caused by this separation does not subside. Every year, on every holiday, on each day, family members suffer with grief and their longing and concern for their loved ones do not give them a rest. How can a woman not see her children for more than five years? A brother his sister? A son his elderly mother? The story of petitioners 1-6, as described below opens a window into the painful world of these separated families.
43. Given **the limited criteria for family visits relatives in Gaza, the right to holiday visits is the last option for Israeli citizens and residents to maintain their family connections with their immediate family members. Denying this right is tantamount to destroying these hundreds of families and severing their family ties.**

The parties

Petitioner 1

44. Petitioner 1, Ms. _____ Hamdan, is a 58-year-old, disabled woman, an Israeli resident who has been living in Jerusalem since her marriage in 1981. Her three sisters live with their families in Gaza and Petitioner 1 visited them during the holidays, when the Respondent permitted it. Ever since the Respondent stopped allowing these visits, the Petitioner has not seen her sisters, except for a visit in 2007, when she was allowed to leave and visit one of her sisters, who was hospitalized in Gaza after being diagnosed with a cancerous tumor.
45. On March 9, 2011, HaMoked applied on behalf of Petitioner 1 to the Respondent, in order to allow Petitioner 1 to leave for Gaza to participate in the funeral of her brother-in-law, stand by her sister and support her this difficult time. On March 14, 2012, the Respondent notified that the application of Petitioner 1 was denied, since she did not meet the criteria.
46. Thus, for five years, Petitioner 1 has not seen her sisters, neither in moments of joy, nor on holidays and or times of distress and hardship, all simply because it was her brother-in-law's funeral and not that of an immediate family member.

Petitioners 2-4

47. Petitioner 2, Ms. _____ al-Qadim, is a 34-year-old Israeli citizen who, since her marriage in 1995, has lived in 'Ar'ara in the Negev with her husband and her eight children. Her elderly parents, her five brothers and five sisters live in the Gaza Strip, and Petitioner 2 visited them during the holidays, while the Respondent permitted it. Ever since the Respondent stopped allowing these

visits, the Petitioner has not seen her parents and siblings, except for a visit in 2010, when she was allowed to leave and visit her mother, who was hospitalized.

48. Petitioner 3, Ms. _____ Mubaraq, is a 39-year-old Israeli citizen, living since her marriage in 1990 in Masudin El Azazmeh. Petitioner 4, Ms. _____ Mubaraq, the sister of Petitioner 3, is a 50-year-old Israeli citizen, living since her marriage in 1982 in Abu Krinat. The older sister of Petitioners 3-4 is the mother of Petitioner 2. She lives in the Gaza Strip and Petitioners 3-4 have not seen her for four years.
49. On April 17, 2011 HaMoked contacted the Respondent on behalf of Petitioners 2-4 asking him to allow their departure for Gaza, to see Petitioner 2's mother, who was suffering from severe pain due to spinal disk herniation. On May 1, 2012, the Respondent informed that the application was denied.
50. Thus, for two years, Petitioner 2 did not see her closest family members: her parents and siblings only because her requests did not meet the Respondent's tough criteria and did not, according to the Respondent, reflect a 'humanitarian need'. Petitioners 3-4 have not seen their older sister for four years.

Petitioner 5

51. Petitioner 5, Ms. _____ Aliwa, is a 62-year-old disabled woman confined to a wheel chair, born in Gaza Strip. By virtue of her marriage in 1968 she gained Israeli citizenship and has been living since that time with her husband and three children in Lod. Her three brothers and two sisters live with their families in the Gaza Strip, and Petitioner 5 visited them during the holidays, while the Respondent permitted it. Ever since the Respondent stopped allowing these visits, Petitioner 5 has not seen her siblings, except for a visit in 2007, when she was allowed to leave and visit her sick sister.
52. On June 3, 2012, the Petitioner contacted the Respondent asking him to allow Petitioner 5 to travel to Gaza, because her 65-year-old sister had undergone a knee joint replacement surgery and was suffering from severe pain due to a spinal disk herniation. On June 11, 2012, the Respondent informed that Petitioner 5's application was denied.
53. Thus, for five years, Petitioner 5 has not seen her siblings, either in moments of joy, or on holidays or times of distress and hardship, all simply because the medical problems and surgeries of her siblings were not 'severe enough'.

Petitioner 6

54. Petitioner 6, Mr. _____ Darwish, is a 47-year-old Israeli resident, living in Jerusalem. The Petitioner's younger sister has been living in the Gaza Strip since her marriage in 1982.
55. The Petitioners have had difficulties meeting over the years. In 2007, the sister was allowed to enter Israel, when their father passed away, but since then Petitioner 6 and his sister have not seen each other. On May 5, 2011 HaMoked contacted the Respondent on behalf of Petitioner 6 asking him to

allow him to leave for Gaza to see his sister, who was hospitalized due to severe abdominal pain and heavy bleeding, and had to undergo a hysterectomy. On May 31, 2011, the Respondent informed that the application of Petitioner 6 was denied, “due to failure to meet the criteria”.

56. Thus, for five years, Petitioner 6 has not seen his sister, and did not stand by her side during her surgery, only because her medical condition was not serious enough, according to the Respondent.

Petitioner 7

57. Petitioner 7 (Hereinafter: **HaMoked Center for the Defence of the Individual or HaMoked**) is a human rights not-for-profit organization. It was the petitioner in previous petitions in which the arrangement for entry of Israeli citizens and residents to visit their relatives in Gaza Strip during Muslim and Christian holidays was achieved (within HCJ 10043/03, HCJ 1034/04, HCJ 552/05, HCJ 10135/05, HCJ 8451/06 and HCJ 2823/07).

The Respondents

58. Respondent 1 (Hereinafter: **The Respondent**), OC Southern Command, is authorized to approve the entry of Israelis into the Gaza Strip on behalf of Respondent 3, the State of Israel, which has controlled the crossings into and out of the Gaza Strip for over forty years.

In the past he was vested with this authority as the military official who commanded military forces in the Gaza Strip on behalf of Israel and pursuant to a military order, which established that the Gaza Strip was a closed military area. Today, he exercises the same power according to his interpretation of Sec. 24 of the Disengagement Implementation Law, 5765-2005.

59. Respondent 2, the Defense Minister, is the competent official to issue security directives subject to Israeli constitutional and administrative laws, balanced with human rights law.

Exhaustion of Remedies

60. On June 5, 2012, HaMoked contacted the respondents asking to allow, again, family visits during the holiday, as in the past. In its letter, HaMoked stressed that for the past five years family members had been prevented from seeing their relatives, and they were yearning to meet and celebrate Id Al-Fitr together.

A copy of HaMoked’s letter to the Respondents, dated June 5, 2011 is attached and marked **P/17**.

61. On June 12, 2012, a notice from the respondent was received, stating that for the month of Ramadan he had decided on a number of mitigating measures, which did not include allowing meeting of relatives, and that “southern command recommends not to allow the entry of Israelis into the Gaza Strip during Ramadan”.

A copy of the Respondent’s response of June 12, 2012 is attached and marked **P/18**.

62. On July 12, 2012, the reply of the Respondent's legal advisor was received, according to which the Respondent had decided "not to accede to your request regarding granting Israeli citizens and residents a permit to enter Gaza during said holiday, for security reasons".

A copy of the Respondent's reply of July 12, 2012 is attached and marked **P/19**.

63. Under these circumstances, the Petitioners have no recourse but to take legal action.

The Legal Argument

The right to family life and the right to freedom of worship

64. The right to family visits during the holidays was recognized by the Respondents, and for a reason. It is a right derived from the right to family life and the right to freedom of worship.

65. The right to family life amalgamates the preservation of the inherent character contained in the unique fabric of the family, including financial and moral support, physical help, self fulfillment, identity.

66. The Supreme Court has repeatedly emphasized, in many judgments, the great importance of the right to family life, and particularly in the **Adalah** judgment. Thus, for example President Barak wrote in Section 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.

([HCJ 7052/03 Adalah v. Minister of the Interior](#), TakSC 2006(2) 1754 (2006)).

And in another context it was said that:

Israel is obligated to defend the family unit by virtue of international conventions.

(HCJ 3648/97 **Stamka v. Minister of the Interior** IsrSC 53(2) 728, 787).

67. Article 46 of the Hague Regulations, which constitutes customary international law, establishes:

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

68. It should be emphasized that in customary humanitarian international law as well, the right to family life constitutes a basic right:

Family life must be respected as far as possible.

(Henckaerts J.M. Doswald-Beck L. Customary International Humanitarian Law, Vol1: Rules. ICRC (2005). pp.379-383).

See also:

Article 27 of the Fourth Geneva Convention 1949;

Article 10 of the Covenant on Economic, Social and Cultural Rights 1966;

Articles 17 and 23 of the Convention 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.

69. The right to freedom of religion and worship includes the right to practice holiday customs and commandments. As described above, the holiday of Id Al-Fitr has tremendous importance for families. During the holiday, families rejoice together, dine together and ask forgiveness from each other. On the right to freedom of worship see:

[**HCJ 10356/02 Yoav Haas v. IDF Commander in the West Bank**](#), IsrSC 58(3), 443 (2002)
paragraph 19;

HCJ 3261/93 Mening v. Minister of Justice, IsrSC 47(3), 282 (1993);

CA 6024/97 Shavit v. Hevra Kadisha Rishon LeZion, IsrSC 53(3), 600 (1999).

70. Even without the criteria which have already been established, the Respondent would have had to exercise his authority and allow holiday visits. This is so in light of the rights the realization of which depends on the visits and in the absence of a superseding security reason to prevent them (as can be seen from past visits, in which thousands of visitors participated, without any negative security implication – even after the elections in which the Hamas government was elected).

71. As argued above, the holiday visits are a humanitarian issue of the first order. The right to family life and the right to freedom of worship are rights that were acknowledged in Israeli constitutional law as well as international human rights law and International humanitarian law. Therefore, the decision of the Security-Political Cabinet, which left “humanitarian aspects” out of the restrictions, must affect the state’s undertakings to allow holiday visits. Moreover, the residents of Gaza generally cannot enter the territory of Israel in order to visit their family members who are citizens and residents of Israel. Therefore, the **cancellation of holiday visits in Gaza for citizens and residents of Israel is first and foremost an infringement of the right to family life, freedom of worship and freedom**

of movement of citizens and residents of Israel who wish to visit their family members who reside in Gaza.

Lack of reasonableness and proportionality

72. As described above, the restrictive criteria that were established in the matter of the entry of Israelis into Gaza for family visits, whereby such visits are allowed only for visiting immediate family members in rare circumstances such as: a wedding, serious illness and funeral, were established on the basis of the existence of regular holiday visits, i.e. under the assumption that these family members see each other, regularly a few times a year.
73. Without regular visits during the holidays, these restrictive criteria become the only way for family members to see each other. Under these circumstances, the established criteria are draconian, unreasonable and disproportionate.
74. Thus, as demonstrated by the description of Petitioners' predicament, many family members cannot see each other for many years: individuals do not get to see their elderly parents in their final years and their entry is allowed only for the funeral; parents do not meet their children's partners and see them for the first time at their wedding; individuals do not see their ailing siblings and their applications to visit them are approved only when the illness becomes life threatening.
75. In the absence of exceptional events – when a relative in Gaza is alive, healthy and is not getting married – his relative in Israel has no way to visit him. He cannot participate in his birthday, cannot congratulate him for completion of studies, cannot rejoice upon the birth of his children and cannot support him when he mourns the death of his spouse. In most cases, family members have no way to maintain their family ties, and the family fabric disintegrates.
76. The Petitioners wish to clarify that every day hundreds of people travel through the Erez crossing, among them women whose husbands reside in Gaza, diplomats, businessmen, patients from Gaza who need treatment in Israel, residents of the Occupied Palestinian Territories who seek to travel between the West Bank and Gaza and also Israelis who enter to visit their relatives under the above mentioned criteria and others. However, for five years the Respondent has refused to allow holiday visits even subject to conditions and quotas. Under these circumstances, it is difficult to see how his decision is reasonable.

For information about activity at the Erez crossing, see COGAT website:
<http://www.cogat.idf.il/1930-en/Cogat.aspx>

77. The infringement of the right of members of a family to maintain their family fabric does not subside with time. On the contrary: each passing day, the infringement increases and their longing for their loved ones becomes more painful. **The longer the Respondent continues to prevent holiday visits, the more unreasonable and disproportionate his decision becomes.** Honorable Justice Procaccia's remarks in HCJ 6358/05 in the matter of restricting the right to leave the country are appropriate for our case:

As time passes and the orders are extended time after time, the relative weight of the harm to the basic right of the individual in relation to the security purpose increases. The competent authority must consider the passage of time whenever it reconsiders the necessity of renewing the restrictions on the Petitioner in the future. In the balance it makes, from time to time, between the conflicting considerations, it must give proper weight to the element of time, as even a decision which is reasonable in certain circumstances may become unreasonable under changing circumstances (**HCJ 910/85 Ressler v. Defense Minister**, IsrSC 42(2), 441). Like administrative detention which cannot continue indefinitely, so other restrictions on personal freedom cannot go beyond “the breaking point”, after which they cease to be proportional (compare the remarks of President Barak in CrimFH 7048/97 **A's v. Defense Minister**, IsrSC 54(1), 721, 744 and HCJ 11026/05 **Abu Ara v.IDF Commander Judea and Samaria**, (not yet published). The passage of time may constitute a changing circumstance that must be considered as a factor which adds weight to the infringement of the Petitioner's basic freedom, which is caused due to the restrictions imposed on him.

(**HCJ 6358/05 Vanunu v. OC Home Front Command**, TakSC 2006(1) 320, Paragraph 19 (2006)).

For all these reasons, this Honorable Court is requested to issue an Order Nisi as sought in the Petition's heading and render it absolute after receiving the Respondent's reply. In addition, the Court is asked to instruct the Respondent to pay Petitioners' expenses and legal fees.

July 22, 2012

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[Our File 31706]