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**At the Supreme Court**  
**Sitting as the High Court of Justice**

**HCJ 8027/21**

In the matter of:

1. \_\_\_\_\_ **Abu Altayef, ID No.** \_\_\_\_\_
2. \_\_\_\_\_ **Abu Altayef, ID No.** \_\_\_\_\_
3. \_\_\_\_\_ **Abu Jazar, ID No.** \_\_\_\_\_
4. \_\_\_\_\_ **Karim, ID No.** \_\_\_\_\_
5. **HaMoked - Center for the Defence of the Individual founded by Dr. Lotte Salzberger - Registered Association No. 580163517**
6. **"Gisha – Legal Center for the Freedom of Movement" - Registered Association No. 580438174**

Represented by counsel, Adv. Aaron Miles Kurman (Lic. No. 78484) and/or Maisa Abu Saleh-Abu Akar (Lic. No. 52763) and/or Daniel Shenhar (Lic. No. 41065) and/or Benjamin Agsteribbe (Lic. No. 58088) and/or Nadia Daqqa (Lic. No. 66713) and/or Tehila Meir (Lic. No. 71836)

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**The Petitioners**

**v.**

1. **GOC Southern Command**
2. **Coordinator of Government Activities in the Territories**
3. **Gaza District Coordination Office**

Represented by the HCJ Department  
at the State Attorney's Office, Ministry of Justice,  
31 Salah-a-Din Street, Jerusalem  
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## The Respondents

### Petition for Order *Nisi*

Petition for order *nisi* is hereby filed which is directed at the Respondents ordering them to appear and show cause:

- 1) Why they would not amend the "divided families" procedure in a manner which would protect the basic right of Israeli residents and citizens to regular family life with their parents, Gaza residents, at least in the same manner that the current version of the procedure protects said basic right of Israeli residents and citizens with their spouses (by marriage), residing in Gaza;
- 2) and at least, why they would not amend the "divided families" procedure in a manner which would protect the basic right of adult Israeli residents and citizens to regular family life with their parents, Gaza residents, at least in the same manner that the current version of the procedure protects said basic right of minor Israeli residents and citizens.

### Preface

Usually a person's most valuable asset is the mental connection between parents and their natural child, whom they regard as the fruit of their love, their own flesh and blood and the next generation carrying their genetic heritage.

(CA 488/77 **A v. Attorney General**, IsrSC 32(3) 421, 441 (1978)).

It is our initial 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'... the family relationships, and the protection of the family and its basic elements (the spouses and their children), lie at the basis of Israeli law. The family has an essential and central purpose in the life of the individual and in 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 Legal Centre for Arab Minority Rights in Israel v. Minister of the Interior**, IsrSC 61(2) 202, para. 25 of the opinion of President Barak (2006)(References were omitted).

The connection between a child and his parents and the commandment to honor one's parents is a basic and sacred principle of Israel heritage from ancient times and any human society of culture; it is the fifth of the Ten Commandments: 'Thou shall honor your father and your mother' (Exodus 20:1–21; Deuteronomy 5:1–23). The reason for that being that 'a person is created by three: God, his father and his mother' (Kiddushin 30, 2[13]). Go and learn the importance attributed to the commandment to honor one's parents by our scholars as reflected in the

story about Rabbi Tarfon (one of the most well-known scholars of the first century): 'Rabbi Tarfon had an old mother. Whenever she went to bed he kneeled before her and she climbed on him, and whenever she woke up he bent over and she stepped down on him. One day he spoke highly of himself in the synagogue. They told him: you have not even fulfilled half of the commandment. Did she throw your wallet to the ocean and you did not scold her?' (Kiddushin, 31, 2 [13] translated into Hebrew...).

(CA 1482/92 **Hagar v. Hagar**, IsrSC 47(2) 793, 805 (1993)).

1. The fifth Commandment states "Thou shall honor your father and your mother" rather than "Thou shall honor your father and your mother until you are 18 years old". However, for almost a generation, the state of Israel almost completely denies its adult residents and citizens from properly honoring their fathers and mothers residing in Gaza, since the "divided families" procedure – the only mechanism enabling Israeli residents and citizens whose father or mother is a Gaza resident, to realize their basic right to regular family life with the Gaza parent – applies only to Israelis until they "18 years of age".
2. As specified below, this petition seeks to revoke the age limitation established in the "divided families" procedure, so as to enable Israelis to realize their basic right to regular family life with their Gaza parents – and uphold the basic human value of honoring one's parents – throughout their entire life.

## **Factual Infrastructure**

### **A. Background**

3. This petition mainly concerns a small and a single group of Israeli residents and citizens (hereinafter: "**Israelis**") having one Israeli parent and another parent who resides in Gaza. These are children of "divided families" (as these Israelis shall be hereinafter referred to below), namely, the Israeli children of spouses (by marriage) one of whom is registered with the Israeli population registry (either as a citizen or as a resident), while the other is registered with the Palestinian population registry and is a Gaza resident. As specified below, Petitioners 1-4 (hereinafter: the **Petitioners**), are adult children of "divided families".
4. For about a decade and a half, a single mechanism protects, even if only partially – the basic right of the vast majority of children of "divided families" to regular family life, in general, and to regular family life with their Gaza parents, in particular. It is the "divided families" procedure (hereinafter: the "**Divided Families**" **Procedure** or the **Procedure**).
5. The "Divided Families" Procedure was created to diminish and mitigate to a certain extent the severe harm inflicted on the basic right to family life of children of "divided families" and their parents as a result of the sweeping prohibitions imposed by the Respondents on the exit of Israelis to Gaza and their stay therein, and on the entry of Gaza residents to Israel and their stay therein, in general, and particularly in the framework of family unification as well as for the purpose of short family visits.
6. On the one hand, since 2002, the state of Israel substantially limits the right of Gaza residents married to Israelis – to receive status in Israel – including their right to receive stay permits therein. This policy was initially entrenched in government resolution No. 1813 from May 2002, and subsequently in the Citizenship and Entry into Israel (Temporary Order) Law, 5773-2003 (hereinafter: the **Temporary Order**). Upon the

adoption of government resolution No. 3598 (dated June 15, 2008), the prohibition against family unification between Israelis and Gaza residents became absolute.

7. It should be noted here that although the Temporary Order expired on July 6, 2021, its provisions are still implemented by the Ministry of Interior as if the law is still in force (for this purpose see AP 25402-09-21 **Khatib v. Minister of Interior**; and AP 2038-08-21 **Karmawi v. Population and Immigration Authority** (respondent's preliminary response dated October 20, 2021)). In addition, according to the current version of the "Unclassified Status of Authorizations for the entry of Palestinians into Israel, their passage between the Judea and Samaria Area and Gaza Strip and their travelling abroad" (its updated version as of December 20, 2020) (hereinafter: the **Status of Authorizations**), Respondents' policy concerning the issue of temporary stay permits to Gaza residents in Israel is still based on the provisions of the Temporary Order (see section 1(b) of the "General" chapter).

A copy of the preliminary response in AP 2038-08-21 is attached and marked **P/1**;

A copy of the relevant parts of the Status of Authorizations is attached and marked **P/2**.

8. Accordingly, the ability to conduct regular family life in Israel was completely denied from all divided families which were created in the last two decades. For almost an entire generation, the entry of a Gaza resident into Israel and their stay therein, for the purpose of maintaining family life under one roof together with their Israeli spouse and children, is prohibited. At the same time, the right of a Gaza resident to visit their Israeli spouse and children in Israel is also extremely limited. As established in the Status of Authorizations, in most cases, the Gaza resident shall be permitted to temporarily stay in Israel and meet at least some members of their nuclear family unit, only in certain cases in which one of the family members suffers a severe illness or is hospitalized, is getting married or passed away (see Status of Authorizations, chapter B and the Gaza Strip – Table of Permits).
9. It should already be emphasized that the decision of the honorable court which recognized the validity of the Temporary Order in 2006, was based on the possibility to conduct regular family life in the territories (the Gaza Strip in the case at hand), the above according to the state's argument in said case that the order was proportionate and constitutional because it did not completely deny the right to family life, but only restricted it, since it could be exercised in the territories. As stated by the then president Barak:

With respect to the right to family life, the respondents claim that the Temporary Order 'does not prevent family life, nor does it limit the autonomy to choose a spouse, nor does it nullify the right to family life; rather, it does not allow the realization of the right specifically in the State of Israel'

...

Human dignity as a constitutional right applies to the right of an Israeli to establish a family unit and realize it in Israel... Certainly the Citizenship and Entry into Israel Law does not prevent the Israeli spouse from marrying their spouse from the territories. The freedom to marry is maintained. **Moreover, usually the Israeli spouse is not prevented from moving to the territories ('Every person is free to leave Israel:' Section 6(a) of the Basic Law: Human Dignity and Liberty).** Thus they are entitled, of course, to realize their right to establish the family unit outside Israel. **I assume — without having had all the details submitted to us in this regard — that in most**

**cases the Israeli spouse will receive a permit from the military commander to enter the territories.**

(HCJ 7052/03 **Adalah Legal Centre for Arab Minority Rights in Israel v. Minister of the Interior**, IsrSC 61(2) 202, paragraphs 14 and 42 of the opinion of President Barak (2006) (Emphases added) (hereinafter: **Adalah**)).

10. However, on the other hand, as of 1994 when Israel has started to transfer to the Palestinian Authority certain powers in the territories and in Gaza, and more forcefully, as of the eruption of the second *intifada* by the end of 2000, severe restrictions are imposed by the Respondents on the entry of Israelis into the Gaza Strip. Said restrictions were entrenched in primary legislation upon the implementation of the disengagement plan and cancellation of military regime in Gaza (which were carried out pursuant to government resolution No. 4235 dated September 11, 2005 and the Proclamation regarding the end of the military regime which was executed on the following day by the Commander of IDF Forces in the Gaza Strip Area). According to sections 2(a), 22(a), 23(e) and 24(a) of the Disengagement Plan Implementation Law, 5765-2005, and the Disengagement Plan Implementation (Gaza Strip) Decree, 5765-2005, the entry of Israelis into the Gaza Strip and their stay therein is **prohibited**, without a permit issued for this purpose on behalf of Respondent 1 (See, in that regard, paragraph 6 of the judgment of the Honorable Justice Procaccia in HCJ 10336/06 **Abu Huza v. GOC Southern Command** (reported in Nevo, December 27, 2006) ("According to section 24(a) of the Disengagement Plan Implementation Law, 5765-2005, an Israeli shall not enter the Gaza Strip territory without a permit issued on behalf of the Commander. The body vested with the authority to approve the entry of Israelis into the Gaza Strip is the GOC Southern Command")).
11. After the Hamas organization assumed power in the Gaza Strip in June 2007, stricter limitations were imposed on the entry of Israelis to Gaza. In its resolution 34/B dated September 19, 2005, the Ministerial Committee of National Security of the Government of Israel defined the Gaza Strip as a "hostile area", being under the control of the Hamas organization (which was declared in said resolution a "terror organization") (HCJ 5268/08 **Inbar v. GOC Southern Command**, paragraph 1 of the judgment of the Honorable Justice Hayut (as then titled) (citing from the resolution of said committee dated September 19, 2007) (reported in Nevo, December 9, 2009)). "In view of the above" it was declared by the committee that "additional limitations shall be imposed on Hamas regime... and limitations shall be imposed on the movement of individuals to and from the Gaza Strip" (*Ibid.*). Accordingly, by the end of 2007, the Respondents stopped allowing Israelis (together with their minor children and spouses) to visit their immediate family members in Gaza during the two major holidays (according to their religion), which was permitted a few years earlier (on the issue of holiday visits see HCJ 10043/03 **Abajian v. Commander of IDF Forces in the Gaza Strip**; HCJ 552/05 **HaMoked Center for the Defence of the Individual v. Commander of Military Forces in the Gaza Strip**; and HCJ 2823/07 **HaMoked Center for the Defence of the Individual v. GOC Southern Command**).
12. Consequently, as of the end of 2007 to date, Israelis are allowed to enter Gaza – other than under the "Divided Families" Procedure or for specific work purposes – only in exceptional humanitarian circumstances. As currently stated in the Status of Authorizations (section 7(c)(1), Chapter B), said humanitarian circumstances include the participation of Israelis (together with their children under the age of 16) in funerals and weddings of immediate family members (including grandparents); and family visits by Israelis (together with their children under the age of 16) of immediate family members (including grandparents) in circumstances of a life threatening severe illness requiring a

long hospitalization. It should be emphasized that according to Respondent 3's "Handling Travelling Applications of Israelis from Israel to Gaza – Israeli Desk" procedure (the procedure's updated version as of February 11, 2019 (hereinafter: the **Handling Procedure**)), in said humanitarian circumstances an Israeli shall be allowed to stay in Gaza up to a maximum period of three days (section 3(g)(2)).

A copy of the Handling Procedure is attached and marked **P/3**.

### **"Divided Families" Procedure – Objectives, Development and Provisions**

13. Hence, but for a separate and special arrangement designated to protect and maintain the family fabric of "divided families", the right of Israelis married to Gaza residents and the right of the children of said "divided families" to regular family life together with the Gaza spouse/parent, would have been completely denied, both within the territory of the state of Israel and in Gaza itself. Even before the holding of this honorable court in **Adalah**, the Respondents have realized that denying children of "divided families" and their parents the right to realize, within Gaza, the basic right to family life, would be inconceivable. Already by the end of 2004, the state authorities notified of the establishment of a "divided families" procedure in a version similar to the current one, enabling members of "divided families" to realize their right to family life in the Gaza Strip:

3. IDF authorities in the area [the Gaza Strip] wish to protect the family unit and the child's best interests and to uphold regular family life to the largest extent possible. The fact that one of the spouses is an Israeli resident while the other spouse is a resident of the Palestinian Authority, certainly does not make it easier to conduct regular family life, all the more so when children are involved in this reality.
4. Being aware of the above difficulty, work procedures were established with respect to divided families. According to these procedures, the Israeli spouse may submit an application, together with supporting documents, to the 'Israeli Desk' at the Erez crossing District Coordination Office (DCO), to enter Gaza for the purpose of visiting his spouse, a Gaza Strip resident.

A copy of the letter on behalf of IDF legal advisor in the Gaza Strip Area sent to HaMoked representative on November 9, 2004, is attached and marked **P/4**.

14. By the end of 2004 in the framework of H CJ 10043/03 **Abajian v. Commander of IDF Forces in the Gaza Strip**, the respondent (there) notified of his decision "not to allow... the **regular and uncontrolled** entry of thousands of Israelis into the Gaza Strip Area, even if their family members reside in Gaza." However, in the same supplementary response (No. 2) dated August 27, 2004 (paragraphs 21-22), the respondent specified several cases in which the entry of Israelis into the Gaza Strip would be allowed, including the case regulated by the "Divided Families" Procedure (underlines were added):

However, and in view of the desire to take into consideration, to the extent possible, the needs of the residents of the Palestinian Authority, as well as the desire of Israeli citizens and residents to visit their relatives residing in the Gaza Strip Area, the respondent enables, even at the time of an armed confrontation, and in the absence of specific

security preclusion, the entry into the Gaza Strip Area of... Israelis married to a person residing in the Gaza Strip Area... It should also be noted that Israelis granted with a permit to visit the Gaza Strip Area may join as companions immediate family members under 18 years of age.

A copy of supplementary response (No. 2) on behalf of the Respondent dated August 27, 2004 filed in the framework of HCJ 10043/03 is attached and marked **P/5**.

15. With the passage of time, the "Divided Families" Procedure was expanded in a manner recognizing the children of divided families, at least in certain circumstances, as having an independent right (and not only a derivative right, derived from the right of their Israeli parent) to travel to Gaza to realize their right to family life with their Gaza parents. To date the "Divided Families" Procedure is composed of different provisions appearing, *inter alia*, in the Status of Authorizations and in the Handling Procedure. The nature and scope of the right to travel to Gaza by virtue of the "Divided Families" Procedure are established in section 7(g)(2) of the Status of Authorizations, as follows:

'Divided families': Departure of Israelis whose spouses by marriage reside in the Gaza Strip ("divided families") for the purpose of uniting with their spouses together with their Israeli children up to 18 years of age. If the Israeli parent cannot travel to the Gaza Strip (only in cases of serious illness preventing their movement/death/divorce), his/her children (under 18) will be allowed to travel to the Gaza Strip to visit the Gaza parent.

- a) Children up to 16 years of age may be accompanied by one first degree relative or second degree relative (elder brother up to the age of 18, grandparent and in extraordinary cases an Israeli uncle or aunt).
- b) The permit will be given only to the Israeli family members (parents/children).
- c) Departure of children (up to the age of 18) will be preceded by the Israeli guardian's signature of a declaration waiving personal and security responsibility before the departure to the Gaza Strip.
- d) Departure of children without an accompanying parent shall be allowed for a period which shall not exceed one week.

According to section 3(g) of the Handling Procedure, permits issued according to the "Divided Families" Procedure are valid "up to six months". Moreover, by the expiration of said six month period the above permits may be renewed; In addition, whenever an Israeli who is entitled to receive a permit by virtue of the Procedure returns from Gaza to Israel, he/she is entitled to immediately apply for a new permit to return to Gaza.

### **The impact of the age cap established in the "Divided Families" Procedure on the Petitioners and others in their condition**

16. As aforesaid, during the last two decades a whole generation of Israelis was born to parents who are "divided" between Israel and the Gaza Strip. For the children of these "divided families", the "Divided Families" Procedure became the key without which they could not have realized their basic right to family life with their Gaza parents – neither in Israel nor in Gaza. According to the choices of their parents, some of the children of

these "divided families" grew up in Israel and went to Israeli schools, while frequently visiting their Gaza parents which were permitted according to the Procedure; some grew up in Gaza with both of their parents by virtue of permits which were issued according to the Procedure and which were renewed once every six months, while periodically visiting their relatives in Israel, and some moved (sometimes more than once) from Israel (where they lived only with their Israeli parent) to Gaza (where they lived with both of their parents) – or in the opposite direction – during their childhood.

17. However, when the children of these "divided families" turn 18, the only key which protected their family fabric throughout their entire life is abruptly taken from them by the Respondents. As a result of the age cap established in the "Divided Families" Procedure, said Procedure no longer applies to the children of "divided families" once they become of age. Therefore, commencing from their 18<sup>th</sup> birthday, the only cases in which the Respondents allow children of "divided families" to enter Gaza and/or stay therein are these three rare humanitarian cases specified in section 7c(1) of Chapter B of the Status of Authorizations – marriage, illness (life threatening illness or illness requiring long hospitalization) or death of a first-degree relative, the above, unless a child of a "divided family", after coming of age, decides to marry a Gaza resident and establish a "divided family" of their own.
18. Accordingly, the last family meeting which can be held within the framework of the "Divided Families" Procedure between the Israeli child and the Gaza parent – usually on or about the child's 18<sup>th</sup> birthday, may literally be the last meeting between them. According to Respondents' criteria for many years, after turning 18, a child of a "divided family", who does not have immediate family members in Gaza other than their Gaza parent who is healthy and does not re-marry, shall not be entitled to travel to Gaza to visit their parent, but only to bury them and mourn their death.
19. The severe harm caused to the constitutional right of the children of said "divided families" to regular family life, who instead of celebrating their 18<sup>th</sup> birthday by having a festive family meal are forced to have one last meal as a whole nuclear family, cannot be overstated. Just as they reach adulthood, their regular family life with their Gaza parents comes to an end.
20. The most severe harm is inflicted on children of "divided families" whose center of life on the eve of their 18<sup>th</sup> birthday is located in Gaza. Upon the expiration of the last permit which was given to them in the framework of the "Divided Families" Procedure, the presence of said children in Gaza becomes **illegal, even if they have resided in Gaza their entire lives**. Accordingly, once they reach adulthood they are forcefully expelled from their home and social environment, and are forced to separate from their Gaza parents and the other members of their nuclear family residing in Gaza.
21. In general, a young person who grew up and lived their entire life in Gaza is not prepared both mentally and financially, to leave their family and live on their own in a different place at the age of 18. Their forced move to Israel while still dependent on their parents – still going to high school and/or studying in the university and/or working and/or conducting relationships in Gaza – may completely disrupt their life and extremely encumber their ability to make a living and develop as independent adults. The harm caused to young women may even be harsher: in a society in which young women continue to live with their parents until they marry, in many cases their social status is at risk.
22. Forcing young adults, children of "divided families" whose center of life is in Gaza, to leave their family home against their will, separating them from their nuclear family, forcing them to become independent in a place which is foreign to them, without being

able to go back to their family home, while, at the same time other young Palestinians (Gaza residents, West Bank residents and Israeli residents) – as well as other young Israelis (who do not have a Gaza parent) – can enjoy their natural right to grow and live with their family until they decide to establish a family of their own, is unequal.

23. It should be noted that in 2016, in HCJ 9325/16 **Reiss v. GOC Southern Command**, the respondent was requested to renew the permit which was issued by virtue of the "Divided Families" Procedure to the petitioner, an 18 year old young woman, a child of a "divided family" who has resided her entire life in Gaza, to enable her to continue living in her parents' house in Gaza and continue with her studies in the university over there. In the hearing which was held on December 22, 2016 (about a week after she turned 19) the petitioners accepted the offer of the honorable court, which was given the force of a judgment later that day, as follows:

The petitioners shall withdraw the petition, reserving their rights and arguments if petitioner 1 wishes to enter Israel. In such an event she may submit a suitable application to the respondent, which shall be submitted in writing through the attorney's office. The petitioner may also initiate legal proceedings if the answer she receives does not satisfy her, and in the absence of answer – within reasonable time under the circumstances. When legal proceedings are initiated – the argument of delay shall not be raised against the petitioner.

While said offer enabled the petitioner to stay in Gaza as requested by her, it left the petitioner in real distress. In view of the fact that respondent's decision not to renew her permit remained in force, petitioner's presence in Gaza was officially an offense punishable by imprisonment of two years (according to section 27(a)(2) of the Disengagement Plan Implementation Law, 5765-2005). Moreover, since no promise was given to the petitioner that she would be allowed to return to her place of residence (Gaza) if she travels to Israel in the future, she found herself in a catch: to ensure that she is not uprooted from her home, she was in fact forced to relinquish her constitutional right to return to the state of her citizenship; however, if she decides to return to Israel in the future, she may be denied of her right to return to her place of residence (Gaza), and as aforesaid, she may be charged with a criminal offense for staying in Gaza without a valid permit. It should be noted that a similar problematic arrangement was offered by the respondent to a petitioner in a similar situation in HCJ 2841/11 **Abu Jazal v. GOC Southern Command** (response on behalf of the respondent dated May 17, 2011).

A copy of the judgment in HCJ 9325/16 is attached and marked **P/6**.

24. The harm inflicted on the right of children of "divided families" whose center of life is in Israel on the eve of their 18<sup>th</sup> birthday is also very severe. It is clear to anyone who has experienced the lockdowns which were imposed as of the outbreak of the corona pandemic in March 2020, that no matter how technologies such as "zoom" and "face time" enable staying in touch with family members from a long distance, there is no substitute for real physical meetings and visits in the home of your loved ones. A child who turns 18 cannot properly honor his/her father or mother, support them and take care of them as they took care of him/her when he/she was a child, if he/she cannot stand by them in joyous times and in difficult times and at any regular time in between. However, for children of "divided families" who turned 18, physical visits with their Gaza parent are not possible other than in one of the above humanitarian events, which may not occur until the demise of the said parent.

25. It should be reminded that in fact the adolescence process does not end abruptly when a child turns 18. It is a process which commences years before the child turns 18 and continues years thereafter. During the entire process, the child needs his/her parents' help, advice and support. Obviously, in order to provide these non-tangible but imperative things in the best way possible, telephone (and/or video) calls are insufficient, but rather regular physical meetings between the young adult and his/her parents are required – meetings which are completely prohibited by the respondents when the petitioners, and others in their condition, turn 18.

#### **A more limited and draconian application of the "Divided Families" Procedure**

26. In this context it should be noted that last year an alarming phenomenon has emerged: the most severe impingement on the basic right of children of "divided families" over 18 years of age to regular family life with their Gaza parent, started to permeate adulthood. In several cases, the Respondents denied permit applications submitted according to the "Divided Families" Procedure on behalf of 17 years old children, on the grounds that by the time a decision was made in said applications the child had already come of age. The above, according to an interpretation of the Procedure whereby the effective date for the age cap is the date on which the children actually travel to Gaza.
27. As was argued by Petitioner 5 in two specific petitions which were filed in these cases (HCJ 8090/20 **Abu Sahiban v. GOC Southern Command**; and HCJ 974/21 **Gafir v. GOC Southern Command**), the above interpretation is not the least injurious interpretation reconciling with the language of the Procedure and realizing the security purpose of the age cap established therein, and is also inconsistent Respondents' recognition that the current version of the Procedure does not prevent an Israeli child from staying in Gaza up to approximately six months after his/her 18<sup>th</sup> birthday. However, instead of adopting the proportionate interpretation of the Procedure, whereby the effective date for the child's age is the submission date of the permit application to enter Gaza, the Respondents notified by letter which was sent by them to the petitioners in **Gafir** that "two new provisions were updated" which are relevant, *inter alia*, to the "Divided Families" Procedure, and which are intended, *prima facie*, to reinforce the above injurious interpretation.

A copy of Respondents' letter in HCJ 974/21 is attached and marked **P/7**.

28. Hence, exactly when the first children of "divided families" who were born after the "Divided Families" Procedure was established, turn 18, for whom said Procedure is the only mechanism through which their constitutional right to family life may be realized, the Respondents, instead of expanding the Procedure and applying it to said children as adults, are trying to limit its scope even further in a manner impinging not only the family life of adult Israelis but also that of minor Israelis and the principle of the child's best interest.
29. In view of all of the above, the Petitioners whose details are specified below, request that the Respondents enable them to continue realizing their constitutional right to regular family life with their Gaza parents, according to the same provisions of the "Divided Families" Procedure which apply to their Israeli parent, or at least according to the same provisions which applied to them while they were minors.

#### **B. The Parties**

**Petitioners \_\_\_\_\_ and \_\_\_\_\_ Abu Altayef**

30. Petitioners 1 and 2, Mr. \_\_\_\_\_ (hereinafter: **Petitioner 1**) and Ms. \_\_\_\_\_ (hereinafter: **Petitioner 2**) are two siblings, Israeli citizens, whose mother is an Israeli citizen and whose father is a Gaza resident. In 2001, the mother, Mrs. \_\_\_\_\_ Abu Altayef, married her cousin, Mr. \_\_\_\_\_ Abu Altayef, a Gaza resident. Over the years the spouses had six children all of whom received the status of Israeli citizens. The Family's center of life is in Gaza. The mother and her children received stay permits in Gaza by virtue of the "Divided Families" Procedure.
31. Petitioner 1, born on January 15, 2002, is the eldest son. Petitioner 1 grew up throughout his life in Gaza, but when he turned 18 he was forced to leave his parents' home and move to Israel. The last entry permit to Gaza was issued to Petitioner 1 on August 4, 2019, valid until January 30, 2020. Since then Petitioner 1 has not met his father, and probably shall not be able to meet him, unfortunately, other than in very harsh humanitarian circumstances.

A copy of Petitioner 1 ID card is attached and marked **P/8**.

32. On October 24, 2021 Petitioner 6 submitted an application on behalf of Petitioner 1, in which the Respondents were requested to approve Petitioner 1's family visit in Gaza, some of whom he has not met since he had turned 18, and after his mother gave birth to his young brother.
33. Only two days later, on October 26, 2021, Respondent 3's answer was received which denied the application on the grounds that "it does not comply with any of the criteria [sic] which were established".

A copy of the correspondence in Petitioner 1's matter from October 2021 is attached and marked **P/9**.

34. Petitioner 2, born on May 21, 2003, grew up her entire life in Gaza, and received permits like her siblings. When she turned 18, she should have left her family home and her life in Gaza and move to Israel. As elaborated above, since Petitioner 2 is a young woman, and since in the traditional society that she belongs to it is not customary for a young woman to leave her family home before she marries, Petitioner 2 had to stay in Gaza without a permit.

A copy of Petitioner 2 ID card is attached and marked **P/10**.

#### **Petitioner \_\_\_\_\_ Abu Jazar**

35. Petitioner 3, Mr. \_\_\_\_\_ Abu Jazar (hereinafter: **Petitioner 3**) is an Israeli citizen, whose mother, Mrs. \_\_\_\_\_ Abu Jazar, is an Israeli citizen and whose father, Mr. Abu Jazar, is a Gaza resident. The spouses had eight children, with Petitioner 3 being the second child in the family. The Family's center of life, other than the father who resides in Gaza, is in Israel. Over the years the mother and her children received stay permits in Gaza by virtue of the "Divided Families" Procedure.
36. Petitioner 3 was born on August 19, 2001. Recently, on August 12, 2021, Petitioner 3 submitted a permit application to enter Gaza to take care of his sick father. On September 5, 2021, his application was denied since it "did not meet the criteria; "The patient's medical condition does not meet the criteria". As aforesaid, to meet the criteria the father should be on his death bed or confined to bed with a severe illness.

A copy of Petitioner 3 ID card is attached and marked **P/11**.

A copy of the application dated August 12, 2021, is attached and marked **P/12**.

A copy of the answer dated September 5, 2021, is attached and marked **P/13**.

**The Petitioner \_\_\_\_\_ Karim**

37. Petitioner 4, Ms. \_\_\_\_\_ Karim (hereinafter: **Petitioner 4**), is an Israeli citizen. Her mother, Mrs. \_\_\_\_\_ Karim, is an Israeli citizen, and her father, Mr. \_\_\_\_\_ Garam, is a Gaza resident. The spouses married in 2002 and had seven daughters, but Petitioner 4 is the only one who received status in Israel. The center of life of the family is in Gaza, while over the years the mother and her daughter received stay permits in Gaza by virtue of the "Divided Families" Procedure.
38. Petitioner 4, born on February 4, 2003, grew up her entire life in Gaza and received renewable permits. When she turned 18, she should have left her family home and her life in Gaza and move to Israel. In view of the fact that Petitioner 4 is a young woman, the only one of her six sisters having status in Israel, and since it is not customary for a young woman to leave her family home before she marries, Petitioner 4 had to stay in Gaza without a permit.

Copies of the ID card of Petitioner 4's mother and of the permit to travel to Gaza which was issued to Petitioner 4 on September 13, 2019, are attached and marked **P/14**.

39. Petitioner 5 (hereinafter: **HaMoked Center for the Defence of the Individual or HaMoked**) is a registered not-for-profit association located in Jerusalem which acts, *inter alia*, in the matters of Israeli citizens and residents wishing to travel to Gaza to realize their basic right to regular family life with their family members residing in Gaza.
40. Petitioner 6 (hereinafter: **Gisha**), is a human rights association acting to promote and protect freedom of movement in Israel and in the territories occupied by it, with an emphasis on the right of Gaza residents to freedom of movement by virtue of International law and Israeli law. Among other things, the association assists Israelis, Gaza residents and their children to realize their right to enter Israel and Gaza.
41. Respondent 1, GOC Southern Command (hereinafter: the **Respondent**), is vested with the authority to permit the departure of Israeli citizens and residents to the Gaza Strip from the state of Israel, which controls, for more than fifty four years the borders of the Gaza Strip and the crossings thereto.
42. Respondent 2, Coordinator of Government Activities in the Territories (hereinafter: **Respondent 2** or **COGAT**), is responsible for implementing the civil policy of the government of Israel in the west bank areas and toward the Gaza Strip, and for the coordination and communication with the Palestinian Authority and the Palestinian population in the west bank and in the Gaza Strip. The civil administration and the district coordination offices (DCOs) work under and are subject to COGAT.
43. Respondent 3, Gaza District Coordination Office (hereinafter: **Respondent 3** or **Gaza DCO**) is responsible, on behalf of respondent 2, for the implementation of the civil policy of the state of Israel toward Gaza, and for the coordination and communication with the Palestinian Authority and the Palestinian population in the Gaza Strip. In addition, Gaza DCO is authorized on behalf of the Respondent to issue to Israelis entry and stay permits in the Gaza Strip; such permit applications are submitted to the Israeli Desk at the Gaza DCO (hereinafter: the **Israeli desk**) and are handled by it.

**Exhaustion of Remedies – HaMoked's principled applications to the Respondent**

44. On March 11, 2021, HaMoked submitted a principled application to Respondent 1 (hereinafter: a **Principled Application**) demanding that the right of Israelis to regular family life with their Gaza parents shall also be maintained after they turn 18. Among other things, HaMoked demanded that the "Divided Families' Procedure be changed such that the same protection to the right to family life currently granted by it to Israelis with respect to their Gaza spouses, shall also be granted to Israelis with respect to their Gaza parents. It was demanded that the right of an Israeli minor according to the "Divided Families' Procedure as currently drafted to enter Gaza and stay therein to unite with his/her Gaza parent shall, at least, be extended and granted in the same scope after his/her 18<sup>th</sup> birthday.

45. In its said application HaMoked specified in detail the legal framework underlying its demands and explained the substantial harm inflicted on the right to family life. A copy of the application was sent to Respondents 2 and 3.

A copy of the application dated March 11, 2021 is attached and marked **P/15**.

46. The letter was sent by e-mail to all addressees and on the same day an e-mail message was received from the Respondent bearing a reference number "141977".

A copy of the e-mail messages dated March 11, 2021 is attached and marked **P/16**.

47. On April 8, 2021 an e-mail message was received from Respondent's public liaison officer notifying that an answer to the application shall be distributed by COGAT's public liaison officer.

A copy of the e-mail message dated April 8, 2021 is attached and marked **P/17**.

48. On May 18, 2021, an e-mail message was received on behalf of COGAT's public liaison officer notifying that the relevant bodies were still examining the application and that in view of the security situation, the answer may be delayed.

A copy of the e-mail message dated May 18, 2021 is attached and marked **P/18**.

49. On June 17, 2021 an answer to the application was received on behalf of COGAT's public liaison officer, whereby in view of the fact that the policy which applied to the travel of Israelis from Israel to Gaza was established by taking into account all considerations, including security considerations, it was found, after the examination of the application, that there was no need to change the current policy applicable to the movement of Israelis to Gaza.

A copy of the answer dated June 17, 2021 is attached and marked **P/19**.

50. On July 13, 2021 HaMoked sent a response to the above answer in which it was explained that in its Principled Application it did not request to change the policy which applied to the entry of Israelis to Gaza as a whole, but in fact, to remove the age cap established in the "Divided Families" Procedure, a demand which was not referred to at all in the above answer. HaMoked noted that other than general "security considerations", the Respondents did not point at any additional considerations which were taken into account while giving the answer. In addition, it was noted that the Respondents have completely disregarded the weighty considerations which were specified by HaMoked in its Principled Application. In view of the above, HaMoked reiterated its request to seriously consider the Principled Application, taking into account all relevant considerations, and primarily the severe harm inflicted on the right to family life.

A copy of the response dated July 13, 2021 is attached and marked **P/20**.

51. The response was sent by e-mail but no confirmation of its receipt was received. Therefore, on July 22, 2021 HaMoked sent again a request for confirmation of receipt. On July 25, 2021 a confirmation was received from COGAT's public liaison officer acknowledging receipt of the message and notifying that it was under examination.

A copy of the e-mail messages is attached and marked **P/21**.

52. At the same time, on July 20, 2021 HaMoked sent a letter to the Respondents with respect to the proper interpretation of the "Divided Families" Procedure as currently drafted. The letter was sent following new instructions which were published on the government website bearing on the implementation of the "Divided Families" Procedure (see sections 26-29 above). In said letter the Respondents were requested to revoke said new instructions. In addition, so long as the age cap established in the "Divided Families" Procedure was not revoked, the Respondents were requested to interpret and implement it according to the rule whereby the effective date with respect to the child's age was the application submission date rather than the actual entry date to Gaza.

A copy of HaMoked's letter dated July 20, 2021 is attached and marked **P/22**.

53. Said parallel letter was sent by e-mail but no confirmation of its receipt was received. Therefore, on July 22, 2021 HaMoked sent again a request for confirmation of receipt. On July 25, 2021 a confirmation was received from COGAT's public liaison officer acknowledging receipt of the message and notifying that it was under examination.

A copy of the e-mail messages is attached and marked **P/23**.

54. Respondents' answer to HaMoked's response dated July 13, 2021 as well as to its letter concerning the Procedure's proper interpretation dated July 20, 2021 was received on August 23, 2021, in which they have reiterated their answer dated June 17, 2021 whereby a change of policy was not required.

A copy of Respondents' letter dated August 23, 2021 is attached and marked **P/24**.

55. In view of the aforesaid, including the unreasonableness of Respondents' negative decision in Petitioner 5's Principled Application (see below), and the categoric rejection of the specific applications of Petitioners 1 and 3, the Petitioners had no alternative but to petition to this honorable court.

## **The Legal Argument**

### **A. The Legal Framework**

56. As aforesaid, the general prohibition against the entry of Israelis into Gaza, as well as the authority of the GOC Southern Command to issue permits to Israelis to travel to Gaza and stay therein notwithstanding the above prohibition, are entrenched in sections 2(a), 22(a), 23(e) and 24(a) of the Disengagement Plan Implementation Law, 5765-2005, and in the Disengagement Plan Implementation (Gaza Strip) Decree, 5765-2005. In fact, the Israeli Desk at the Gaza DCO is the body which is responsible, on behalf of the Respondent, for handling permit applications submitted by Israelis to travel to Gaza, and for examining said applications.

57. Among other things, permit applications of Israelis to travel to Gaza and stay therein are examined according to the most current procedure of the Respondents and other Israeli authorities, which is published and revised from time to time in the Status of Authorizations. Said policy document, which has the status of internal guidelines, establishes the nature of the above criteria according to which permit may be granted to Israelis to depart to Gaza, namely, the three exceptional humanitarian criteria (weddings, visiting a sick person and funerals), limited criteria relating to certain types of employment and the "Divided Families" Procedure. Additional provisions of the "Divided Families" Procedure are established Respondents' other procedures, including the Handling Procedure providing, *inter alia*, that permits issued according to the "Divided Families" Procedure shall be valid for up to six months, as opposed to permits issued according to the above humanitarian criteria which are valid up to three days.
58. While examining the proportionality of the severe violation of the basic rights of the children of "divided families – and primarily of their basic right to regular family life with their Gaza parents – caused by the age cap established in the "Divided Families" Procedure, as specified below, one should take notice not only of the additional circumstances in which Israelis are allowed to travel to Gaza, but also of the circumstances in which Gaza residents are allowed to enter Israel, particularly for the purpose of realizing their right to family life with their Israeli spouses and children. In this context, and as specified above, notwithstanding the fact that the Temporary Order has expired in the beginning of July 2021, its provisions which imposed an almost absolute prohibition on granting status to Gaza residents in Israel by virtue of family unification are still implemented by the Ministry of Interior, allegedly, according to the broad authority vested with the Minister of Interior by virtue of the Entry into Israel Law, 5712-1952, and the Citizenship Law, 5712-1952 (see Exhibit P/1 above).
59. In addition, the authority to grant Gaza residents permits to enter Israel is vested only with several Gaza DCO position holders, including the Head of the DCO, according to the "Authorization to give Permit" which was signed by the Minister of Interior on January 19, 2009 (*Rashumot*, Official Gazette 5913, page 2265 (February 5, 2009)), the above, by virtue of the authority vested with the Minister of Interior according to Section 1 of the Entry into Israel (Exemption to Gaza Residents)(Temporary Order) Decree, 5765-2005, which was issued by the Minister of Interior on September 21, 2005 by virtue of his authority according to Section 17(b) of the Entry into Israel Law, 5712-1952. The applications of Gaza residents to enter Israel are examined by the Gaza DCO, *inter alia*, according to the criteria established in Chapter B of the Status of Authorizations. As aforesaid, said criteria are still based on the Temporary Order, regardless of its expiration (see Section 1(b) of the "General" chapter of the Status of Authorizations).

**B. The Respondents prevent children of "divided families" over 18 years of age from realizing their constitutional right to regular family life with their Gaza parents**

60. As aforesaid, due to the age cap established in the "Divided Families" Procedure, children of "divided families" lose their right to visit their Gaza parents regularly and frequently – and to continue living with them in the Gaza Strip – when they turn 18. In view of Respondents' policy which prohibits, as aforesaid, almost completely the realization of the right to family life with a Gaza parent in Israel and visits of adult Israelis in Gaza other than in the framework of a wedding, illness or funeral of an immediate family member, the age cap established in the "Divided Families" Procedure actually separates children of "divided families" who turned 18 from their Gaza parents, at times for many years, and at times, forever. As aforesaid, according to Respondents' policy, the only time that a child of a "divided family" may be allowed to return to Gaza as an adult will not be to visit their parent, but only to bury them. Hence, the age cap established in the "Divided Families" Procedure in fact deprives a child of a "divided

family" who turned 18 from the ability to realize their right to regular family life with their Gaza parent.

61. The right to family life derives, *inter alia*, from the right to human dignity and is one of the most important fundamental natural rights. as was held by the Honorable Justice Procaccia in **Dobrin**:

The Basic Law: Human Dignity and Liberty entrenches the human rights to dignity and liberty... Within the scope of the right to human dignity lies the right of a person to have a family... The right to have a family is one of the most basic elements of human existence. It is derived from the protection of human dignity, from the right to privacy and from the realization of the principle of the autonomy of the will of the individual, which lies at the very essence of the concept of human dignity.

(HCJ 2245/06 **Dobrin v. Israel Prison Service**, para. 12 of the judgment of Justice Procaccia (reported in Nevo, June 13, 2006)(references were omitted)

62. These special relationships between the members of the same family circle are recognized and protected by the law. As stated by the then President of the Supreme Court in **Adalah**:

**'It is our initial 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'... the family relationship, and the protection of the family and its basic elements... lie 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.**

(**Adalah**, para. 25 of the opinion of Justice Barak (Emphasis added)(References were omitted)).

63. The right to family life also includes the right of children to be raised by their parents and the right of parents to raise their children. As was held in LCA 669/00 **A v. Attorney General**, IsrSC 54(3) 196, 209 (2000) "Parents have a natural and fundamental right to raise their child". Said "natural right" may carry more weight when the child is a minor, but it is still very important when the child turns of age. Particularly in the first years of the child's life as an adult, the support, assistance, advice and guidance received by them from their parents – both parents – are very important for his ability to continue growing, developing and becoming an independent person. No less important is the child's ability to continue living with their parents – particularly when this is their cultural norm – or at least to return to their home and see their parents – both parents – on a regular basis.
64. Moreover. a child's right to family life with their parent and a parent's right to family life with their child is not a temporary right which exists only when the child is a minor deriving solely from the principle of the child's best interest. On the contrary. The right of the child and the parent to family life with one another stands throughout their entire life.

65. Indeed, the right to family life includes the right and obligation of any person, regardless of whether he/she is a minor or an adult, to take care of their parents and honor them. As stated by the then deputy president Menachem Elon "The connection between a child and his/her parents and the commandment to honor one's parents is a basic and sacred principle of Israel heritage from ancient times and any human society of culture" (CA 1482/92 **Hagar v. Hagar**, IsrSC 47(2) 793, 805 (1993)). The obligation to honor their parents applies to children even more forcefully when the parents grow older and need the support and help of their adult children to manage their daily lives. There is no dispute that a policy which enables a child to visit their parent only when the parent is already hospitalized or on their death bed, and then only for three days, does not enable the child to properly fulfill their duty to honor their parent, and at the same time does not enable them to realize their right to family life. It seems that such a sweeping limitation on the child's ability to honor their father and mother is nothing but a severe violation of the "dignity" of the child "as such", contrary to the provisions of Section 2 of the Basic Law – Human Dignity and Liberty.
66. Accordingly, and in view of the supreme importance of the "family relationship... in the life of the individual and in the life of the society" any person, according to both Israeli law and international law, has the right to family life (the above **Adalah**, paragraph 25 of the opinion of president Barak). Against this fundamental and substantial right, it is incumbent upon the Respondents to respect Petitioners' family circle, as held by this honorable court: "Israel is obligated to protect the family unit by virtue of international conventions" (HCJ 3648/97 **Stemka v. Minister of Interior**, IsrSC 53(2) 728, 787 (1999)).
67. Among other things, Article 46 the Convention respecting the Laws and Customs of War on Land including the Regulations respecting the Laws and Customs of War on Land (Hague 1907) (hereinafter: the Hague Convention (1907)), constituting international customary law, stipulates as follows:
- Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.
68. The comprehensive study of the International Committee of the Red Cross which was published in 2005, in a bid to identify the rules of international humanitarian customary law, recognizes the obligation of the state to protect family life as one of these rules:
- Family life must be respected as far as possible.  
(Jean-Marie Henckaerts & Louise Doswald-Beck, [1 Rules] Customary International Humanitarian Law 379-83, Rule 105 (Int'l Comm. Red Cross ed., 2005, Cambridge University Press 2009)).
69. The obligation of the state to protect the family unit and the right to family life are also recognized by other international sources, including: Article 27 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949); Article 10 of the International Covenant on Economic, Social and Cultural Rights (1966), Treaties Series 1037; (hereinafter: the **Covenant on Economic Rights**) which was signed by the state of Israel in 1966 and was ratified by it in 1991; Articles 17 and 23 of the International Covenant on Civil and Political Rights (1966) Treaties Series 1040 (hereinafter: the **International Covenant on Civil Rights**), which was signed by the state of Israel in 1966 and was ratified by it in 1991; Article 12 and Article 16(3) of the Universal Declaration on Human Rights (1948); and Articles 8 and 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).

70. It should be noted that in general, the right to family life includes a citizen's right to live with the members of his immediate family in his country. As was held in **Stemka** (*Ibid.*, page 787):

The state of Israel recognizes the citizen's right to freely choose their spouse and establish with them a family in Israel. Israel is obligated to protect the family unit by virtue of international conventions... and although said conventions do not require [the adoption] of this policy or another with respect to family unification, Israel has recognized – and does recognize – its obligation to protect the family unit also by way of granting family unification permits. Accordingly, Israel joined the most advanced states, states recognizing – subject to state security, public safety and public welfare reservations – the right of family members to live together in the territory chosen by them.

71. However, upon the enactment of the Temporary Order (and government resolution No. 3598) many divided families were deprived of the right to live together in Israel. As aforesaid, underlining the honorable court's decision which recognized the validity of the Temporary Order in the above **Adalah**, was the possibility to conduct regular family life in the territories (the Gaza Strip in the case at hand).
72. As recalled, the state argued at that time that the Temporary Order 'does not limit the autonomy to choose a spouse, nor does it nullify the right to family life, *ab initio*; rather, it does not allow the realization of the right specifically in the State of Israel'" (**Adalah**, *Ibid.*, paragraph 14 of the opinion of President Barak). On the basis of said argument, President Barak was of the opinion that "usually, the Israeli spouse is not prevented from moving to the territories ('Every person is free to leave Israel:' Section 6(a) of the Basic Law: Human Dignity and Liberty). Accordingly, they are entitled, of course, to realize their right to establish the family unit outside Israel. I assume — without having had all the details submitted to us in this regard — that in most cases the Israeli spouse will receive a permit from the military commander to enter the territories" (*ibid.*, paragraph 42 of the opinion of President Barak).
73. Due to the "Divided Families" Procedure the assumption made by President Barak was proven as correct with respect to Israelis married to Gaza residents as well as with respect to their minor children. However, since said Procedure ceases to apply to children of "divided families" once they turn 18, "in most cases" these children do not receive "a permit from the military commander to enter the territories". Since 2007 children of "divided families" over 18 are not allowed to visit their parents in Gaza unless one of the above humanitarian conditions occurs.
74. Therefore, as a result of the age cap established in the "Divided Families" Procedure, each "divided family" is forced to cope with the destruction of the fabric of its family life when its first born child turns 18. From this moment, all members of the nuclear family may never be able to meet, as such, in their country. Hence, the violation of the right to family life is not limited to the right of the children of "divided families" who came of age to meet with their Gaza parent, but also applies to the right of each member of such "divided family" to meet with its other members, as a whole nuclear family
75. The mere fact that the farewell meeting of a Gaza parent with their Israeli child by virtue of the "Divided Families" Procedure, on or about the child's 18<sup>th</sup> birthday, may literally be their last meeting proves the severity of the violation of their right to family life and the human tragedy embedded therein.

C. **By limiting the applicability of the "Divided Families" Procedure only to minor children, the Respondents violate the principle of the child's best interest**

76. As has already been held in CA 209/54 **Steiner v. Attorney General to the Government of Israel**, IsrSC 9 241, 250 (1955) "The child's best interest is a paramount principle". The Covenant on the Rights of the Child (1989), Treaties Series 1038, which was ratified by the state of Israel in 1991 and the enactment of the Basic Law: Human Liberty and Dignity have reinforced the status of the child as an independent rights holder and as a separate and independent legal entity under the law.
77. Judicial precedent has often emphasized that when the child's best interest is discussed considerable weight should be given to this consideration. "Since the legislator ascended to the level of the modern approach – a modern approach that the scholars of Israel have been taking for ages – that the child is not an 'object'... but is rather a 'subject', he himself is a 'litigant'... and his interests may not be disregarded under any circumstances whatsoever (Steiner, *Ibid.*, page 251).
78. The fact that the "Divided Families" Procedure applies not only to Israelis who are married to Gaza residents but also to their Israeli minor children does indeed protect the best interest of said children. However, by determining that the Procedure shall cease to apply to children of "divided families" when they turn 18, the Respondents substantially disregard the principle of the child's best interest.
79. An important element in the parent-child relationship as well as in the child's personal and psychological development is stability, and in the case at hand, the promise and the child's reasonable expectation that their parent shall always be present – physically – in their life. However, children of "divided families" already know from a very young age, that a time will come when one their parents shall no longer be physically present in their life. The fact that this knowledge necessarily permeates the sub-consciousness of the minor child and has a negative impact on their relationship with the parent who is expected to disappear from their life cannot be disregarded.
80. Moreover. Minors receive education, *inter alia*, to enable them to develop in a manner which would enable them to succeed to build a career and god life in the society in which they are raised. Hence, forcing children of "divided families", living in Gaza as minors by virtue of the permits issued to them by the Respondents, to leave their environment and society and move alone to Israel precisely when they graduate from high school, prevents them from exploiting their entire educational investments, and necessarily puts them in an inferior position.
81. The Respondents also fail in another aspect of the child's best interest test. Not only are the parent-child relationships important for the child, but also their relationships with their siblings, whether they are minors or adults. However, for children of "divided families" living in Gaza, the age cap established in the "Divided Families" Procedure, forcefully separates them from their adult siblings, who are forced to leave their home and move to Israel shortly after they turn 18. Indeed, the Israeli minor siblings can visit the adult sibling whenever the Israeli parent returns to Israel, but this option is not equivalent to the continuous daily presence of the adult sibling in the life and home of the minor; and in circumstances in which some of the minor siblings are Gaza residents (namely, they have no status in Israel), the separation from their adult siblings is almost absolute. In addition, minor siblings of children of "divided families" whose center of life is in Israel suffer from their inability to meet – with their adult sibling – their Gaza parent; Accordingly, these minors are denied the possibility to be with all of their immediate family members together.

82. Eventually, as noted above and emphasized in HaMoked's letter dated July 20, 2021 (see Exhibit P/22 above) the disproportionate manner by which the Respondents interpret and implement the "Divided Families" Procedure as currently drafted, has recently led to events in which minors were denied the opportunity to have a last meeting with their Gaza parents, only because between the date of their permit application under the Procedure and the date on which a decision was made in their application, they have celebrated their 18<sup>th</sup> birthday. Accordingly, the critical violation of the right of children of "divided families" over 18 years of age to regular family life with their Gaza parents permeates adulthood and to date applies also to 17 years old children of "divided families". Hence, the direct harm inflicted on minor children proves Respondents' disrespect for the principle of the child's best interest.

**D. The Respondents violate the constitutional right of children of "divided families" over 18 years of age to freedom of movement and other human rights**

83. By preventing children of "divided families" over 18 years of age from exiting Gaza, the Respondents also violate their right to freedom of movement. The right to freedom of movement is the main expression of a person's autonomy, the freedom to make their own choices and to realize their abilities. The great importance of the right to freedom of movement arises from the fact that freedom of movement is the engine which drives the entire body of a person's rights, the limitation of which necessarily results in the violation of other human rights relating to all aspects of life. Hence, first and foremost, the severe violation of the right of children of "divided families" to regular family life, in general, and to regular family life with their Gaza parents, in particular, is the direct and inevitable result of the limitation of their freedom of movement.
84. In Israeli administrative-constitutional law, the right to freedom of movement is entrenched in Section 6 of the Basic Law: Human Dignity and Liberty. It is recognized as a basic fundamental right "which is in the first rank of human rights" and is "on the very highest level of the scale of rights in Israel" (HCJ 1890/03 **Bethlehem Municipality v. State of Israel**, IsrSC 59(4) 736, 754 (2005) (citing the words of president Barak in HCJ 5016/96 **Horev v. Minister of Transport**, IsrSC 51(4) 1, 51, 53 (1997)).
85. In international human rights law the right to freedom of movement is entrenched, *inter alia*, in Article 12 of the International Covenant on Civil Rights (1966); in Article 13 of the Universal Declaration on Human Rights (1948); and in Article 2 of the Fourth Protocol of the Convention for the Protection of Human Rights and Fundamental Freedoms (1963).
86. As aforesaid, the right to freedom of movement includes a person's right to leave their country and to return thereto. This right was recognized in Article 13(2) of the Universal Declaration on Human Rights (1948):
- Everyone has the right to leave any country, including his own, and to return to his country.
87. Similarly, Article 12(4) of the International Covenant on Civil Rights expressly states that:
- No one shall be arbitrarily deprived of the right to enter his own country.
88. Section 6 of the Basic Law: Human Dignity and Liberty states as follows:

- (a) All persons are free to leave Israel.
- (b) Any Israeli citizen staying abroad has the right to enter Israel.

89. A person's right to return to his country of residence is also recognized by Israeli case law:

A person's right to travel to and from their country of residence is a 'natural right'. It is one of the basic human rights. The limitation of said right severely violates their rights. (HCJ 4706/02 **Salah v. Minister of Interior**, IsrSC 56(5) 695, 702g (2002)).

90. In the case at hand, the Respondents limit the constitutional right of children of "divided families" over 18 years of age to leave the country, by preventing them from travelling to Gaza. It is an absolute preclusion (unless one of the above humanitarian conditions is met) which stands throughout the entire adult life of said Israelis – regardless of their different specific circumstances and regardless of the existence or non-existence of a personal security preclusion.
91. For children of "divided families" whose center of life immediately before they turn 18 is in Gaza, the limitation on their departure to Gaza (after they turn 18) **actually denies them the right to return to their country of residence**. It should be reminded that some of said children of divided families, including Petitioners 2 and 4 in the case at hand and the petitioner in **Reiss**, resided in Gaza throughout their life as minors.
92. Moreover. The arrangement which was offered to the petitioner in **Reiss**, as well as the arrangement which was offered to the petitioner in **Abu Jazal** who was in a similar situation, are arrangements which actually deny children of "divided families" wishing to continue living in their family home in Gaza after they turn 18, their constitutional right to return to Israel. Since said arrangements enabled the petitioners to (continue) staying in Gaza even after the expiration of their permit, by returning to Israel the petitioners exposed themselves to the risk of being charged (according to sections 24(a) and 27(a)(2) of the Disengagement Plan Implementation Law, 5765-2005). Moreover. Since said arrangements did not include any reassurance that the petitioners would be allowed to return to Gaza if they choose, despite the risk of being charged, to realize their right to enter their country (Israel) in the future, the realization of their right to return to Israel involved a very high risk (near certainty) that they would be denied of their right to return to their place of residence (Gaza).
93. It should be pointed out that the above are two different specific arrangements (although similar in nature). A similar general arrangement does not exist in the "Divided Families" Procedure or in any other procedure. This means that a 17 years old child of a "divided family" who has been living their entire life with both of their parents and all siblings in the family home in Gaza – by virtue of permits which were issued by the Respondents according to the "Divided Families" Procedure – wishing to continue living with them there after their 18<sup>th</sup> birthday, is required to make an inconceivable decision – to either obey the laws of their country and separate, against their will, from their family upon the expiration of the last permit which was issued to them before their 18<sup>th</sup> birthday, or disobey the law and relinquish their right to return to their country (at least until they marry with a Gaza resident), to be able to continue living their life with their family.
94. In this situation, children of "divided families" whose center of life was in Gaza before they turned 18, clearly demonstrate the obvious, that the violation of the right to freedom of movement entails the violation of additional human rights. Forcing them to leave Gaza upon the expiration of the last permit which was issued to them by virtue of the "Divided Families" Procedure before their 18<sup>th</sup> birthday, means that children of "divided families"

are forced to separate not only from their family members, but also from their home, society, familiar environment, friends, neighbors, studies, work, spouses (not by marriage) and the like, depending on the personal circumstances of each child.

95. Accordingly, a host of additional human rights of children of "divided families" whose center of life is in Gaza— beyond their right to family life — are violated as soon as the "Divided Families" Procedure no longer applies to them due to their age, including, *inter alia*:
- (a) A person's right to live in their home and not to be forcefully and arbitrarily transferred therefrom — and more forcefully when their home is their parents' home and who are still providing for them (on the central role of a person's home in shaping their life and the right not to be displaced from one's home, see H CJ 7015/02 **Ajuri v. Commander of IDF Forces in the West Bank**, Supreme Court 2002(3), 811 (2002); H CJ 1661/05 **Regional Council Hof Gaza v. Israel Knesset**, IsrSC 59(2) 481 (2005) (hereinafter: Regional Council); M. Stavropoulou "The Right Not to be Displaced" 9 Am. U. J. Int'l (L. & Pol'y 689, 717, 736-37 (1994)).
  - (b) The right to freedom of occupation and the right to earn an honest living (on this right see H CJ 8111/96 **The New Workers' Union v. Israel Aerospace Industries Ltd.**, IsrSC 58(6) 481, 542-543 (2004); H CJ 4769/95 **Menachem v. Ministry of Transport**, IsrSC 57(1) 235, 261 (2002); and Article 6 of the Covenant on Economic Rights).
  - (c) The right to education and academic education (on this right see H CJ 4805/07 **Israel Movement for Reform and Progressive Judaism v. Ministry of Education**, IsrSC 62(4) 571, paragraph 51 of the judgment of the Honorable Justice Procaccia (2008); H CJ 1554/95 **Shoharei Gilat Association v. Minister of Education, Culture and Sports**, IsrSC 50(3) 2, 24 (1996); and Article 13 of the Covenant on Economic Rights).

**E. Respondents' denial of HaMoked's principled application to cancel the age cap established in the "Divided Families" Procedure was unreasonable**

96. As is known, an administrative decision is unreasonable where "the administrative authority does not give proper weight to the different interests" and considers all pertinent interests (H CJ 389/80 **Yellow Pages Ltd. v. Israel Broadcasting Authority**, IsrSC 35(1) 421, 445 (1980)). In the case at hand it does not seem that the Respondents made a reasonable decision in HaMoked's principled application to cancel the age cap established in the "Divided Families" Procedure. Respondents' answers to HaMoked's letters raise the concern that they have not only failed to give the proper weight to the interests which they had considered, but that they have failed to consider all relevant considerations.
97. As aforesaid, in response to HaMoked's letter dated March 11, 2021 in which the Respondents had been requested to expand the "Divided Families" Procedure and apply it also to adult Israelis one of whose parents is a Gaza resident, the Respondents stated in their answer dated June 17, 2021 that "Having examined your application [dated March 11, 2021], it was found that there is no reason to change the policy which currently applies to the movement of Israelis to Gaza... [which] reflects the balance, which is proper at this time, between all the considerations which are relevant to the matter."
98. The above answer raises the concern that the Respondents have not thoroughly examined, if at all, the principled and specific application which had been submitted to them by HaMoked. It should be well noted that in HaMoked's letter dated March 11, 2021, the Respondents were not requested to change the "entry policy of Israelis to Gaza from

Israel" as a whole, but in fact, only to remove the age cap established in the "Divided Families" Procedure. However, in their above answer dated June 17, 2021, the Respondents made no reference to the "Divided Families" Procedure, not to mention the age cap established therein.

99. Similarly, in HaMoked's letter dated March 11, 2021 the Respondents were not requested to amend the sweeping violation of the right to freedom of movement of each and every citizen and resident of the country arising from the Disengagement Plan Implementation Law and the declaration of the political and security cabinet from 2007 of Gaza as a "hostile territory" (considerations which were noted by the Respondents in their letter dated June 17, 2021); but rather, to amend the specific and critical violation of the right of children of divided families over 18 years of age to regular family life, arising directly from the age cap established in the "Divided Families" Procedure. However, the Respondents have completely failed to refer in their answer dated June 17, 2021, to the basic right to family life, not to mention the severe violation of said right of adult Israelis one of whose parents is a Gaza resident.
100. Moreover. Other than general security considerations, the Respondents did not specify in their answer dated June 17, 2021, the additional considerations which were considered by them, even for the purpose of establishing the general entry policy of Israelis to Gaza. All the more so, the Respondents have not sufficiently specified the reasons for their decisions to deny HaMoked's application to cancel the age cap established in the "Divided Families" Procedure. The Respondents did not point at the specific security threat which according to them shall arise from the application of the "Divided Families" Procedure to adult Israelis one of whose parents is a Gaza resident; they did not explain why personal security checks do not constitute an alternative mechanism to achieve the security purpose for which the sweeping age cap was established in the Procedure; and they made no reference to the specific balance between the ostensible security threat and the above violation of the basic right to family life.
101. As recalled, on July 13, 2021 HaMoked responded to Respondents' answer. In its response, HaMoked specified the above arguments concerning the unreasonableness of Respondents' denial of HaMoked application dated March 11, 2021. A week later, on July 20, 2021, HaMoked sent the Respondents a principled application with respect to a similar but separate matter: for as long as the age cap established in the "Divided Families" Procedure is not cancelled, the Respondents were requested to adopt and implement the proper and proportionate interpretation of said limitation whereby the effective date for a child's age is the application submission date rather than the actual entry date to Gaza.
102. The caption of Respondents' letter dated August 23, 2021 ostensibly indicates that it is a response to HaMoked's last letter concerning the proper interpretation of the "Divided Families" Procedure. However, Respondents' letter itself does not refer at all to the interpretation issue (or to the new provisions of the Procedure which the Respondents were requested to cancel in HaMoked's letter dated July 20, 2021). Instead, the Respondents referred to their letter dated June 17, 2021 and reiterated their decision not to "change the existing policy". The Respondents added that "as was clarified in the [previous] answer, the existing policy pursuant to which entry into Gaza in the framework of the "Divided Families" Procedure is permitted to a child until the age of 18, is a good, proper and reasonable balancing between all the considerations which are relevant to the matter (the security considerations on the one hand and the humanitarian considerations on the other), a balancing that the courts have also found no reason to interfere with (see, for instance, 7235/09 [sic] HaMoked Center for the Defense of the Individual v. GOC Southern Command)."

103. However, HCJ 7235/09 **HaMoked Center for the Defense of the Individual v. GOC Southern Command** (reported in Nevo, September 16, 2009 (emphasis added)), did not concern the "Divided Families" Procedure or the age cap established therein, but rather the "prohibition against the entry of Israelis into Gaza to visit family members on the Muslim holiday Eid al-Fitr" in 2009. As aforesaid, in HaMoked's letters dated March 11, 2021 and July 13, 2021 and in the Petition at hand the Respondents are not requested to enable, in the holiday season (namely, for a specific occasion limited in time) the entry to Gaza of any Israeli (together with their spouse and minor children) having at least one relative residing in Gaza, as was requested in HCJ 7235/09.
104. Indeed, in the Petition at hand the Petitioners also request to enable Israelis to travel to Gaza. However, in the case at hand the Respondents are requested to enable children of "divided families" who were allowed, until they turned 18, to enter Gaza to realize their constitutional right to family life together with their Gaza parents, to keep receiving the same permits for the same purpose after their 18<sup>th</sup> birthday. Therefore, both security and humanitarian considerations which were considered by the respondents and by the Honorable Court in HCJ 7235/09 are different than those which should be considered by the Respondents and by the Honorable Court in the case at hand.
105. Moreover. Even if the case at hand involved the same balancing with which the Honorable Court has decided not to interfere in the framework of HCJ 7235/09, as was argued by the Respondents in their letter dated August 23, 2021, then, with the passage of time, the proper weight that should have been given by the Respondents to the different considerations would have changed. This fact is also reflected in the judgment which was given on September 16, 2009 in HCJ 7235/09, in which "the fact that the Respondents review their policy from time to time" was one of the underlying reasons of the decision that at that time the "severe" violation of "protected rights" did not "exceed the extent which is required". On the one hand, the longer the violation of the basic rights the harsher the harm caused thereby, and accordingly in the balancing against the security interest more weight should be given to the violation of the rights. On the other hand, the security situation is dynamic. Therefore, it should be thoroughly examined whether the weight which was given to said considerations more than a decade ago is still the proper weight which should still be given to them at this time.
106. In view of the aforesaid, the Respondents could not have relied on HCJ 7235/09 to justify their refusal, at this time, to accept HaMoked's application to cancel the age cap established in the "Divided Families" Procedure. In addition, it does not seem that Respondents' decision which is the subject matter of this Petition was reasonable, since according to Respondents' own letters, not all relevant considerations were considered, and those which may have perhaps been considered were not given the proper weight. Moreover, a reasonable decision should be based on facts and data, and the Respondents did not point at any detail which had been considered by them while making their decision.

**F. The violation of the basic rights of children of "divided families" over the age of 18 to regular family life with their Gaza parents, as well as the violation of additional basic rights of these children caused as a result of the age cap established in the "Divided Families" Procedure, is not proportionate**

107. As known, the question whether the violation of basic rights is proportionate depends on three sub tests – the "rational connection test", the "least injurious means test" and the "proportionality test in the narrow sense (**Regional Council**, page 550).
108. "The first sub-test is the 'rational connection' test or the 'compatibility test', pursuant to which a pertinent connection should exist between the proper purpose of the law and the

arrangements established in the law for the realization thereof. Namely, the means chosen should rationally lead to the realization of the purpose" (HCJ 7385/13 **Eitan Israeli Immigration Policy Center et al. v. Government of Israel**, paragraphs 24-25 of the opinion of Justice Vogelman (reported in Nevo, September 22, 2014)).

109. According to Respondents' above letters it seems that the purpose that the Respondents wish to achieve by the age cap established in the "Divided Families" Procedure is a security purpose. Without derogating from the importance of protecting the security of the country, its citizens, residents and inhabitants, the question is whether the denial of physical contact between children of "divided families" over the age of 18 – who are also Israeli citizens and residents – with their Gaza parents contributes to state security?
110. In addition, the Respondents did not refer to any data justifying the security evaluation which is required in the case at hand, namely an evaluation that a security threat is posed by allowing children of "divided families" over 18 years of age to keep realizing their right to family life with their Gaza parents according to the same mechanism – the "Divided Families" Procedure – that enabled them to do it during the first 18 years of their life. In other words, the extent to which a general security threat is posed, according to the Respondents, by allowing the exit of Israelis to Gaza, precisely from the specific population of children of "divided families" over 18 years of age?
111. Moreover. In as much as the age cap established in the "Divided Families" Procedure is based on the concern to the life of Israelis in Gaza, then said concern is less relevant with respect to children of "divided families". If said concern did not suffice to prevent children of "divided families" from visiting Gaza regularly – and even from residing therein – for 18 years, it is unclear why it increases after they turn 18. Here, the weight which should have been given to this consideration was expected to decrease with respect to adults compared to children.
112. However, even if we assume for discussion purposes that the Respondents satisfy the first sub-test, they fail to satisfy the second and third sub-tests.
113. With respect to the **least injurious means test**, applying a sweepingly injurious arrangement to persons that the harm inflicted on them does not realize the purpose of said arrangement, turns the harm inflicted by the arrangement into a disproportionate harm, when there is a less injurious means which may seemingly realize the purpose of Respondents' policy (see HCJ 10662/04 **Hassan v. National Insurance Institute**, IsrSC 65(1) 782, paragraphs 61-68 of the judgment of President Beinisch (2012)).
114. In the case at hand, the means which was chosen by the Respondents is an almost absolute limitation of the ability of children of "divided families" over the age of 18 to visit their Gaza parents. As aforesaid, as a result of the age cap established in the "Divided Families" Procedure and Respondents' general policy, the child's farewell meeting with their Gaza parent – usually on or about the child's 18<sup>th</sup> birthday – may literally be their last meeting. The next time that said child may possibly be allowed to travel to Gaza shall not be to visit their parent, but to mourn their death.
115. It should be noted that as of the age of 16, any child wishing to travel to Gaza in the framework of the "Divided Families" Procedure undergoes a specific and **personal** security check, namely, a separate examination in addition to the examination that their Israeli parent undergoes, whenever said child wishes to receive a new permit or to renew their existing permit.
116. Therefore, it is clear that in the case at hand a means less injurious to the basic rights of the children of "divided families" is available and is already used by the Respondents for the realization of the same security purpose that they wish to obtain by the sweeping age

cap established in the "Divided Families" Procedure. If a specific security check is an effective measure when a 16 year-old child and a 17 year-old of a "divided family" is concerned, why wouldn't it be an effective and satisfactory measure when an 18 year-old child of a "divided family" is concerned?

117. With respect to the proportionality test in the narrow sense which examines the proportion between the harm caused as a result of the violation the basic rights by the arrangement and the advantage gained by the arrangement, it was held that the relevant comparison is not a comparison between the harm caused as a result of the violation of the basic rights and a situation whereby **no** means is available to achieve the required purpose, but rather a comparison between the harm caused as a result of the violation of the basic rights and the **marginal addition** gained by the means taken as compared to the possible use of an alternative less injurious means (HCJ 7444/03 **Daka v. Ministe of Interior**, paragraph 33 of the judgment of Justice Procaccia (2010)).
118. Relevant to the case at hand are the words of the Honorable Justice Tirkel in **Salah**, concerning the examination of the proportionality of the violation of the right to exit the country:

When we place the conflicting rights on the scale, I believe that, first of all, it is necessary to weigh the magnitude of the infringement of the individual's right, and then the magnitude of the harm to the public's right. The magnitude of the infringement of the individual's right is examined in accordance with... the period that the restriction is in force, and also the personal interest of the person who is not allowed to leave the country... regarding the magnitude of the infringement of a right - or the "proportionality" of the infringement - it is also necessary to weigh the period of time of the restriction. The longer the restriction continues, the greater the magnitude of the restriction. A restriction on the right to leave the country that lasts for several days is not the same as a restriction lasting several months or years... The purpose of the travel and its destination are important considerations in measuring the magnitude of the infringement of the right. Limiting the right to exit of a person for whom leaving is necessary and important is liable to increase the magnitude of the infringement.

HCJ 4706/02 **Salah v. Minister of Interior**, IsrSC 56(5) 695, 704-705 (2002) (reference omitted)).

119. In the case at hand, the violation of the basic rights of children of "divided families" – and primarily their right to family life in general and to family life with their Gaza parents, in particular – caused as a result of the age cap established in the "Divided Families" Procedure is an extremely severe and inhuman violation.
120. The "Divided Families" Procedure is the closest thing possible to some kind of "status" granted to Israelis in Gaza, since contrary to the other applicable humanitarian criteria pursuant to which the right to enter Gaza and stay therein depends on the satisfaction of certain conditions (for instance severe illness, death, etc.), the right according to the "Divided Families" Procedure arises solely by virtue of the family relationship – a person married to a Gaza resident and a minor one of whose parents is a Gaza resident are entitled to apply for a permit according to the Procedure at any time, and there is no quota limiting the number of permits which may be requested or received. Indeed, this is the proper purpose of the "Divided Families" Procedure, in the view of the fact that a Gaza resident cannot receive status in Israel by virtue of said family relations. Hence, the age cap established in the "Divided Families" Procedure is similar to a situation whereby Israel

would have granted status to a child of an Israeli and his/her foreign spouse, and would have denied them of said status when they turned 18 and would have ordered to deport them – knowing that the Israeli parent is not allowed to visit their child in the country of their citizenship.

121. Said mechanism - whereby children of "divided families" are given a kind of status in Gaza during the first 18 years of their life and are then denied therefrom when they turn 18, without giving them an alternative means to realize their right to family life with their Gaza parent – exists for almost a decade and a half. Namely, to date there is almost a whole generation of children of "divided families" whose family life with their Gaza parents depends on the "Divided Families" Procedure. On the other hand, there is an older generation of children of "divided families" that since 2007 are unable to visit their Gaza parents, other than upon the occurrence of one of the above rare humanitarian events.
122. It does not seem that such a severe, sweeping and ongoing harm caused to the core of "the most basic and ancient social unit in the history of mankind, which was, is and will be the element which preserves and secures the existence of human society" (CA 488/77 A v. Attorney General, IsrSC 32(3) 421, 434 (1978)), is justified in view of the marginal addition to state security – if any, since the Respondents did not provide any data in that regard – gained by the age cap established in the "Divided Families" Procedure, compared to the application of the same specific security checks to children over the age of 18 which are already used with respect of 16-18 year-old children. In conclusion, the Petitioners are of the opinion that the age cap established in the "Divided Families" Procedure is an illegal means which is not required to achieve Respondents' alleged security purposes.

## **Conclusion**

123. Can the Respondents be allowed to deny a whole generation of Israeli citizens and residents, upon turning 18, the sole mechanism that was provided to them by their county for the realization of their constitutional right to family life with their Gaza parents, without offering them any alternative arrangement? As the "Divided Families" Procedure is currently drafted, the Petitioners and all children of "divided families" are doomed by the Respondents to deal with the real possibility that after the forced separation from their Gaza parents on or about their 18<sup>th</sup> birthday, they will never see and meet each other again.
124. However, as known, the relationship between a parent and their child, and between a child and their parent, continues throughout their lives and is not abruptly disconnected when the child legally comes of age. The right to nurture these relationships is the essence of the right to regular family life. There is no dispute that the basic right to family life of a person, who is denied of the right to meet with their parents, is severely and deeply violated.
125. Children of "divided families" like Petitioners 2 and 4, choosing not to separate from their parents and homes in Gaza after their last permit has expired on or about their 18<sup>th</sup> birthday, are in fact forced to relinquish their constitutional right to enter Israel, in a bid to maintain their family fabric and keep realizing their right to continue living in the same place in which the Respondents allowed them to live since they had been born.
126. To limit to the maximum extent possible the severe violation of the rights of children of "divided families" who turned 18 to family life and freedom of movement, this Honorable Court is requested to direct the Respondents to amend the "Divided Families" Procedure such that the right of its adult Israeli citizens and residents to regular family life with their Gaza parents shall be protected in the same manner that the right of Israeli citizens and

residents to regular family life with their Gaza spouses (by marriage) is currently protected; or, at least, such that children of "divided families" who turned 18 shall be given the same right to realize their right to regular family life with their Gaza parents which is currently given to minor children of "divided families".

In view of all of the aforesaid, the Honorable Court is requested to issue an *order nisi* as requested in the beginning of this Petition, and after receiving Respondents' response to make it absolute. In addition, the Honorable Court is requested to direct the Respondents to pay Petitioners' expenses and attorneys' fees.

This petition is supported, inter alia, by affidavits signed before a lawyer in Gaza and Israel and forwarded to HaMoked electronically, following coordination by phone. The Honorable Court is requested to accept these affidavits and the powers of attorney which were also sent electronically, considering the objective difficulties of the Petitioners to meet with their legal counsels.

November 22, 2021

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