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

**HCJ /09**

- In the matter of:
1. \_\_\_\_\_ **Abu Rokaya ID No.** \_\_\_\_\_
  2. \_\_\_\_\_ **Habiballah ID No.** \_\_\_\_\_
  3. \_\_\_\_\_ **Jubran ID No.** \_\_\_\_\_
  4. **B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories**
  5. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

all represented by counsel, Att. Ido Bloom (Lic. No. 44538) and/or Abeer Jubran-Daqwar (Lic. No. 44346), and/or Yotam Ben Hillel (Lic. No. 35418) and/or Hava Matras-Irion (Lic. No. 35174) and or Sigi Ben Ari (Lic. No. 37566) and/or Nirit Hayim (Lic. No. 48783) and/or Daniel Shenhar (Lic. No. 41065)  
Of HaMoked Center for the Defence of the Individual,  
founded by Dr. Lotte Salzberger  
4 Abu Obeida St., Jerusalem, 97200  
Tel: 02-6283555; Fax: 02-6276317

**The Petitioners**

v.

**GOC Southern Command**

**The Respondent**

### **Petition for *Order Nisi***

A petition for an *order nisi* is hereby filed which is directed at the Respondent ordering him to appear and show cause why he will not permit Petitioners 1-3, representatives of a human rights organization to enter the Gaza Strip.

### **Request for Urgent Hearing**

The Court is requested to schedule an urgent hearing in the petition.

The Petitioners seek to enter the Gaza Strip in order to document and closely examine the humanitarian circumstances and the state of human rights in the Gaza Strip following the fighting (operation “Cast Lead”), as well as in order to urgently train field researchers on their behalf in Gaza.

Clearly, in these circumstances, the time element is crucial and therefore there is great importance in the Petitioners’ entry into Gaza promptly and as shortly after the end of the fighting as possible.

Despite the aforesaid, the Respondent delays processing the Petitioners’ entry and does not respond to their appeals.

### **Following are the grounds for the petition**

#### **The sides**

1. Petitioner 4, B’Tselem – The Israeli Information Center for Human Rights in the Occupied Territories (hereinafter: **B’Tselem**) is an organization which was established in 1989 by a group of prominent academics, attorneys, journalists, and Knesset members. It endeavors to combat human rights violations in the Territories, document and educate the Israeli public and policymakers about human rights violations in the Occupied Territories, combat the phenomenon of denial prevalent among the Israeli public and help create a human rights culture in Israel.

B’Tselem has attained a prominent place among human rights organizations. In December, 1989 it received the Carter-Menil Award for Human Rights. Its reports have gained B’Tselem a reputation for accuracy, and the Israeli authorities relate to them seriously. The reports also constitute an important source of information for journalists and diplomats. *Inter alia*, American Department of State reports partly rely on B’Tselem’s data.

2. Until September 2000, B’Tselem was able to conduct fieldwork in the Gaza Strip using Israeli field researchers who were granted a permit for this purpose by the Respondents. This changed as of the end of September 2000, with the outbreak of the second Intifada in the backdrop, as the Respondent has greatly restricted – almost completely banning – Israelis’ entry into the Gaza Strip.

In light of the reality created by the Respondent and in order to carry on the organization’s tradition of monitoring and documenting human rights violations in Gaza, B’Tselem began employing field researchers from among Gaza’s population.

In accordance thereto, B’Tselem has employed two field researchers in the Gaza Strip over the years. However, as there was no other choice, this has been done without the field researchers receiving training by the organization’s professional staff in person. During the fighting, B’Tselem recruited two more field researchers, and they have also not been properly trained.

3. Petitioners 1-3 (hereinafter: **the Petitioners**) are B’Tselem employees, Petitioner 1 is the fieldwork director, Petitioner 2 is an information coordinator and Petitioner 3 is a field researcher.
4. Petitioner 5, HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger (hereinafter: **HaMoked**) is a registered non-profit organization working to promote the human rights of residents of the Occupied Territories. HaMoked was established in 1988, against the backdrop of the first intifada and has since then handled thousands of cases, by contacting state authorities and conducting legal work, both representing others and as a public petitioner. HaMoked also publishes periodic and thematic reports as part of its public goals and desire to fulfill the democratic principle of the public’s right to know.

5. The Respondent, GOC Southern Command, is authorized to approve entry of Israelis into the territories of the Gaza Strip on behalf of Respondent 3, the State of Israel which has had control over the crossings into and out of the Gaza Strip for over forty years.

In the past, the Respondent held this power pursuant to a military order which determined the territories of the Palestinian Authority in the Gaza Strip were a closed military zone. The Respondent currently exercises that same power according to his interpretation of Article 24 of the Implementation of the Disengagement Plan Law, 5765-2005.

#### **The factual foundation and exhaustion of remedies**

6. On 27 December 2008, Israel launched an extensive operation in the Gaza Strip known as “Cast Lead”.

Over the course of the fighting some 1,300 residents of the Gaza Strip were killed and thousands were wounded. Houses and buildings were destroyed and extensive damage was caused to civilian infrastructure facilities. Many of Gaza’s residents were turned into refugees with no way of escaping the horror of the fighting.

Following 22 days of fighting, on 17 January 2009, Israel announced a unilateral ceasefire and Israeli military forces began gradually withdrawing from the Gaza Strip, completing the withdrawal on 21 January.

7. Upon the end of the fighting, on 20 January 2009, B’Tselem appealed to the Gaza DCO requesting to approve the entry of Petitioner 1 into the Gaza Strip as soon as possible, for the purpose of a meeting with the organization’s field researches in the Gaza Strip and their training.

A copy of the letter by B’Tselem dated 20 January 2009 is attached and marked **P/1**.

8. The next day, 21 January 2009, representatives of B’Tselem and other human rights organizations met with Minister Herzog, the minister in charge of coordinating humanitarian aid to the civilian population in the Gaza Strip on behalf of the government. In the meeting, Minister Herzog was asked, *inter alia*, to take action toward allowing entry of representatives from human rights organizations to Gaza.

9. Following the meeting, on 27 January 2009, a letter requesting action be taken to allow delegations from Israeli human rights organizations to enter Gaza was sent on behalf of B’Tselem and other organizations. The letter emphasized that **there was great importance in allowing activities by Israeli human rights organizations in Gaza and allowing them to directly assess the needs of the population and the assistance it required.**

A copy of the letter to Minister Herzog dated 27 January 2009 is attached and marked **P/2**.

10. On 27 January 2009, an officer from the Gaza DCO by the name of Irit laconically informed a representative of B’Tselem that the request in the matter of Petitioner 1 was “refused on the basis of criteria”. B’Tselem’s representative voiced his bewilderment at the response considering the importance of the issue and the fact that the entry of representatives of the human rights organization Physicians for Human Rights was approved a short time beforehand. However, the response remained the same: “does not meet criteria”!

11. On 1 February 2009, the Petitioners contacted the Respondent via HaMoked requesting to allow the Petitioners' entry into and exit out of Gaza. The letter included a request to coordinate their entry for **as early as 5 February 2009**.

A copy of the letter by HaMoked dated 1 February 2009 is attached and marked **P/3**.

12. The Respondent's office replied by telephone to a representative of HaMoked that the matter was being handled by Captain Yasmin Ohana, Examination and Supervision Officer.

However, the requisite date – 5 February 2009 – came and went without any response to the application other than a notice that the matter was being “processed”.

13. As two weeks passed without a response to the request, HaMoked once again contacted the Respondent on 16 February 2009, emphasizing the urgency of the matter and the great importance of timing when it comes to representatives of a human rights organization seeking to enter Gaza following bitter fighting.

Due to the urgency of the matter the response of the Respondent was requested by 19 February 2009 and it was noted that the Petitioners would be forced to consider legal action thereafter.

A copy of HaMoked's further letter dated 16 February 2009 is attached and marked **P/4**.

14. In the meantime, the organizations received a response on behalf of Minister Herzog. The response stated that entry of delegations from human rights organizations “is not included under the umbrella of humanitarian aid which Minister Herzog oversees” and that in order to obtain permits to enter the Gaza Strip the organizations “must contact the Defense Ministry which is entrusted with the matter”. Nonetheless, the letter stated that “an inquiry conducted by the Ministry with the Defense Ministry clarified that according to the directives of the GOC Southern Command, who is responsible for Gaza in terms of security, there is a strict ban on entry of organizations for reasons of personal safety”.

A copy of the response on behalf of Minister Herzog dated 19 February is attached and marked **P/5**.

15. Since no response from the Respondent to HaMoked's appeal was forthcoming, the undersigned attempted to contact Captain Yasmin Ohana urgently, yet managed to do so only on Monday 23 February 2009. In a telephone conversation, Captain Ohana stated that the “matter was being processed” and that “there should be a final answer tomorrow”.
16. Yet, on the next day, 24 February 2009, Captain Ohana again stated that the “matter was being processed” and that “there should be a final answer tomorrow”.
17. On the next day, the undersigned made another attempt to obtain an answer from Captain Ohana, but that morning, Captain Ohana said that she was “looking into the matter”. Since then, repeated attempts to contact her were to no avail.
18. In these circumstances and given the urgency of the matter, the Petitioners have been left with no choice but to turn to this Honorable Court.

## **The Legal Argument**

### **The importance of the work of human rights organizations**

19. Defending human rights is the underlying foundation of a democratic regime. Some may say that protecting the individual and regulating the relationship between the individual and the public is the *raison d'être* of a political system. See Articles 1 and 1A of Basic Law: Human Dignity and Liberty).
20. The realization of human rights depends on the existence of a number of social safety nets. First and foremost among these is the judicial system which defends these rights and provides effective relief against breaches thereof. However, human rights cannot be upheld without other protective mechanisms. Among the latter, one may note the assimilation of human rights in the education system, the creation of a political culture which has incorporated the principle of human liberty, the existence of a free press and more. One of the most important elements in ensuring human rights is the existence of active, efficient and effective human rights organizations.

In a report submitted to the UN Human Rights Committee in 1988 (in Article 588), Israel touted the important role played by human rights organizations in the country and their absolute freedom:

The State of Israel does not restrict the right of organizations to carry out activities to promote and respect human rights... Human rights organizations fully benefit from the right to form associations and promote their various objectives. There are dozens of organizations that work freely and successfully in all areas of human rights, including the Association for Civil Rights in Israel, a number of organizations promoting the rights of Arabs, a coalition of 53 different organizations working on children's rights, over 100 organizations addressing women's rights, the Israel Movement for Progressive Judaism religious center and organizations working to promote the rights of the handicapped, homosexuals, minorities, organizations promoting freedom of information and speech and many more. These groups have fulfilled a crucial role in the development of human rights laws in Israel. They have submitted petitions and provided legal consultation in a large number of Supreme Court rulings relating to human rights. They are also substantially involved in legislation lobbying and, through members of Knesset – in legislative initiatives relating to human rights. Their reports and conferences receive extensive coverage in the media, and their publications are freely distributed in Israel and abroad. They cooperate with international human rights organizations and conduct a variety of public relations and fundraising activities abroad. The work of human rights organizations is in no way circumscribed by government authorities.

Indeed, human rights organizations are an important aspect of guaranteeing human rights. The state and the public at large, have a vested interest in their freedom to act and in promoting them. The Respondent's decision in our matter does not reflect recognition of this importance of human rights organizations.

21. Attorney General Meni Mazuz also emphasized the importance of the work of human rights organizations. Thus, for example, in a letter sent to B'Tselem on his behalf (written following disparaging statements directed at human rights organizations which appeared in a document submitted to the Court by the state attorney's office), he clarified that:

Human rights organizations – including “B'Tselem” and “HaMoked: Center for the Defence of the Individual” play an important and essential

role in defending human rights in Israel and must be treated in accordance thereto, regardless of disagreements on one position or another adopted by the organizations. This is one of the substantive principles of respect for human rights.

A copy of the attorney general's letter to the government dated 9 March 2006 is attached and marked **P/6**.

22. Access by human rights organizations to the populations who need their services is of particular importance when these populations require the protection of international humanitarian law. In view of this, Article 30 of the IV Geneva Convention stipulates –

Protected persons shall have every facility for making application... to any organization that might assist them.

These several organizations shall be granted all facilities for that purpose by the authorities, within the bounds set by military or security considerations...

[T]he Detaining or Occupying Powers shall facilitate, as much as possible, visits to protected persons by the representatives of other organizations whose object is to give spiritual aid or material relief to such persons.

23. Article 16 of the UN declaration regarding human rights defenders (1999) stipulates –

Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas...

And Article 18 adds:

Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.

24. The 2005 UN resolution on this issue emphasizes:

Human rights are always increasingly at risk as peace and security begin to break down and a situation slides towards and into armed conflict. Defenders conduct missions into barely accessible regions of a country in conflict, interview victims and witnesses, conduct investigations, corroborate information, and then document and report on their findings. Their activities sometimes provide the only restraint on the behaviour of combatants and allow the international community to remain at least partially apprised of a changing situation [...]

There should be no hesitation in saying that without the work of human rights defenders, today, in countries where there is ongoing armed conflict, millions of people would be much more vulnerable to violations of their rights to life, physical integrity, liberty, food, health, adequate housing, education and many others, and the United Nations system would be much less well equipped to address the conflict.

(United Nations, General Assembly, Human rights questions: human rights questions including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms, UN Doc. A/60/339, 7 Sep. 2005)

25. At face value at least, the Respondents' conduct in this matter raises concerns of an attempt to limit human rights organizations and impede their important work – which, for obvious reasons, is not always convenient for the Respondent.

### **Freedom of information and the public's right to know**

26. The main aspect of B'Tselem's work is collecting information, examining it and disseminating it. This work is essential not only for the benefit of the residents of the Occupied Territories themselves, but also in order to guarantee the right of the public - both in Israel and abroad - to know about the situation in the Gaza Strip and the state of human rights therein. Freedom of information - and the right to provide the public with information - are protected rights which trump other interests.
27. This Honorable Court recently addressed the issue of upholding the public's right to know even during an actual war. HCJ 9910/09 [*sic*] Foreign Press Association in Israel v. GOC Southern Command (unpublished; 2 January 2009) addressed the prohibition on foreign correspondents' entry into the Gaza Strip at the height of operation "Cast Lead". The petition was rejected only after an arrangement was made to allow a group of journalists to cover the events, despite the fact that "extensive military action" was taking place at the time:

In their preliminary response to the petition, the Respondents claimed that passage of foreign correspondents to Gaza was restricted following a deterioration of the security situation in Gaza in November 2008 [...]

On 1 January 2009, the Respondents submitted a notice to the Court stating that after having considered the suggestion made by the Court, it was decided to allow the entry of a small, limited number of foreign correspondents to Gaza at times when the Erez Crossing is operational [...]

We have reached the conclusion that considering the current state of affairs in the Gaza Strip, where extensive military action is currently taking place, the procedure formulated by the Respondents reflects a balance...

The Court added that:

**Freedom of speech and freedom of the press, like the public's right to know, persevere even in a time of fighting, and they have particular importance at such a time.** (emphasis added; I.B.).

28. The public's ability to know, to be exposed to different sources of information and to exchange information is an essential condition for fulfilling the right to freedom of speech. The words of Justice Mazza are important for our case:

The public's right to know is one of the central and important derivatives of freedom of speech, which, as phrased by Justice Agranat, constitutes a "supreme right" in our system. Indeed, without the ability to exchange opinions and disseminate and receive information, freedom of speech cannot be fulfilled... and as safeguarding freedom of speech is an important guarantee of the democratic process and the respect of other fundamental rights... so respect of the public's right to know is a condition for realizing freedom of speech.

(HCJ 5771/93 **Zitrin v. Minister of Justice**, *Piskey Din* 48(1) 661, (1993)).

29. The right to freedom of information and the right of the public in Israel and abroad to know influence awareness and the right to freedom of speech. President Barak (as was his title then) elaborated on the importance of freedom of information:

Freedom of information is designed to fulfill a number of principle interests. Foremost among them is the interest of freedom of speech and the public's right to know... freedom of speech is the most precious element of democracy – it is a fundamental right which is also a supreme value in any democratic regime... freedom of speech is one of the fundamental human rights in Israel and it may be said that it stands at the higher echelon of fundamental rights. Indeed, "without democracy there is no freedom of speech and without freedom of speech there is no democracy" [...]

Freedom of speech is, in fact, a code name for a "bundle of rights" (CivA 214/89 Avneri v. Shapira, *Piskey Din*, 43(3) 840, 861). "Fulfilling this liberty requires other rights that allow the citizen to express his opinion and without which, freedom of speech becomes a dead letter" (HCJ 606/93 Kidum Enterprises and Publishing (1981) v. Broadcasting Authority, *Piskey Din*, 48(2) 1; CrimA 7528/95 Hillel v. State of Israel, *Piskey Din* 50(3) 89, 95). One of the central rights which derives from freedom of speech is the right to know and to be exposed to information. You cannot have freedom of speech without the right to know, and you cannot have a right to know without freedom of information. In the words of President Barak, without information there is no opinion, without opinion there is no expression, without expression there is no persuasion, without persuasion there is no confrontation and without confrontation there is a concern that the truth will not see the light of day (see HCJ 399/85 MK Meir Kahana v. Broadcasting Authority Management Board, *Piskey Din* 41(3) 255). "The absence of appropriate means for gathering information impedes the fulfillment of the principle of freedom of speech" (HCJ 6218/93 Dr. Shlomo Cohen v. Israel Bar Association, *Piskey Din* 49(2) 529).

AdmPA 6013/04 State of Israel – Ministry of Transportation v. Israel News Company Inc., *Takdin Elyon* 2006(1) 14, 20 (2006)).

30. Moreover, the public's right to know is particularly important in situations where there are conflicting data and stories regarding what is taking place in the Gaza Strip. Clearly, the work of human rights organizations who are dedicated to universal values which do not distinguish between people and who are committed to standards of reliability is doubly important in these circumstances.

### **The right to dignity, freedom of occupation and freedom of movement**

31. The Respondent's decision infringes on the Petitioners' rights to freedom of occupation, dignity and freedom of movement.
32. We have already elaborated on the public interest in the Petitioners' work and its importance for defending human rights. Yet beyond this, the issue also concerns their constitutional rights.
33. The right to freedom of movement is the foremost expression of a person's autonomy, his free choice, and his fulfillment of his capacities and rights. The right to freedom of movement is among the norms of customary international law.

See:

Article 6A of Basic Law: Human Dignity and Liberty;

HCJ 6358/05 **Vaanunu v. GOC Home Front Command**, *Takdin Elyon* 2006(1) 320, para. 10 (2006);

HCJ 1890/03 **City of Bethlehem v. State of Israel**, *Takdin Elyon* 2005(1) 1114, para. 15 (2005);

HCJ 3914/92 **Lev v. District Rabbinical Court**, *Takdin Elyon* 94(1) 1139, 1147 (1994).

34. The right to freedom of movement is the engine that drives the fabric of a person's rights, the engine which allows a person to fulfill his autonomy and choices. When freedom of movement is restricted, that "engine" is damaged, and as a result, some of a person's rights and opportunities cease to exist. His dignity as a human being is breached. Hence the great importance attributed to the right to freedom of movement.

### **Conclusion**

35. It is difficult to overstate the great importance of having representatives of human rights organizations enter the Gaza Strip after the fighting. It is extremely important to allow the entry of workers of organizations for whom safeguarding human rights is a guiding principle and who seek to closely examine the situation in the Gaza Strip, reach the individuals who are in distress and in need of assistance and document the situation, as well as train professionals who will be able to help continue this important task in the future.
36. The Respondent has refused to allow the entry of Petitioner 1 and delays processing the applications of all the Petitioners despite the clear importance of the issue and despite the fact that it is clear that time is of the essence in this case.

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

26 February 2009

[T.S. 59491]

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Ido Bloom, Att.  
Counsel for the Petitioners