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**States of Emergency: Legal Aspects and Implications for the Corona  
Crisis in Israel**

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**The corona pandemic reached Israel before various legal provisions necessary to enhance the country's preparedness for an emergency were approved. Legislation is required in order to replace older rules, make structural changes, and grant the relevant authorities the effective capacities to deal with the economy and with issues affecting the civilian population. Decision making at this time highlights how much is lacking in the law books on essential state means and powers. For instance, legislation of a "home front law" is necessary in order to manage civilian emergency preparedness better; this is far more valuable than government decisions that have limited effect. The National Security Council, called on to assist the Prime Minister in management of the corona crisis, is an agency not mandated by law to engage in this realm and with limited experience in civilian matters. It is recommended that a small ministerial committee be established to lead Israel's effort against the spread of the disease, while authorized to make difficult decisions during this dire period.**

Since 1948, the State of Israel has been under a "state of emergency." This prolonged situation, which has no parallel in any other Western country, grants the government the legal prerogative to enact regulations at any time "for the defense of the State, public security and the maintenance of supplies and essential services" (Basic Law: The Government, Section 39(a)). These emergency regulations can be used not only to regulate issues that are generally covered by laws (such as the imposition of taxes), but also to override existing Knesset legislation, with the exclusion of Basic Laws. When the government cannot be convened, the Prime Minister is permitted to enact such regulations himself or assign this task to another minister. The emergency regulations are valid for up to three months. Once enacted, they must be brought immediately to the Knesset Foreign Affairs and Defense Committee for review; this Committee is authorized to approve, cancel, or amend the regulations in the Knesset plenary.

In 1999, the Association for Civil Rights in Israel filed an appeal against the continuation of the state of emergency, and the government subsequently began action to cancel it. However, over previous years, various laws had been legislated and regulations imposed based and conditioned on the state of emergency. Consequently, it was impossible to

abolish the state of emergency in one take, and a sufficient amount of time is required to legislate the changes that would establish new regulations. Much time has passed since then, and the “naturalization” of the laws has not been completed. The Knesset, which monitors the legislative changes initiated by the government, extends the state of emergency on an annual basis in order to enable proper attention to the residual emergency legislation. In February 2020, the Knesset extended the state of emergency by four months only – given the political stalemate – until mid-June.

Since the state of emergency in Israel has become routine, special arrangements were made to deal with crisis situations. A prominent example of this is Section 8 of the Reserve Duty Law, which states that when the Minister of Defense is convinced that there are “emergency circumstances” and that “the security of the state requires it,” he is permitted to call reserve soldiers to urgent service of long duration (“Order 8”). The order requires approval of the cabinet and the Knesset Foreign Affairs and Defense Committee. According to Section 9c of the Civil Defense Law, if the government believes that there is “a high likelihood of attack on the civilian population,” it is permitted, with the approval of the Foreign Affairs and Defense Committee, to declare a “special situation in the home front.” Such a decree allows the IDF Chief of Staff to issue instructions to the broad public, with the aim of protecting life and property. It also enables the Homefront Command (HFC) to invoke increased powers over civilians in order to achieve these objectives.

Regarding a state of emergency that is not the result of belligerent actions, Israel has an arrangement in the Police Ordinance, which includes a chapter that deals with a “civilian emergency situation” (which, until about two years ago, was referred to as a “mass disaster event”). When the government, with the approval of the Foreign Affairs and Defense Committee, declares such an event (a pandemic falls into this category), the police are granted with command and control authority to manage the event, and police officers are given broad powers to issue instructions to the public with the aim of saving life and property. At such times, Magen David Adom, the Fire and Rescue Authority, and other first responders are placed under the police command. More importantly, upon request, the IDF must make its forces available to the Police for such a task. In this context, the IDF soldiers involved are also considered “first responders.” They do not have legal power, and their duties are fulfilled by providing assistance to the police.

The existing law also includes a mechanism to “pass the baton,” which authorizes the Police to transfer the command and control responsibility for the event to the IDF, if the event is too overwhelming for it. In such cases, the IDF Chief of Staff and the other military officers receive the authority of the Police chain of command, including Commissioner and other offices. In such an extreme case, the Police become a first response and rescue organization under IDF command.

Even though the main function of the HFC, in line with the Civil Defense Law, is to assist the civilian population harmed by hostilities, the Minister of Defense is authorized to enable the Command to act “whether in general or for a particular matter, and in coordination with the agencies involved in the matter – to save lives and property, even when not involving civil defense” (Section 2(k) of the Civil Defense Law). The legal situation is that during a civilian emergency situation, IDF forces can be made available to assist the Police, and in extreme cases, the IDF can be tasked with responsibility for command and control. The implementation of this action depends on the declaration of a “civilian emergency incident.” Such a state of emergency has never been declared in Israel, and it seems that it is not necessary as long as the systems are able to function without changing the existing legal arrangements.

Reinforcements for assisting the population may be provided by the HFC (not by the IDF) as part of its function as a “civil defense service” with the approval of the Minister of Defense. Its action in such circumstances does not bestow on it particular authority toward the public, but it is perceived as deployment to assist the civilian population, in a wide array of fields, with its added value in terms of scope, deployment, and availability of means. Under these circumstances the HFC is not tasked with the responsibility for the event, rather reinforces other agencies, and does not expropriate their responsibilities or authority.

None of the above relates to the economic sphere. Here government decisions have established that preparedness for various types of state of emergency, and not just in the case of war, shall be made through the Emergency Economy Committee (EEC). The EEC is headed by the Minister of Defense and includes the directors general of all government ministries and representatives of the IDF, the HFC, local authorities, first responders, the business sector, and more. Its role is to take appropriate preparatory actions in direct response to the reference threat in order to ensure the continued supply of essential services and goods. In a state of emergency, the EEC is supposed to assemble a broad picture of the economic challenges and design solutions for them. There are matters that can be solved by the Committee, while others are subject to government decision. The EEC does not replace the government, and does not take on specific responsibilities of government ministers or other authorities. It also includes district committees, and by law such committees must be established in each local authority, led by the mayor.

The convening of the EEC in a state of emergency depends on a government decree of an emergency economic situation. Several years ago, the government decided that a declaration of a “special home front situation” pursuant to the Civil Defense Law automatically deploys the EEC. Such a decision has not been made regarding a state of

emergency that does not refer to a state of war. As such, in order to activate the EEC as an emergency forum with regard to the corona outbreak, a special government decision is needed, which has yet to be taken. Declaring an economic emergency does not require the government to issue compensation or other payments. The purpose of the step is to create an orderly mechanism for integrative work of government ministries as needed in the perilous situation facing the country.

For decades, this activity was carried out by the Ministry of Defense. Since 2007, it has been managed by the National Emergency Management Authority (NEMA), which operates under the Minister of Defense. Three years ago, the Minister of Defense established a committee (the Mizrahi Committee) to examine the relationship between NEMA and the HFC. The committee recommended a series of structural changes, some of which are subject to administrative consideration while others require government approval or legislative changes (that have not been advanced). Inter alia, the committee recommended that the HFC should be responsible for preparedness in matters of emergency economy on the district and municipal levels. This recommendation has important implications for activating the emergency economy. It is clear that during the current extended political transition period, the various levels of the EEC are not optimally capable of meeting the challenges of the current crisis. This is in addition to the ongoing organizational tension between NEMA and the HFC, which necessarily impacts negatively on the performance of these critical agencies.

### **Implications and Recommendations**

The corona pandemic reached Israel when the legal necessary structure to improve the country's emergency preparedness has not been completed. Legislation is necessary in order to replace old regulations, make structural changes, and equip the relevant authorities with effective impact vis-à-vis the economy and the civilian population. It is possible that emergency regulations may be necessary in the future. The main part of such legislation must be prepared in advance so that the controversy will not center on the question of what is the authority, but rather to what extent it should be used.

The decision making process at this time highlights how much is lacking in the law books on essential state means and powers. For instance, a "home front law" is needed to better regulate civilian emergency preparedness and deployment. Such a law should replace government decisions that are of limited power. (The Ministry of Defense prepared a draft in this vein a number of years ago.) As such, the mission of the HFC and its critical functions concerning assistance to the population during emergencies should be redefined. The HFC should be left as the national operational arm in accordance with the decisions of the political echelon for cases when the civilian system has difficulty dealing with the emergency, and as reinforcement for it. For this purpose, inter alia, the HFC should be

equipped with policing authorities under Police command and with other authorities as necessary. Until then, emergency regulations can be used to achieve this objective.

Regarding economic matters (essential goods and services), it is important to convene and use the EEC. This is a sound body, with proven experience. The expected worsening of the corona crisis demands strong integrative work procedures. The crisis has been managed so far by the Prime Minister, assisted by the National Security Council – an agency that lacks experience in civilian matters, and whose action in this realm is not mandated by law. On the other hand, the body that the government itself set out to take responsibility in these dire circumstances has not been activated. The Prime Minister himself, subject to government approval, can legally chair the EEC. A designated small ministerial committee on the management of the corona crisis, which can make major economic decisions, should be established. From a legal standpoint, the decisions of such a ministerial committee have the same legal weight as the plenary government decisions.