At the Supreme Court **HCJ _2786/09**
Sitting as the High Court of Justice

In the matter of: **____ Salem et al.**

Represented by counsels, Att. Ido Bloom et al.

The Petitioners

- Versus -

Military Commander of the West Bank

The Respondent

Response and Supplementary Arguments

The Petitioners hereby respectfully submit to the Honorable Court a response to the Respondent's Response dated 7 April 2009 and supplementary arguments on their behalf.

As stated in the petition, due to the urgency of the matter, the petition was filed in a short period of time, and therefore, after its submission, the Petitioners continued to collect documents and details and also held an attorney meeting with the Petitioner.

The Honorable Court is requested to issue an *Order Nisi* as requested in the petition, as well as:

A. **To issue a temporary injunction** instructing the Petitioner to refrain from deporting Petitioner 1 from his home in the West Bank to the Gaza Strip so long as the petition is pending, as stated in the request for a temporary injunction submitted in the framework of the petition.

B. To order the immediate release of the Petitioner from the illegal custody in which he is being held to his home, as stated in the Request for Writ of *Habeas Corpus* which is filed in tandem with this response, and as described below.

C. Inasmuch as despite what is stated in this response and in the Request for Writ of *Habeas Corpus*, filed in tandem with it, it shall be decided not to immediately release the Petitioner to his home, the Honorable Court is requested to schedule the petition for hearing **most urgently**.

This Response and Supplementary Arguments are supported by an affidavit on behalf of Petitioner 1.

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Introduction

1. A Military commander proclaims a certain area of the Territories as a "closed zone".

   A resident of the Territories arrives with his suitcases at the gates, having coordinated this with the military commander.

   The military commander examines his papers, verifies his information and permits him to enter with no conditions or restrictions whatsoever.

   That man builds a home, works, studies, has a family.

   He is not the only one. Many, like him, move to that area. They all move in the same manner. They do not infiltrate through openings in the fence or crawl under the cover of darkness. They all arrive at the main entrance gate and declare their desire to enter. The military commander permits all of them to enter and opens the gate with no conditions or restrictions.

   Some years later, the same man is arrested by the military commander for a short time - but is released back to his home without allegations or restrictions.

   And now, fourteen years later, the military commander knocks on his door in the middle of the night, accuses him of being an "infiltrator and "illegal alien" and with a stroke of a hand wishes to deport him from his home, family, the life he has built.

The Petition

2. This petition concerns the Respondent's decision to deport the Petitioner – a Palestinian who has been living in Beit Sahur in the West Bank for the past fourteen years, a married father of two young children – from his home in the West Bank to the Gaza Strip based on the fact that his address in the population registry still erroneously appears in the Gaza Strip (despite his attempts to update it).

A Palestinian police officer in the Gaza Strip – true mortal danger

3. The Petitioner is a Fatah man and an officer with the Fatah Palestinian police. As such, his forced deportation to the Gaza Strip may constitute real mortal danger for him. In the context of the severe and violent conflict between Hamas and Fatah elements in the Gaza Strip, Hamas has taken severe actions against members of the Authority's security forces from Fatah, from "house arrests" and abductions to **torture and executions.**

4. A report by Amnesty International published in February 2009 regarding Hamas actions against the opposition and Fatah members, under the cover of the war in Gaza, emphasizes:

> The targets of Hamas' deadly campaign include former detainees accused of "collaborating" with the Israeli army… **as well as former members of the Palestinian Authority (PA) Security forces** and other activists of PA President Mahmoud Abbas' Fatah party. […] Most of the victims were abducted from their homes; they were later dumped – dead or injured – in isolated areas, or were found dead in the morgue of one of Gaza's hospitals.

A copy of the Amnesty report dated 10 February 2009 is attached and marked **P/3**.

5. A report by the Intelligence and Terrorism Information Center of the Israel Intelligence' Heritage & Commemoration Center (IICC) **dated 12 February 2009**, which is based on the Amnesty report also stressed that:

> Since the end of December 2008, during and after the Israeli military offensive, Hamas forces in the Gaza Strip have engaged in a campaign of abductions, deliberate killings, torture and death threats against those they accuse of "collaborating" with Israel. **At least two dozen men have been shot dead** by Hamas gunmen in this period. Scores of others have been shot in the legs, kneecapped or inflicted with other injuries intended to cause permanent disability, subjected to severe beatings **which have caused multiple fractures and other injuries**, or otherwise tortured or ill-treated.
>
> The victims of Hamas's deadly campaign include those who escaped from Gaza's Central Prison when it was bombed by Israeli forces on the first day of the operation and are accused of "collaborating" with the Israeli army. Others attacked were former operatives of the Palestinian Authority security forces and other activists affiliated with Fatah. The campaign began shortly after the beginning of Operation Cast Lead and had continued after the ceasefire. (Emphases in the original, I.B.)

("Oppression of Hamas Opponents in the Gaza Strip", report by the Intelligence and Terrorism Information Center, 12 February 2009, http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/html/hamas_e058.htm).

6. Palestinian Media Watch, an organization which monitors Palestinian media, also published that according to media reports in **January 2009**, Hamas ordered Fatah members in Gaza to remain under "house arrest" and that those who defied the order were shot on site:

> The reports from Gaza pointed out the death of dozens of Fatah members caused by Hamas members…
>
> Gaza resident who lives in the town El-Bira, said that her father was killed the day before yesterday and nine of her family members were injured by shooting by Hamas, among them were three small children and two young people in critical condition...
>
> […]
>
> The father was killed right in front of his children, because he didn't stay at home, after they placed him under house arrest, he and everyone who belongs to Fatah.

For the full report see http://www.pmw.org.il/Bulletins_Jan2009.htm#b180109

See also: Amira Hass, "Hamas executes collaborators and restricts Fatah movement", *HaAretz*, 8 January 2009.

Khaled Abu Toameh, "Hamas torturing Fatah members in Gaza", *The Jerusalem Post*, 19.2.2009.

Jason Koutsoukis, "How Hamas uses murder and torture to erase Fatah rivals", *The Sydney Morning Herald*, 14.3.09.

7. A report by Human Rights Watch described the fate of members of the Palestinian Authority security forces (at present or in the past) in the Gaza Strip. A most comprehensive report published by the organization in July 2008, includes descriptions of various cases in which members of the Palestinian Authority security forces in the Gaza Strip were abducted from their homes, subjected to severe torture and in some cases, cruelly executed.

The full report was published on the Human Rights Watch website at: http://www.hrw.org/sites/default/files/reports/iopt0708_1.pdf

8. **Several ago, on 20 April 2009, Human Rights Watch published another current report on the subject**, entitled, "Under Cover of War: Hamas Political Violence in Gaza". The report indicates that arrests, torture and killings of members of Fatah and political opponents by Hamas elements in the Strip have continued.

The new report also stresses that:

> Hamas security forces have also used violence against known Fatah members, especially those who had worked in the Fatah-run security services of the Palestinian Authority (PA).

The full report was published on the organization's website at: http://www.hrw.org/sites/default/files/reports/iopt0409web.pdf

9. The Respondent claims that he has held "assessments" and that "no danger awaits the Respondent in the Gaza Strip". Yet, it is clear to all, that this is at most, an estimation, as in such matters no unequivocal determination can be made.

It is clearly impossible to know with certainty what the fate of the Petitioner in Gaza would be, but one thing is certain – **the price of an error in such a case is too heavy to bear**.

The Petitioner's passage from the Gaza Strip to the West Bank in 1995

10. The Petitioner is a police officer for the Palestinian Authority. The Petitioner was born and raised in the Gaza Strip. In 1995, in the context of the implementation of the Interim Agreement between Israel and the PLO (the "Oslo Accord"), the Petitioner was stationed – along with other Palestinian police officers – in the West Bank. **It shall be emphasized that the Petitioner's passage from the Gaza Strip to the West Bank, along with many other police officers, as well as their deployment throughout the West Bank in accordance with the Interim Agreement, were carried out with full coordination between the Palestinian side and the Israeli side.**

11. The deployment of Palestinian police forces in the West Bank and Gaza Strip was regulated in Appendix I of the Interim Agreement, in Article IV and in Appendices 2 and 3. It shall be noted that the Interim Agreement establishes that police officers are to be recruited also from abroad and that Palestinian police officers arriving from abroad would be entitled to be accompanied by their spouses and children (Article IV.4):

> The Palestinian Police shall consist of policemen recruited locally, and from abroad (from among individuals holding Jordanian passports or Palestinian documents issued by Egypt)… Palestinian policemen coming from abroad may be accompanied by their spouse and sons and daughters

Accordingly, the Palestinian police force was indeed assembled from many places in the Arab world. They all arrived with their families, received a Territories identity card and have lived there to this day. It is clear that if Israel agreed that Palestinian police officers who were not residents of the Territories could live permanently in the places where they were stationed in the Territories, then *a fortiori*, there was no restriction on police officers who were residents of the

Territories doing so and, as stated, in effect, this was indeed carried out with full coordination with Israel.

12. Thus, the Petitioner moved from the Gaza Strip to the West Bank in his capacity as a police officer and stationed in Bethlehem – where he has been stationed and has been serving to this day – in accordance with the law, with full coordination with Israel, with its knowledge and clear consent.

13. It would be utterly absurd to claim, today, after fourteen years, that all Palestinian police officers who were transferred from the Gaza Strip to the West Bank at the stage of Palestinian police force deployment under the Interim Agreement with consent by and coordination between the sides are considered "infiltrators" and "illegal aliens" in their homes in the West Bank.

14. It is no wonder, therefore, that over the many years in which he has resided in the West Bank, the Petitioner was never alleged to be an "illegal alien", nor was it alleged that there was any legal impropriety in his continued living in his home there. On the contrary – as recalled, after he was arrested in 2002 (namely, after the Petitioner had allegedly "unlawfully" remained in his home in the West Bank for seven years, according to the Respondent's current position), the Petitioner was ceremoniously released by the Petitioner back to his home in the West Bank, with no claims regarding his continued presence there.

The Petitioner's life in the West Bank since 1995

15. As stated above, the Petitioner has been living in Beit Sahur in the West Bank since 1995. It is where he has resided, worked, married, raised his children and built his life.

A copy of the Petitioners' marriage contract, which was personally signed by the Petitioner on 20 August 2002 at the Shar'i Court in Bethlehem is attached and marked **P/4**.

A copy of a lease for an apartment in Beit Sahur between 1 January 2001 and 1 January 2010, signed by the Petitioner on 1 January 2002 is attached and marked **P/5**.

A copy of a confirmation by the municipality of Janata in the Bethlehem District regarding the Petitioner's application for a building permit in the Bethlehem area, dated 15 August 2005 is attached and marked **P/6**.

A copy of a building permit issued for the Petitioner by the municipality of Janata in the Bethlehem District dated 12 February 2006 is attached and marked **P/7**.

A copy of a contract to purchase a plot of land in the Bethlehem area which was signed by the Petitioner in Bethlehem on 15 November 2006 is attached and marked **P/8**.

A copy of a power of attorney given to the Petitioner in the framework of a transaction in which he purchased a plot of land in Bethlehem, signed in court in Bethlehem on 29 April 2008 is attached and marked **P/9**.

Copies of pay slips issued to the Petitioner by the Palestinian Authority for his work in the Palestinian police in Bethlehem for the months of September 2003, August 2004, November 2005 and January 2006 are attached and marked **P/10**.

The decision under review: the issuance of a deportation under order the Order regarding Prevention of Infiltration due to "illegal presence" (and not a decision to deport for security reasons)

16. In his response, the Respondent attempts to emphasize the ostensible security allegations against the Petitioner, yet the central question at hand is not the question of security, as, in any case, the foundation and condition for the appropriateness of the Respondent's decision to deport the petitioner is that he is indeed an "infiltrator" and "illegal alien".

17. It is clear that if the Petitioner is not an "infiltrator", indeed it is impossible to deport him as an "infiltrator" irrespective of security allegations. It shall be recalled that the military commander has at his disposal a variety of measures to take against persons against whom he has security based allegations – even if they are not "infiltrators".

18. The decision under review in our case is not, therefore, a decision on "deportation for security reasons" but rather a decision on the "deportation of an infiltrator" and must be examined as such.

As President Shamgar has noted:

> In order to cast away doubt, I wish to add and clarify that one must also not confuse the power to deport as regards an infiltrator with the power to deport for reasons of security which is defined in different legislation. As explained, the power to deport under the Order regarding Prevention of Infiltration refers exclusively to a person who is present in the Area after having entered it unlawfully… the power to deport ensues from a person's being an infiltrator, namely, from him being a person who entered the Area knowingly and unlawfully following presence in the countries listed in the Order subsequent to a specific date, and no more.

(HCJ 454/85 **Dahamoudi v. Minister of Defense**, *Piskey Din* 39(3) 401, 410, (1985)).

19. In light of the above, the attempt to "wave" security allegations at the Petitioner is nothing short of an attempt to deceive the Court, since, if indeed, as the Petitioners claim, it is an utter absurdity to consider the Petitioner an "infiltrator", then clearly security allegations neither add nor detract from the case.

The Petitioner cannot be considered an "infiltrator", therefore the deportation order lacks any legal basis

20. As stated in the Respondent's Response, on 30 March 2009, an order of deportation from the West Bank was issued against the Petitioner pursuant to the Order regarding Prevention of Infiltration 5729-1969, which, according to the Respondent's claim "also serves as a legal reference for holding him in custody pending his removal to the Gaza Strip". The order was attached to the Respondent's Response as appendix R/3.

21. However, this is a procedure devoid of any legal basis, as it is clearly manifest that the Petitioner cannot be considered an "infiltrator" under the Order regarding Prevention of Infiltration at all!

22. When the Petitioner moved from the Gaza Strip to the West Bank (and in the years that followed), there was no dispute that the Gaza Strip and the West Bank constituted a single territorial unit. This was the foundation for the Interim Agreement. The Court described this in the **Ajuri** case, in reference to the possibility of issuing a warrant for assigned residence from the West Bank to the Gaza Strip and vice versa – on the basis of their being one area:

> In the case before us, we are concerned with the assigned residence of a person from his place of residence to another place in the same territory for security reasons in an area subject to belligerent occupation...
>
> It was argued before us that the Gaza Strip — to which the military commander of Judaea and Samaria wishes to assign the place of residence of the petitioners — is situated outside the territory [...]
>
> This argument must be rejected... From a social and political viewpoint, the two areas are conceived by all concerned as one territorial unit, and the legislation of the military commander in them is identical in content. Thus, for example, our attention was drawn by counsel for the Respondent to the provisions of clause 11 of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, which says:

> 'The two sides view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which shall be preserved during the interim agreement.'
>
> This provision is repeated also in clause 31(8) of the agreement, according to which the 'safe passage' mechanisms between the area of Judaea and Samaria and the area of the Gaza Strip were determined. Similarly, although this agreement is not decisive on the issue under discussion, it does indicate that the two areas are considered as one territory held by the State of Israel under belligerent occupation
>
> […]
>
> [T]he area of Judaea and Samaria and the area of the Gaza Strip should not be regarded as territories foreign to one another, but they should be regarded as one territory.
>
> (HCJ 7015/02 **Ajuri v. Commander of the IDF Forces**, *Takdin Elyon* 2002(3) 1021, 1028-1029). [Translation: the Supreme Court website, http://elyon1.court.gov.il/files_eng/02/150/070/A15/02070150.a15.htm]

23. Accordingly, Section 1 of the Order regarding Prevention of Infiltration indeed establishes that an "infiltrator" is solely a person who arrived from outside the Territories and entered them "knowingly and illegally" (or remained in the Territories after the expiration of the permit he had been issued) following a period of remaining in one of the foreign countries bordering Israel:

> "**Infiltrator**" – a person who entered the Area knowingly and illegally following a period of remaining in the East Bank of the Jordan, Syria, Egypt or Lebanon subsequent to the decisive day.

A copy of the Order regarding Prevention of Infiltration (No. 329) 5729-1969 is attached and marked **P/11**.

24. **It is clear that a person cannot be considered an "infiltrator" if he entered one part of the Area from another part of the Area, and, in any case, the language of the Order excludes such a person from the scope of its application.**

25. It shall be noted that when referring to the Order regarding Prevention of Infiltration which was issued at the same time regarding the Gaza Strip, the Court clarified that when the original Order was issued, in 1967, a person who had crossed between the West Bank and the Gaza Strip could have been considered an "infiltrator". However, in 1969, the Order was amended, **and its language from**

that point and thereafter – which is identical to the current language of the Order regarding Prevention of Infiltration referring to the West Bank, which is relevant to our case – <u>explicitly excludes those who moved between the West Bank and Gaza Strip from the scope of its application</u>:

> On 4 September 1967, the Order regarding Prevention of Infiltration (Gaza Strip and Northern Sinai) (No. 82), 5727-1967, was published in the Gaza Strip, according to which infiltration was established as an offence and a definition of an infiltrator was presented, which refers, according to its language, to persons who entered the Area knowingly and illegally following a period of remaining in a different area, in Egypt, the East Bank of the Jordan, the West Bank, Syria or Lebanon. The Order applied as of 6 June 1967.
>
> Incidentally, entry into the Gaza Strip following a period of remaining in Judea and Samaria was considered infiltration at the time the aforementioned Order was published, if a permit to enter the Area had not been granted.
>
> […]
>
> In conclusion, a person who entered the Gaza Area subsequent to 6 June 1967, following a period of remaining in one of the aforementioned countries or in Judea and Samaria, without being granted a permit, personal or general, to render his entry legal, is considered, in the Gaza Strip, an infiltrator…
>
> The Order which is valid today is the Order regarding Prevention of Infiltration (Gaza Strip and Northern Sinai) (No. 290), of 18 June 1969, which in Section 1, presents a definition of infiltrator the language of which is as follows:
>
> "'Infiltrator' – a person who entered the Area knowingly and illegally following a period of remaining in the East Bank of the Jordan, Syria, Egypt or Lebanon subsequent to the decisive day".
>
> **<u>The material difference in this definition is the exclusion of the reference to remaining in another held territory from the definition.</u>**
>
> (HCJ 159/84 **Shahin v. Commander of IDF Forces**, *Piskey Din* 39(1) 309, 318-319; emphasis added).

26. The form relating to the questioning the Petitioner underwent prior to the issuance of the warrant (attached to the Respondent's Response as appendix R/2), unveils the extent of the absurdity:

The form is entitled "**Protocol for Deportation of Jordanians**" (on the top left hand side) and is entirely directed at foreign nationals who did indeed arrive from foreign countries and are not residents of the Territories. Thus, for example, according to the form, the candidate for removal must be identified by his **foreign identity card or passport** number, the **country of origin** must be indicated, etc.

27. In light of the above, it is clear that the deportation order issued against the Petitioner as an "infiltrator", under the Order regarding Prevention of Infiltration lacks any legal basis and is invalid.

The significance of this is that since 30 March 2009, the Petitioner has been held in custody with no legal reference!

Reference to the Respondent's arguments

28. The Respondent's central claims in regards the Petitioner, upon which he wishes to found the determination that the Petitioner is an alleged "infiltrator" and "illegal alien" in his home are two:

A. Since he entered the West Bank, the Petitioner has never been issued a "permit to remain" there.
B. The Petitioner has not submitted an "application for settlement" in the West Bank and has not received a "permit to settle" there.

29. As stated above, the Petitioner cannot be considered an "infiltrator" to begin with and the claims on this matter are inherently unfounded. However, as detailed below, should the Respondent wish to base his claims on the fact that the West Bank is a "closed zone", indeed, even then, the claims lack any basis, to the point of absurdity – both in regards the factual aspect as well as the legal aspect.

The claim that the Petitioner should have held a "permit to remain" – which the Respondent first decided existed at the end of 2007

30. In his Response, the Respondent claims against the Petitioner that "he has never been granted a permit to remain in the Judea and Samaria Area" (so, for example, in section 7 of the Response on behalf of the Respondent). However, the Respondent "forgets" to mention that **he decided on the very existence of "permits to remain" only in late 2007, namely, 12 years after the Petitioner moved from the Gaza Strip to the West Bank!**

31. Thus, in response to an application under the Freedom of Information Act submitted by Petitioner 5 to the Coordinator of Government Activities in the Territories [COGAT], a spokesperson for COGAT announced on 18 May 2008 that **the first ever permit to remain was issued only on 25 December 2007!**

It was further stated that "**as of November2007** a resident of the Gaza Strip who is present in Judea and Samaria is required to possess a permit to 'remain in Judea and Samaria' and the permit is designed for this purpose only".

Copies of the submission by HaMoked - Center for the Defence of the Individual and the response of the COGAT are attached and marked **P/12-P/13**.

32. It is distressing that the Petitioner chose to "omit" this pertinent fact from his response and throw false accusations at the Petitioner that ever since he moved to the West Bank in the mid-1990's he has not possessed a permit – **which did not exist** at the time of his move and for many years thereafter!

33. In effect, for many years, the only permit required for the purpose of passing from the Gaza Strip to the West Bank (and vice versa) was a permit to enter Israel, which is naturally required for the purpose of travelling between the two parts of the Territories through the territory of Israel.

That is, when the Respondent claims that whoever passed from the Gaza Strip to the West Bank received a "transit permit" (section 20 of his response), indeed this is no more than a **permit to enter Israel** designed to facilitate passage through Israel and nothing more. It is distressing that here too, the Respondent chose to omit a pertinent detail and contended with a laconic statement that those who passed received a "transit permit" while creating the false impression that this was, allegedly, a "permit to remain" in the West Bank.

Beyond necessity, it shall be emphasized that the inferred claim, as if the permit to enter Israel also served as a "permit to remain" inside the Territories is illogical and baseless – particularly in light of the fact that even in cases where the Respondent explicitly allowed permanent or protracted relocation between the two parts of the Territories, **he issued permits to enter Israel valid for one day only, namely, for the period of time necessary for passage inside Israel and nothing further.**

34. This was the case, for example, in the matters of Mr.Khaled Kahlout (HCJ 5504/03), Mr. Nidal Nabahin (HCJ 3555/05) and Muhammad Jdili (HCJ 4465/05), all Palestinians who had lived in the West Bank for many years, and whom the Respondent initially refused to allow to return from the Gaza Strip to their homes in the West Bank based on the fact that their addresses were erroneously registered in the Gaza Strip.

In all those cases, following a petition to the HCJ, the Respondent allowed their return to their homes in the West Bank permanently. The Respondent also provided notices on behalf of the State Attorney's Office proclaiming that they would be able to receive the services of the DCO's in the West Bank and even travel abroad and return through the Allenby Bridge.

The only permit issued by the Respondent for the purpose of their return to the West Bank permanently in those cases – as in many other cases – was **a permit to enter Israel for one day only** which was designed to allow their short passage through Israel and nothing more.

Copies of the letters issued by the State Attorney's Office in the matters of Mr. Nabahin, Mr. Jdili and Mr. Kahlout are attached and marked **P/14**.

Copies of the permits to enter Israel **for one day only** issued by the Respondent for the purpose of the passage of Messrs. Nabahin, Jdili and Kahlout are attached and marked **P/15**.

35. In a feeble attempt to explain the reality in which the Respondent, in practice, issued permits to enter Israel for a short period of time (sufficient only for passage through Israel), with no connection to remaining in the West Bank or to how long one remained there, the Respondent claims that the permit expired "when the purpose for which the permit had been granted was fulfilled". This is obviously completely absurd, as the meaning of this is that the Respondent, according to his claim, issued entry permits into Israel which were indefinite and **which were, in any case, impossible to examine or enforce**. Obviously, a soldier at a checkpoint has no means of checking or knowing whether a person who received a permit for the purpose of "visiting relatives" or "medical treatment" has indeed already fulfilled the purpose or not.

Moreover; these were, as stated, **permits to enter Israel**. Does the Respondent wish to make the serious claim that the validity of "permits to enter Israel" issued by him is not limited by time in particular, but depends only on the "fulfillment of the purpose for entry"? Does this thesis apply also to all those illegal aliens who are caught inside Israel after the date of their permit and do the authorities indeed refrain from deporting them from Israel to the Territories if they have yet to "fulfill the purpose of the permit"?

36. Thus, for many years (over ten years after the Petitioner moved to the West Bank) there was no "permit" for Palestinians "to remain" in the West Bank, whereas the permit to enter Israel is – as its name indicates – a permit issued for the purpose of passage through Israel between the two parts of the Territories.

Indeed, as stated by the Respondent, when the petitioner moved to the West Bank he did not have a "permit to remain". However, the sole reason for this is that **the Respondent decided to issue such permits only twelve years later!**

The claim that the Petitioner should have filed an "application for settlement" and received a "permit for settlement" in the West Bank.

37. The absurdity of the Respondent's claims regarding the "permit to remain" in the West Bank, on the existence of which he decided only recently, pales in comparison to the absurdity of the claims regarding the "permit to settle", as **since 1967 and to this day, there has never been a "permit to settle" or a "permit to change place of residence" for a Palestinian in the West Bank – whatever his registered address.**

38. On this matter too, in an attempt to explain the reality in which, in practice, **there never was a "permit to change place of residence in the Territories**", the Respondent has claimed in the past that the alleged procedure for requesting and receiving a "permit to change place of residence" is the procedure for changing an address in the population registry.

That is, according to this claim, it has always been the case that when a person relocated from one community in Gaza to a community in the West Bank and filed an updating notice regarding his registered address, the Respondent considered this "an application for changing place of residence", and the actual updating of the registry constituted the necessary "permit" – whereas, if a person moved to the same place from another community inside the West Bank, the very same form constituted an updating of address and nothing more. This is nothing but a baseless and illogical claim, as described below:

The Respondent himself has previously acknowledged that prolonged remainder in the West Bank constitutes "transference of center of life" from the Gaza Strip to the West Bank

39. On several occasions in the past, the Respondent acknowledged that the mere protracted presence of a Palestinian in Gaza [*sic*] in the West Bank is sufficient to constitute an official "transfer of center of life" in his case.

40. For example, this was the case of Mr. Turki Firani. Mr. Firani was born in the Gaza Strip and relocated to the West Bank in 1997. He, also, did not request nor receive any "permit to remain" or "permit to settle", which as stated, did not exist. Similarly to the Petitioner in this petition, he too built his life in the West Bank, married and had a family. In 2006, Mr. Firani entered the Gaza Strip to visit his ailing brother who was living there. When he wished to return to his home in the West Bank, the Respondent refused to allow him to do so, based on his registered address in the Gaza Strip.

41. Following an appeal by HaMoked - Center for the Defence of the Individual, the response of the Office of the Legal Advisor in the Gaza DCO on behalf of the International Law Division was received and read as follows:

> A review of your request indicates that your client has been present in Judea and Samaria where he took a wife and had a family, for some ten years. Your client has been present in the Gaza Strip since 26 March 2006 and now wishes to return to his family and children who are currently in Judea and Samaria.
>
> In order to continue processing your request, we ask that you present **documents attesting to the connection of the abovementioned person to the territories of Judea and**

> **Samaria and indicating his presence there over a period of many years, which constitutes, in effect, a transfer of his center of life to Judea and Samaria**.

A copy of the response dated 27 August 2007 is attached and marked **P/16**.

42. It shall be noted that after the required documents were transmitted, the Respondent delayed processing of the request for a protracted period of time, and therefore, a petition in the matter was filed (HCJ 9386/07). Following the petition, the Respondent allowed Mr. Firani to return to his home and family in the West Bank. It is superfluous to note that his return home was made possible by way of a permit to enter Israel for one day which allowed for his passage through Israel and nothing more.

Obtaining a permit under the Order regarding Closed Zones – through updating the address under the Order regarding Identity Cards?

43. As stated, the position of the Respondent is that the requirement for a "permit to change place of residence" is allegedly regulated by the **Order regarding Closed Zones**. However, at the same time, he claims that the authority and the procedure regarding registered addresses fell under the **Order regarding Identity Cards and Population Registry** (Order regarding Identity Cards and Population Registry (Judea and Samaria)(No. 297) 5729-1969).

44. It shall be emphasized that according to the Respondents, the demand and the procedure for obtaining a "permit to change residence" existed before the Interim Agreement (the "Oslo Accord"). That is, according to this position, the Order regarding Identity Cards and Population Registry allegedly determined the procedure for filing applications for "changing place of residence" under the Order regarding Closed Zones – at least until 1995.

45. The legal situation regarding updating registered addresses which was in place prior to the signing of the Oslo Accord, was entrenched in Section 13 of the Order regarding Identity Cards and Population Registry and according to it, a resident of the Territories is obligated to inform the competent authority of his change of address within 30 days of the time the change took effect:

> Where a change occurred in one of the details listed in Section 11, a resident who has received an identity card must inform the population registry bureau in the jurisdiction where his residence is located of the change within 30 days, as will be determined by the competent authority.

This is merely a retroactive obligation to report the change of address of a resident of the Territories. It is akin to the obligation that applies to Israelis inside Israel,

and was not subject to prior or retroactive authorization by the military commander or any other source.

46. In light of the above, it seems that there is no need to elaborate on the extreme absurdity of the thesis according to which the aforementioned Section determined, in effect, the procedure for submitting applications under the Order regarding Closed Zones. Moreover – even if the military commander had indeed decided to act is such a bizarre and bewildering manner, it cannot be expected that an ordinary person should guess that when he hands the clerk at the Ministry of the Interior a form notifying of his new address, the military commander has actually decided to view this as an "application to settle" under the Order regarding Closed Zones – exactly as a person in Israel who is submitting the parallel Israeli form (which is almost identical) at the Ministry of the Interior does not expect it to be anything more than it is: an updating of address.

47. It is superfluous to note that this bewildering thesis was never applied nor claimed regarding foreign nationals who wished to settle inside the closed zones – despite the fact that the Area is the same Area and the Order is the same Order.

The power to update addresses in the population registry has been transferred to the Palestinian Authority

48. In the Interim Agreement between Israel and the Palestinian Authority (the "Oslo Accord"), powers in the realm of the population registry were transferred to the Palestinian Authority and it was established that the Palestinian Authority would manage the population registry of the residents of the Territories. The registry managed by the Palestinian Authority is the decisive registry.

It shall be noted that the powers that were transferred to the Palestinian Authority are exactly the same powers possessed by the military commander and no more. That is, the powers under the Order regarding Identity Cards and Population Registry were transferred to the Palestinian Authority as they were, including the power to accept notices of updated address which was stipulated in the abovementioned Section 13.

49. Along with the transfer of powers, procedures for updates were put in place whose purpose was:

> …to avoid discrepancies and with a view to enabling Israel to maintain an updated and current registry.

One of the procedures explicitly set forth in Article 28 of Annex III is that:

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

50. It must be noted that the Oslo Accord and Article 28 of Annex III constantly make reference to "residents of the Gaza Strip and West Bank" in a single breath and refer to one registry rather than two population registries. No special reference is made to changes of address between the two parts of the Territories, which is consistent with the fundamental principal established in the Accord whereby the Gaza Strip and West Bank form a single territorial unit.

51. Minshar Zeva'i [military proclamation] (No. 7) 5756-1995 (hereinafter: **Proclamation No. 7**) incorporated the Oslo Accord, including Annex III, into military legislation. Section 5 of the Proclamation reads:

> The transfer of powers and responsibilities in accordance with Annex III to the Interim Agreement includes the transfer of all rights, obligations and undertakings related thereto and on this matter the provisions of the Interim Agreement shall apply.

52. The matter is clear and explicit: the power to update the registered address of a resident of the Palestinian Authority was transferred to the Palestinian side. In order to make sure that the Israeli side has an accurate copy of the Palestinian population registry, it was established that the Palestinian side must retroactively notify the Israeli side of every change it made to the registry – the obligation to report changes the Palestinian side made to registered addresses is particularly emphasized.

53. It shall be emphasized that in the past, the Respondent has expressly acknowledged the fact that the power in the matter of changes of address, including changes of address between Gaza and the West Bank – was transferred to the Palestinian Authority in its entirety.

Thus, for example, on 4 December 1995 – **one day before the Petitioner moved from the Gaza Strip to the West Bank**, MK Naomi Hazan addressed Major General Oren Shahor, then Coordinator of Activities in the Territories, and raised a number of questions regarding passage between Gaza and the West Bank, including regarding changes of address from the West Bank to the Gaza Strip and vice versa.

On 9 January 1996 (after the issuance of Proclamation No. 7, which, as stated, incorporated Annex III into the internal military legislation in the Territories), the response of the assistant to the Coordinator of Activities in the Territories, Lieutenant Colonel Shmulik Ozenboy was received, according to which:

> The "safe passage" linking Gaza and Judea and Samaria is scheduled to open sometime during the month of January '96.

> Following the opening of the passage, free travel of residents of Gaza-Judea and Samaria between the two areas will be made possible.
>
> As for your question regarding changes of address between the West Bank and Gaza Strip, I hereby inform you that responsibilities for these matters have been transferred to the Palestinian Authority and therefore they should be addressed on this matter.

A copy of the letter from the Assistant to the Coordinator of Government Activities in the Territories dated 9 January 1996 is attached and marked **P/17**.

Updating of address in the population registry – condition for lawful residence in that address?

54. The point of departure regarding the population registry is that the population registry is a statistical-documentary registry which constitutes, at most, ostensible evidence of its veracity (with the exception of certain data as stated in the law). This was ruled as many as 45 years ago in the **Poonk-Schlesinger** case:

> It is clear and beyond any doubt that the role of a registration clerk… is nothing more than the role of collector of statistical material in order to manage the record of residents.

(HCJ 143/62) **Poonk-Schlesinger**, *Piskey Din*, 17(1), 225, 243) (1963)).

55. Since the Poonk-Schlesinger case, the Supreme Court has repeatedly ruled that the role of a registration clerk is nothing more than the role of collecting statistical material and no judicial power was vested in him. Therefore, the clerk is obliged to register what the citizens tell him, unless this amounts to "incorrectness of the registration which is obvious and does not come under reasonable doubt".

See:

HCJ 3045/05 **Ben Ari v. Director of the Population Administration**, *Takdin Elyon* 2006(4) 1725, 1731 (2006);
HCJ 1779/99, **Jane Doe v. Minister of the Interior**, *Piskey Din* 54(2) 368, 375-376 (2000);
HCJ 2901/97 **Naamat v. Minister of the Interior**, *Takdin Elyon* 2002(1) 634, 640 (2002);
HCJ 2888/92 **Goldstein v. Minister of the Interior**, *Piskey Din* 50(5) 89, 93-94 (1994).

56. Case law stresses that the discretion given to the registration clerk at the time he registers a person's information in the population registry is technical and limited:

> The margin for action of the registration clerk, be it even the head registration clerk, as far as initial registration and changes to the registration are concerned, is not unlimited, as the legislature noted the matters which must be registered, the limits of the registration clerk's discretion, the duty to notify of changes and other such provisions. The registration clerk, or the head registration clerk, or the Minister of the Interior, has no powers beyond the classifications and the means of registration set forth in the law or in regulations regulated pursuant to explicit empowerment set forth in the law.
>
> (HCJ 230/86 **Miller v. Minister of the Interior** *Piskey Din* 40(4) 436, 444-442 (1986)).

And in the Poonk-Schlesinger case, Justice Sussman stressed that:

> There is fault in terms of administration when a citizen who arrives to notify of his information for statistical needs… faces a suspicious clerk who delves into his past.
>
> (The Poonk-Schlesinger case, *ibid*, p. 252).

57. The decision that the updating of a person's address in the population registry constitutes a substantive condition of the very legality of his residence in said address – with no explicit legal basis and with no official publication – puts the person in an impossible position and undermines the fundamental principles of law!

58. The deportation of a man from his home in the West Bank to the Gaza Strip, based on a dated address is no different, from a legal and judicial perspective, from taking a man out of his home in Tel Aviv and deporting him to Beer Sheva or Kiryat Shmona – because that is where his address appears in the population registry.

Even if the Respondent considers these to be two different scenarios and therefore decided, at some point, to apply different rules to them – indeed, from the point of view of the ordinary citizen, as well as from the point of view of the legal basis for the population registry, **they are one and the same**. Clearly, a man who lives in Tel Aviv with a dated address does not fathom that one day, security forces would suddenly raid his home and deport him because according to the population registry, he lives somewhere else.

The claim that the very proclamation of a "closed zone" necessarily obligates the obtaining of a written "permit to enter", "permit to remain" and "permit to settle"

59. The Respondent claims (section 19 of the response) that "in accordance with the Order regarding Closed Zones (Judea and Samaria Region) (No. 34) 5727-1967, entry and remainder therein require an **individual permit** from the military commander, and *a fortiori,* settlement – permanent residency – in Judea and Samaria requires a permit from the military commander".

60. That is, the Respondent's position is that all his aforementioned claims regarding the requirement for a "permit to enter", a "permit to remain" and a "permit to settle" – including the decision from the end of 2007 regarding the issuance of permits to remain and the (baseless, as noted above) claims according to which requests for "permits to settle" are to be submitted via notification of change of address in the population registry etc. – all of this is allegedly, clear openly known, and matter of fact, under the Order regarding Closed Zones.

61. However, this is a legal maneuver which lacks any basis and which is not entrenched in legislation in general and in the abovementioned Order in particular, as described below.

62. The Order regarding Closed Zones (West Bank Region) (No. 34), 5727-1967 (hereinafter: **the Order regarding Closed Zones**), was issued pursuant to Section 70 of the Order regarding Defense Regulations (West Bank Region) 5727-1967 which was **officially abolished in 1972** (and replaced by another, different order).

Without addressing the question of whether the cancellation of the Order regarding Defense Regulations, pursuant to which the proclamation was made, cancelled the proclamation itself, indeed, in any case for some twenty years, the proclamation of the West Bank as a closed zone was in many ways a dead letter. This is so, since until 1988, there were general permits which allowed free movement between the Territories and Israel (General Entry Permit (Residents of Held Areas) (No. 5) (Judea and Samaria), 5732-1972 and General Exit Permit (No. 5) (Judea and Samaria), 5732-1972).

63. In 1988, after the intifada broke out, the military commander suspended the general permits. In the Directive regarding Suspension of General Entry Permit (residents of held areas) (temporary order) (No. 5) (Judea and Samaria) 5748-1988 (hereinafter: **Directive regarding Suspension of Permits**), which was issued pursuant to Section 90 of the Order regarding Defense Regulations (Judea and Samaria) (No. 378) 5730-1970, it was established that:

> A resident of a held territory as defined in the permit shall not enter the Area and shall not remain therein, unless granted a personal permit by the military commander or on his behalf.

In accordance with this provision, anyone who came from the Gaza Strip and wished to enter the West Bank could no longer enter the West Bank freely, but required that the military commander authorize and allow his entry. As is apparent, like the vast majority of the orders proclaiming "closed zones", in this

provision too, there is no restriction on "settlement" or "change of place of residence".

Moreover, this provision indeed did not necessitate the procurement of a written permit, neither according to its language – nor according to the manner in which it was implemented in practice. As stated, a person who arrived from Gaza and whose passage through Israel had been permitted was allowed by the military commander to enter the West Bank with no need for a permit whatsoever.

As stated above, this was not an exceptional matter, as the Territories contain many "closed zones" entry into or passage through which does not require a written permit.

64. It shall be noted that the Order regarding Defense Regulations, pursuant to which said directive was issued, does not establish individual rules regarding closed zones and does not require any one particular permit or another, but generally establishes:

a) The military commander may proclaim any area or locality closed (hereinafter – a closed zone).

b) Where an area or a locality has been closed as stated in subsection 2(a), **the military commander may determine that one of the following provisions shall apply thereto**:

1. No person shall enter the closed zone;

2. No person shall exit the closed zone;

3. No person shall enter the closed zone nor remain in it;

4. No person shall enter the closed zone nor exit from it.

c) The military commander may exempt a person from the proclamation regarding the closing of a zone or locality as stated in this section by means of a personal or general permit.

d) Where a person breaches the provisions of a proclamation regarding the closing of a zone or locality, under which entry or remainder in the closed zone was prohibited, or the conditions of a permit issued to him pursuant to this section, any soldier, police officer or other competent authority appointed thereto may remove him outside the closed zone.

This subsection shall not apply to a permanent resident in the closed zone.

65. As can be seen, this is a general section, which empowers the military commander with the authority to proclaim a "closed zone" and establish various provisions thereto, according to his selection and decision from a number of options.

As known, **there are dozens (if not hundreds) of closed zones throughout the Territories**: some are permanent and some are temporary; some apply to the entire population and some to certain groups only; some require a written permit while others require oral permission from the military authority on the ground; some are diligently implemented and some have long since turned into a dead letter. Each closed zone and its circumstance, each order and its provisions.

66. It shall be noted that the orders – like the Order regarding Defense Regulations and like the Directive regarding Suspension of Permits – do not distinguish between "remaining" and "changing place of residence" or "settling". That is, a person whose entry was permitted in accordance to a specific order does not come under further restrictions.

67. Therefore, in cases where the military commander sought to explicitly restrict the possibility of "settling" and "changing place of residence" he did so using an explicit order, separate and additional to the proclamation as a closed zone.

This, for example, was done in the context of the "disengagement" plan, when the areas of the West Bank which were designated for evacuation were proclaimed closed zone (despite the fact that they are already located inside the territory of the West Bank which is a "closed zone"), **and additionally**, the military commander saw fit to issue a separate order regarding "prohibition on changing place of residence" to those areas.

A copy of the Order regarding Prohibition on Changing Place of Residence (Judea and Samaria) (No.1556), 5365-2005 is attached and marked **P/18**.

68. In fact, even pursuant to the proclamation of the West Bank as a "closed zone", the military commander established that a single, particular group of people is indeed explicitly required to obtain a "personal permit certificate" in order to "change place of residence to the Area permanently": **Israelis**.

The order which regulates the movement of Israelis into the West Bank (General Entry Permit (No. 5) Israeli Residents and Foreign Residents (Judea and Samaria) 5730-1970) establishes, in Section 2(6) that one of the conditions for the entry of **Israelis** into the Area is:

> A residence shall not be permanently or temporarily changed to the Area unless by a personal permit certificate granted by the military commander.

69. The military commander chose not to establish a similar provision with respect to residents of the Territories, and, as stated, indeed, "permits to settle" never existed for residents of the Territories.

70. It is superfluous to note that, as far as the Petitioners are aware, there is not a single Israeli settler in the Territories who holds or has held a "personal permit certificate" for the purpose of changing his place of residence to the Territories.

The attempt to retroactively apply to the Petitioner concepts and rules which crystallized many years after he lawfully moved to the West Bank

71. As stated above, the departure point for the Interim Agreement (in the framework of which the Petitioner was stationed in the West Bank) is that:

> The two Parties view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which will be preserved during the interim period. (Chapter 5, Article XXXI).

72. The Respondent's current position, which apparently views the Gaza Strip and West Bank as two separate territorial units and therefore, perhaps, requires a "special permit" in order that a Palestinian who lives in one "unit" may move to live in the other "unit" **is a new position** which absolutely contradicts the fundamental principle in the Interim Agreement and Israel's clear and express position at the time of signing and implementing the Interim Agreement as well as at the time the Petitioner crossed.

In the period when the Petitioner moved to live in the West Bank, and years later, there was no doubt that Israel viewed the West Bank and the Gaza Strip as a single territorial unit. Therefore, it is understandable why for years there was no "permit to settle" in the West Bank or a "permit to remain" for Palestinians and why there was no need for such permits.

On the contrary: at the time the Petitioner passed, the Parties were hard at work on advancing solutions which would facilitate free passage between the Gaza Strip and the West Bank. As recalled, these matters reached their climax when, toward the end of 1990, the **safe passage** opened for almost a year, in accordance with the Interim Agreement. The safe passage allowed Palestinians nearly unlimited travel back and forth between the Gaza Strip and the West Bank.

73. Inasmuch as there has been a change in the policy of the Respondent, who has recently begun to implement a policy of "separation" between the Gaza Strip and the West Bank, to restrict passage between them or to require, for the first time, possession of all manner of permits etc. (without addressing, at this stage, the question whether these restrictions and requirements are legal), clearly, the Petitioner, whose passage was carried out in accordance with Israel's agreement and in accordance with its official position and who had no reason to suspect that there was even a modicum of "illegality" in his residence and his home, cannot not be faulted.

74. The Respondent's position that the Petitioner's case must be examined in the same manner as that of a person seeking **to move from the Gaza Strip to the West Bank today** and that the "Procedure for Handling Applications for Settlement" be applied to him, a procedure on which the Respondent established on 8 March 2009, namely about one month ago, is particularly outrageous.

75. Clearly, there is no similarity or comparison between the considerations relating to a person who seeks to effectively move between the Gaza Strip and the West Bank **now** and considerations relating to a person who has been living in his home in the West Bank for fourteen years.

The judgments to which the Respondent refers and other cases

76. The Respondent refers to three judgments in an attempt to support his position. Yet, a review of these judgments reveals that there is nothing in them to support the Respondent's position.

77. In the matter of Ghanim (HCJ 7880/03), the Honorable Court was not convinced that the Petitioner had been living in the city of Qalqiliya prior to his arrest. In that case, the Court decided to leave the door open for the Petitioner to appeal to it again in order to have his matter reconsidered, **provided that he was able to present further details supporting his aforementioned claim regarding his place of residence prior to his release**.

Similarly, also in the case of Al-Nabahin (HCJ 10375), the Court established that it had not been convinced that the Petitioner was indeed living in the West Bank, but ruled that "**the material before us indicates that his residence is in Gaza**".

78. The Ward case (HCJ 3519/05) related to a person who had already been released to the Gaza Strip and the Court heard a petition in which the Respondent was requested to allow his passage through Israel to the West Bank. In that case, the Court refrained from ruling on all the issues of principle, after the Petitioner was declared "wanted" and his request to return to the West Bank had already become impractical, as the Court stated:

> The significance of the Petitioner's being declared wanted is that he is hiding from security agencies as a military terrorism operative. In these circumstances, it seems that this petition, although it does raise complicated questions of principle has become theoretical.
>
> "The spearhead" of this petition is the Petitioner's individual matter and once the Petitioner's return to the West Bank has become impractical at this time, there is no longer any point in discussing the general questions raised by the Petitioners, substantial as they may be.

It shall be noted that the judgment indicates that the Court actually saw the problematics of a situation wherein a person is expelled from his home based on the records in the population registry, as, despite the petition's having become redundant, the Court saw fit to comment that:

> As a footnote to these remarks, we saw fit to note that the Respondents would do well to consider establishing a

> protocol allowing a person who has been removed, in the right circumstances and even without having issued a warrant for assigned residence, a procedure of a hearing for the purpose of making his claims when he disputes the records of the Palestinian population registry.

79. Moreover, there are countless examples which indicate that as a general rule, following petitions to the Court, the Respondent has allowed persons who had been deported from the West Bank to the Gaza Strip based on their registered address in Gaza, but succeeded in demonstrating that they were indeed living in the West Bank, to return to their homes in the West Bank with no conditions or restrictions.

80. Thus, for example, in the cases of Mr.Khaled Kahlout, Mr. Nidal Nabahin and Mr. Muhammad Jdili mentioned above:

HCJ 5504/03 **Kahlout v. IDF Commander in the West Bank** concerned the matter of a 30-year-old Palestinian who had settled in Ramallah, following 11 years in which he permanently lived in the West Bank and married a resident of Ramallah. That Petitioner had changed his address in the registry to Ramallah, but Israel did not acknowledge the change. He was arrested at the Allenby Bridge and deported to Gaza. Once the Respondent was required to present the source of the power to deport the Petitioner to Gaza, he opted not to subject his position to judicial review and allowed the Petitioner to return to his home in the West Bank.

In HCJ 3555/05 **Nabahin v. Commander of the Military Forces in the West Bank** and HCJ 4465/05 **Jdili v. Commander of the Military Forces in the West Bank** the cases of Palestinian residents who had been deported from their homes in the West Bank to the Gaza Strip solely because of the fact that their registered address was "Gaza", were again reviewed.

The first petition, HCJ 3555/05, concerned a native of Qalqiliya, whose address was registered in a fictitious address in the Gaza Strip, due to the fact that his family was originally from Gaza. He was caught by the Border Police and deported to Gaza.

The second petition, HCJ 4465/05 concerned the matter of a Palestinian resident who was living in Jericho. He happened to be in the wrong place at the wrong time, and was arrested by military forces who were seeking to arrest other people. He was released several days later and ceremoniously transferred to Gaza.

In both the abovementioned cases, the Respondent preferred, after submission of the petition, to allow the Petitioners to return to the West Bank and not subject his legal thesis to judicial review.

81. In HCJ 396/06 **Q'ais v. Commander of the Military Forces in the West Bank**, the matter of members of a family, Palestinian residents of the Palestinian Authority, was under review. The Petitioners, a couple and their five children,

settled in the West Bank in 1999. In 2005, the Petitioner travelled to visit her parents in the Gaza Strip. She and her young son were granted permits to travel, but when they wished to return to their home at the end of the visit, the Respondents refused claiming that the family must return to Gaza. Here also, the Respondent allowed their return to their home in the West Bank following the petition.

82. HCJ 5436/06 **Effendi v. Commander of the Military Forces in the West Bank** concerned the matter of a Palestinian resident of the Territories. In 1991, the Petitioner moved with his family to Bir Nabala in the West Bank. Fifteen years later, on 4 February 2006, he was caught near his home in Bir Nabala and immediately deported to the Gaza Strip due to the fact that his registered address was in Gaza. Following the petition, the Respondents agreed to allow his return to his home in the West Bank.

83. HCJ 9951/06 **Abu Btihan v. Commander of the Military Forces in the West Bank** concerned the case of a Palestinian resident of the Territories. In 1998, the petitioner moved to live in the West Bank, where he met his wife and established a family. In January 2006, the Petitioner went to the Gaza Strip, through Israel, along with his wife who was then pregnant and their one and a half-year-old son – in order to attend his brother's funeral. In August 2006, a permit to travel from the Gaza Strip to the West Bank was granted to his wife and son only, in light of her pregnancy and her dire medical condition, and since her registered address was Tulkarem in the West Bank. The Petitioner's application for a permit was denied. Following the petition, the Respondents agreed to allow his return to his home in the West Bank as requested.

84. HCJ 810/07 **Abu Sha'aban v. Military Commander in the West Bank** concerned the matter of a young Palestinian whose registered address was Gaza, despite having lived most of his life in Hebron in the West Bank. Due to an argument which erupted between him and his father, the young man ran away to the Gaza Strip in 2005, and had since been unable to obtain a permit to enter Israel in order to return to his father's home. Following submission of the petition, the Respondents agreed that the Petitioner return to his parents' home.

85. HCJ 9386/07 **Firani v. Commander of the Military Forces in the West Bank**, which was mentioned above, concerned a Palestinian who moved from the Gaza Strip to the West Bank with his parents in 1997. He was married and had two children. In 2006, he travelled to the Gaza Strip in order to visit his ailing brother. The Respondents initially refused to allow his entry into Israel based on his registered address in Gaza, and, as stated above, later announced that he must present documents attesting to a center of life in the West Bank. Following the petition, the Respondent agreed to allow his return to his wife and children.

86. **It shall be emphasized, that in all the above cases, without exception, the Respondent permitted the return of the Petitioners to their homes in the West Bank by means of a single day permit to enter Israel, which was used**

for the purpose of their short passage through Israel, and nothing more. None of them received a "permit to remain", "permit to settle" or any other permit for the purpose of being present and residing in their homes in the West Bank – despite the fact that the registered address of all of them is "Gaza".

Conclusion

87. Thus, the Petitioner moved from the Gaza Strip to the West Bank lawfully and had no cause to presume that he had acted unlawfully:

His passage was carried out officially, with full coordination with Israel and according to the Interim Agreement;

In practice, the Respondent's representatives allowed his entry into the West Bank clearly and openly, without claims, restrictions or requirements. Additional permits did not even exist.

A short time after his passage, the "safe passage" which allowed free travel between the Gaza Strip and West Bank was opened;

After having been detained for a short period of time in 2002, the Respondent's representatives released him to his home with no claims whatsoever;

In many other cases where Palestinians living in the West Bank were deported to the Gaza Strip due to their registered address in Gaza – the Respondent permitted their return to their homes following the petition, also with no need for any permit "to remain" or "settle".

88. The matter is clear: the Petitioner indeed did not request nor receive a "permit to remain" or a "permit to settle" - simply because those did not exist. The military commander permitted entry into the Gaza Strip simply by opening the gate to the Petitioner, with no restrictions, requirements or special permits.

89. The significance of the thesis presented by the Respondent is that anyone who has moved from Gaza to the West Bank over a period of decades, up to 25 December 2007 (the date on which the Respondent issued the first ever permit to remain) – even if he passed openly and officially and with the consent of the Respondent himself – is now to be retroactively declared an "infiltrator" in his own home and the Respondent will seek to retroactively apply to him procedures for passage which he established five weeks ago!

90. It cannot be that the military commander laconically proclaims a "closed zone"; does not establish any mechanism of "permits to remain" or other written permits relating thereto; does not set a limit on "changing place of residence" (to distinguish from other cases in which he explicitly did so); in practice, allows entry openly and officially without any requirements or restrictions – and years later makes accusations against a person who acted exactly in accordance with

these practices and deports him from the home where he has been living for many years, his family, his acquaintances, his environment and his life.

All the more so when the significance of such deportation is putting him in true mortal danger.

91. It is not for nothing that the Honorable Court ruled that:

> The fundamental premise is that the displacement of a person from his place of residence and his forcible assignment to another place seriously harms his dignity, his liberty and his property. A person's home is not merely a roof over his head, but it is also a means for the physical and social location of a person, his private life and his social relationships...
>
> Several basic human rights are harmed as a result of an involuntary displacement of a person from his home and his residence being assigned to another place, even if this assigned residence does not involve him crossing an international border.
>
> (HCJ 7015/02 **Ajuri v. Commander of the IDF Forces**, *Takdin Elyon* 2002(3) 1021, 1026 (2002).
>
> [Translation: the Supreme Court website, http://elyon1.court.gov.il/files_eng/02/150/070/A15/02070150.a15.htm]

92. In light of the above, the Honorable Court is requested to **issue an *order nisi* as requested in the petition and, after hearing the Respondent, to render it absolute**. The Honorable Court is also requested to:

A. **Issue a temporary injunction** instructing the Respondent to refrain from deporting Petitioner 1 from his home in the West Bank to the Gaza Strip as long as the petition is pending.

B. Order the immediate release of the Petitioner from the illegal custody in which he is being held to his home, as stated in the Request for Writ of *Habeas Corpus* which is filed in tandem with this response.

C. Inasmuch as despite what is stated in this response and in the Request for Writ of *Habeas Corpus*, filed in tandem with it, it shall be decided not to immediately release the Petitioner to his home, the Honorable Court is requested to schedule the petition for hearing **most urgently**.

23 April 2009

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Ido Bloom, Att.
Counsel for the Petitioners

[T.S. 60480]