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At the Supreme Court
Sitting as the High Court of Justice

HJC 7505/10

In the matter of:

1. **Abu Halawah, Head of Kharbatha Bani Harith Village Council, ID No _____**
2. **Nasser, Head of Deir Qaddis Village Council, ID No _____**
3. **Nafe'a, Head Ni'lin Council, ID No _____**
4. **Nofal, Head of Ras Karkar Village Council, ID No _____**
5. **HaMoked: Center for the Defense of the Individual, founded by Dr. Lotte Salzberger**

all represented by counsel Att. Yadin Eilam
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The Petitioners

V.

1. **West Bank Military Commander**
2. **Legal Advisor for the West Bank**

The Respondents

Petition for Order Nisi

The road is very beautiful – said the boy
The road is very difficult – said the youth
The road is very long – said the man
The old man sat to rest by the side of the road
(*"Songs of the End of the Road"* by Leah Goldberg)

A petition for an *order nisi* is hereby filed, which is directed to the Respondents ordering them to appear and show cause:

- a. Why the obstruction between Road 4460 and Road 463, in a location known as Tzomet HaDoar [The Post Junction] that prevents vehicular passage of Palestinian residents from communities Kharbatha Bnei Kharat, Deir Qaddis, Ni'lin, Ras Karkar and other communities, should not be removed
- b. Why they will not respond to the Petitioners' communication.

Introduction

Petitioners 1 and 3 are council heads of communities in the Ramallah District. Ramallah is naturally the most important and closest urban center to these communities and there are three main roads connecting them to the city. One, through Road 443, was had been closed to Palestinian traffic and has since been blocked by the separation fence. A second road, through Road 463 and the settlement Dolev is also blocked. Unlike the first two roads, the third road is open to Palestinian traffic including residents of the Petitioners' communities but the permanent roadblock set up by the Respondents had lengthened the approach to this road sixfold and has made using this "open" road to be cumbersome and unfeasible.

With no other option, the residents of the communities use an improvised and unofficial road that connects Kharbatha to Ni'lin and from there through Kafr Ni'ma, Deir Ibzi' and 'Ein 'Arik to Ramallah. This road passes through private lands and it is unsafe, winding and has been the scene of numerous accidents. This temporary road was set up by the residents because they had no choice.

The Petitioners have written to the Respondents requesting the roadblock be removed, but no answer was forthcoming.

As the Petitioners will show, the roadblock harms the residents of the communities on a daily basis. They are compelled to choose between a detour of approximately 14 kilometers in order to reach the road which, without the roadblock, is two kilometers away, and a trip along an improvised and dangerous road.

The roadblock injures patients who are attempting to reach hospitals, workers attempting to reach their places of employment, students attempting to reach their schools, and anyone wishing to visit relatives who live on the other side of the roadblock.

We emphasize that the subject of this petition is solely the removal of the obstruction described in paragraph a above. This petition does not raise questions regarding the opening or closing of roads to Palestinian traffic or settler traffic since the Road, access to which is impeded by the roadblock, is open to both Palestinian and settler traffic.

Considering all of the above , the Honorable Court is requested to schedule a prompt hearing of this petition, and to grant the Respondents the shortest time possible for the submitting their response since experience has shown that the Respondents' reply often obviates the need for a hearing of the petition.

The factual base

The parties to the petition and the factual background

1. Petitioner 1 is a Palestinian resident who lives in **Kharbatha Bani Harith** (hereinafter: **Kharbatha**) in the Ramallah District and serves as Head of the Village Council. **Kharbatha** has a population of approximately 3,700.

2. Petitioner 2 is a Palestinian resident who lives in Deir Qaddis in the Ramallah District and serves as the Head of the Village Council. Deir Qaddis has a population of approximately 2,000.
3. Petitioner 3 is a Palestinian resident who lives in Ni'lin in the Ramallah District and serves as the Head of the Local Council. Ni'lin has a population of approximately 5,000.
4. Petitioner 4 is a Palestinian resident who lives in Ras Karkar and serves as the Head of the Village Council. Ras Karkar has a population of approximately 1,900.
5. Petitioner 5 (hereinafter: **HaMoked**) is an association working to promote the human rights of Palestinians in the Occupied Palestinian Territories (OPT).
6. Respondent 1 (hereinafter: **the Respondent**) is the Military Commander of the West Bank Area, on behalf of the State of Israel which has been holding the West Bank under military occupation for more than 43 years.
7. Respondent 2 is the Respondents' legal advisor. The first communication on the subject of this petition was made to him almost three months ago. There was no response to the communication.
8. Kharbatha, Deir Qaddis, and Ni'lin are communities located in close proximity to each other and connected by Road 4460. Kharbatha and Deir Qaddis are situated east of Road 446 while Ni'lin is situated both east and west of Road 446; most of the town is on the west side. The three communities are located west of Road 463.

A general map of the area is attached and marked **P/1**.

9. The three communities belong to the Ramallah District. The Petitioners estimate that approximately 40% of these communities' workforce earns its livelihood in Ramallah. Ramallah is also the source of most of the staples and commodities in the stores of the communities as well as the teachers in the town schools, doctors, nurses, and similar professions. Higher education institutions are also found in Ramallah, as well as high schools that offer subjects that are not available in the town schools, hospitals, public institutions, etc. In addition to the many residents employed in Ramallah, many others travel to the city frequently since government offices, stores, restaurants, service providers, and other facilities are located there.
10. Two main roads connect the communities to Ramallah. Both pass through 'Ein Ayoub junction which is known as Tzomet HaDoar (the Post Junction). One road, which passes close to the settlement of Dolev is entirely closed to civilian traffic. The second road, which passes through Tzomet HaDoar, Road 463, and the villages Deir Ibzi' and 'Ein 'Arik, is open to traffic.

11. For a number of years (apparently since 2002) the Road 4460 exit onto Road 463 near Tzomet HaDoar has been blocked to vehicular traffic by large concrete blocks and an iron gate.

Photographs of the obstruction located at the Road 4460 exit onto Road 463 are attached hereto and marked as **P/2**.

12. **The effect of the obstruction is that the travel by car from Kharbatha to Tzomet HaDoar has turned from approximately 2 kilometers into approximately 14.7 kilometers and the trip from Deir Qaddis to Tzomet HaDoar has turned from approximately 4.5 kilometers into approximately 12 kilometers. This is because the residents are forced to use a winding road that goes through Road 446 and the settlements of Nili and Na'ale. The trip to Ramallah is therefore much longer.** As an illustration, it is similar to the situation wherein someone wishes to travel from this Honorable Court to the President's official residence and, instead of taking the shortest and quickest route, he is compelled to take the Menachem Begin Road until the French Hill intersection and from there through Chaim Barlev Boulevard, the Government Offices, Sheikh Jarrah, Damascus Gate, New Gate, King Solomon Road, King David Street, and Jabotinsky Street until he reaches his destination. There may be those who would be happy to follow the "Walk around Zion and encircle it" commandment from time to time, but how would a person who has to take this long detour every day feel?
13. It is an absurdity that the obstruction is incompatible with the logic behind the "separation" between Palestinians and settlers (regardless of the question of the legitimacy of this separation) since it causes the residents of the Petitioners' communities to come into increased contact with the settlers in the area. This is because the long detour runs very close to homes in Nili and Na'ale. Were it not for the obstruction, the residents of the communities would have no reason to travel near them.
14. An additional problem facing residents of Kharbatha and Deir Qaddis who are forced to make the long journey is frequent traffic jams on the road, particularly in the morning, when people commute to work or school. The congestion is caused by long lines of trucks that block the entire road as a result of the fact that the main West Bank fuel depot is located at the entrance to Road 4460 from the direction of Road 446.

Photographs of the trucks in the vicinity of the fuel terminal are attached hereto and marked **P/3**.

For purposes of illustration, the road by which it is possible to reach Tzomet HaDoar is highlighted in yellow, and the short but blocked route is highlighted in pink on the attached map which is marked **P/4**.

15. Because they had no choice, the residents of the communities, at their own expense, paved an improvised and unofficial road that connects Kharbatha and Bil'in. The residents can continue from there, through Kafr Ni'ma, Deir Ibzi' and 'Ein 'Arik to Ramallah. The road connecting Kharbatha and Bil'in passes

through private property. It is a narrow, unsafe and winding road. It gets flooded on rainy days and many accidents occur on it.

16. Although the distance added by travelling to Ramallah through Bil'in is only about four kilometers, the Petitioners estimate that the trip takes 30 minutes longer. This is both because of the quality of the road and the fact that it passes through two villages – Bil'in and Kafr Ni'ma – which are not equipped to handle the additional traffic; therefore, the journey from Kharbatha to Ramallah is extended from 15 minutes to approximately 45 minutes, and the journey from Deir Qaddis to Ramallah is extended from 25 minutes to approximately 45 minutes.

The road by which residents presently travel to Ramallah is marked on the map attached hereto and marked **P/5**.

17. If the lengthy extension of the trip is an annoyance to the residents, it is a real danger with regard to medical evacuation by ambulance. Most medical evacuations to hospitals in Ramallah are done in ambulances that arrive from the city; a small number are done using a single ambulance located in Ni'lin which has a driver and paramedic but no doctor. The Petitioners estimate that if the obstruction were removed, an ambulance could reach Ramallah from the villages within an average of 12 minutes as compared to an average of approximately 35 minutes – the present travel time. Naturally, a delay of 23 minutes in arrival at a hospital can cost lives, and certainly the double delay time of 46 minutes required for ambulances to reach the communities and return to Ramallah, all the more so.
18. Residents of Ni'lin who travel through Tzomet HaDoar seemingly suffer less harm since the obstruction only extends their route by approximately 3 kilometers. However, since the buses that transport the residents of Ni'lin to Ramallah are also required to pick up passengers in Deir Qaddis and Kharbatha, the obstruction affects all those using public transportation in the same manner.
19. Another alternative used by many residents who use public transportation, for lack of choice, is to split their journey by taking a taxi to the roadblock on Road 4460, crossing the roadblock on foot, then taking another taxi on the other side of the roadblock to reach Ramallah. This also extends travel time since the residents often have to wait 20-30 minutes for a taxi. This is obviously not relevant for those who wish to reach Ramallah by driving their own car or by bus.
20. Ras Karkar is located on the other side of the obstruction, on the opposite, east side of Road 463. The obstruction does not prevent residents of Ras Karkar from reaching Ramallah but it prevents their access to approximately 300 dunum [approx. 74 acres] of agricultural land which is owned by them but located on the opposite side of the obstruction, west of Road 446.
21. It should be noted that the harmful effect of the obstruction on the Petitioners and the residents whom they represent, is not limited only to extending the journey to Ramallah. Many of the residents have relatives living in communities

on the other side of Road 463. Petitioners 1, 2, and 4 estimate that in each of the communities that they lead, there a few dozen families with some relatives living on one side of the obstruction and some on the other. The obstruction greatly extends the journey between the communities on one side and those on the other side, which is harmful to family ties.

22. Hundreds of students who live in the communities headed by Petitioners 1-3 study at universities and colleges in Ramallah and its vicinity. They must reach the educational institutions on a daily basis and return to their homes. The obstruction is very harmful to these students' right to education and their right of access to education.
23. Since the obstruction was set up, the Petitioners have sought the assistance of the Palestinian liaison officers on this matter several times. The petitioners have also held meetings on this topic with Israeli officers from the coordination offices who promised to look into the matter but the obstruction remains.
24. On July 19 2010 the undersigned contacted Respondent 2 on behalf of Petitioners 1-3 and on behalf of HaMoked requesting that he take action to have the obstruction removed.

A copy of the letter of July 19 2010 is attached hereto and marked **P/6**.

25. Until the date of submission of this petition, almost three months since the communication was sent to the Respondents and no response has been received. The Petitioners are have no recourse but to trouble the Honorable Court with a petition seeking remedies that could have been granted without need for its submission.
26. The violation of the rights of the Petitioners and the members of their communities to freedom of movement, family life, health, education, freedom of occupation and their rights to property is perpetrated on a daily basis. **Since the Petitioners appealed to the respondents and received no response, they were left with no choice other than to seek relief from this Honorable Court.**

The Legal Argumentation

27. The Petitioners claim that by failing to remove the obstruction, whose source of authority and reasons are unclear and which impedes the freedom of movement of residents of Kharbatha, Deir Qaddis, Ni'lin, and Ras Karkar, the Respondents severely, unreasonably and disproportionately infringe on the rights of the Petitioners and the residents they represent to dignity, freedom of movement, family life, health, education, freedom of occupation and their right to property.
28. The petitioners wish to make a preliminary comment regarding the legal argumentation concerning the Petitioners' violated rights and the Respondents' competency to set up the obstruction and in so doing to block traffic on the road between Road 4460 and Tzomet HaDoar.

29. As commonly known, no right is absolute. In order to determine whether a violation of Right No.1 is lawful, one must weigh it against the nature and force of Right No.2, in defense of which Right No.1 must be violated. In the case of the present petition, while the rights violated by the obstruction are clear to everyone, the Petitioners have no information regarding the reasons for setting up the obstruction. As noted, the Respondents unlawfully refrained from responding to the Petitioners' request regarding this issue. In light of this, the Petitioners are unable to make arguments on the logic and proportionality of the Respondents' decision to set up the obstruction.
30. The petitioners also have no information regarding any procedure the Respondents followed before setting up the obstruction, any written references on this issue, any order issued for purposes of setting up the obstruction etc. It is appropriate to recall that in the judgment on the issue of Road 443 ([HCJ 2150/07 Abu Safiyeh v. Minister of Defense](#), not published, issued December 29 2009) this Honorable Court remarked (sec. 37 of the decision of the Honorable Judge Vogelman): "The provisions of Article of the Security Provisions Order, which were cited above, empower the military commander to order the closure of a road 'by means of an order or by issuing provisions or in any other manner'". This indicates that the military commander is authorized to order the closing of a road without any written documentation. Nevertheless, this authority should only be exercised when there is an immediate need to close a road for security reasons. **Even in such a case, when closure of the road is not carried out for a short and limited time, the order should subsequently be confirmed in a written order...**A similar question was presented to this Court regarding the military commander's competency to order the closing of an area, based on Article 90 of the Security Order. In that instance, the Court held was as follows:
- The closing of areas must be carried out by means of written orders issued by the military commander. Palestinian residents must not be prevented from reaching their lands in the absence of closure orders.** The foregoing does not detract from the area commander's authority to verbally order a specific closing of any area for a short and limited duration as a result of unexpected circumstances that raise concern of an immediate security threat which cannot be mitigated in any other manner. However, one must stand guard and ensure that the authority to order the localized closure of a specific area without a legal order in response to unexpected circumstances, should be limited solely to the time and place where it is immediately required. **In principle, an area is to be closed by order, notification of which must be provided to those affected, and, residents who have been shut off from their lands must be given the opportunity to challenge the validity of the order.** (statement by then Justice Beinisch in *Morar*, clause 21)
31. The petitioners are not aware of any order issued by the Respondents pursuant to which the obstruction was set up since the Respondents, as mentioned, failed to respond to the Petitioners' request . Nevertheless, the Petitioners do know

that if an order had been issued they were not given an opportunity to "challenge its validity".

32. Therefore, the Respondents cannot claim that the obstruction was set up for the proper purpose of protecting any right. Should the Respondents claim that the obstruction was set up legitimately, under power and authority and that it is reasonable and proportional, the petitioners request the Honorable Court grant them leave to respond on this issue and, if necessary, to amend the statement of petition.

On the matter of the violated rights

33. The significantly longer journey residents of the communities must make if they wish to visit their relatives, or reach the urban center where they are employed and where hospitals, schools, stores, craftsmen, professional services, restaurants, etc. are located, is a direct violation of their rights to dignity, freedom of movement, family life, health, freedom of occupation, property and education. The extended time it takes to reach hospitals may infringe upon their right to life.
34. Since the violated rights are recognized as basic human rights under both Israeli and international law, the petitioners will not burden this Honorable Court with unnecessary and extensive arguments to establish the status of these rights but will do so briefly.

The right to freedom of movement

35. The right to domestic, or inter-state freedom of movement is recognized under Israeli and international law and, according to judgments by this honorable court, it is also anchored in customary international law.
36. In the judgment delivered in [HCJ 1890/03 \(Bethlehem Municipality v. State of Israel\)](#) IsrSC 58(4)736, 755-754 the following is stated:

Freedom of movement is one of the basic human rights and it has been recognized in our law both as an independent basic right... and as a right that is derived from the right to liberty (*per* President Barak and Justice Cheshin in HCJ 5016/96 **Hoerv v. Minister of Transportation** [19], at pp. 59 {213} and 147 { } respectively. **In addition, there are some authorities who believe that this freedom is also derived from human dignity** (*per* President Barak and Justice Cheshin in HCJ 5016/96 **Horev v. Minister of Transport** [19], at pp. 59 {213} and 147 {___} respectively). In addition, there are some authorities who believe that this freedom is also derived from human dignity.

[...]

The status of the freedom of movement in our legal system was discussed by this court in *Horev v. Minister of Transport*... In that case, President Barak said that **freedom of movement is 'one of the more basic rights'** (*ibid.* [19], at p. 49 {___}), that **the right to**

freedom of movement ‘is in the first rank of human rights’ (ibid. [19], at p. 51 {___}) and that **freedom of movement is ‘a freedom that is on the very highest level of the scale of rights in Israel’** (ibid. [19], at p. 53 {___}). The president also added in Horev v. Minister of Transport [19] that **‘as a rule, we place the freedom of movement within the boundaries of the state on a similar constitutional level to that of the freedom of expression’** (ibid. [19], at p. 49 {203}). It should be noted that similar remarks with regard to the status of the freedom of movement were also (ibid. [19], at p. 181 {___}). On the status of freedom of movement in Israeli law following Horev v. Minister of Transport [19], see also Y. Zilbershatz, ‘On Freedom of Movement within the State: Following HCJ 5016/96 Horev v. Minister of Transport,’ 4 Mishpat uMimshal (1998) 793, at pp. 806-809. The freedom of movement is recognized as a basic right also in international law. The freedom of movement within the state is enshrined in a whole host of international conventions and declarations concerning human rights (see, for example, art. 12 of the International Covenant on Civil and Political Rights, 1966, art. 13 of the Universal Declaration of Human Rights, 1948, and art. 2 of the Second Protocol of the European Convention on Human Rights, 1950) and it would appear that it is also enshrined in customary international law (see Zilbershatz, ‘On Freedom of Movement within the State: Following HCJ 5016/96 Horev v. Minister of Transport,’ supra, at pp. 800-801). Notwithstanding, like the freedom of worship and like almost all freedoms, the freedom of movement is not absolute. It is relative, and it should be balanced against other interests and rights. This is the case in our constitutional law (see, for example, Horev v. Minister of Transport [19], at pp. 39, 181 {___, ___}); it is also the case in international law concerning human rights. Thus, for example, art. 12 of the International Covenant on Civil and Political Rights provides: ‘1. Everyone lawfully withimade by the justices who did not agree with President Barak’s majority opinion in Horev v. Minister of Transport [19] (see, for example, the remarks of Justice Cheshin (ibid. [19], at p. 147 {___}) and the remarks of Justice Tal (ibid. [19], at p. 181 {___}). On the status of freedom of movement in Israeli law following Horev v. Minister of Transport [19], see also Y. Zilbershatz, ‘On Freedom of Movement within the State: Following HCJ 5016/96 Horev v. Minister of Transport,’ 4 Mishpat uMimshal (1998) 793, at pp. 806-809.

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Movement within the State: Following H CJ 5016/96 Horev v. Minister of Transport, supra, at pp. 800-801).

37. There is no doubt that the obstruction and the extensive lengthening of the Petitioners' journey violates the right of the Petitioners and members of their communities to freedom of movement.

The right to family life

38. Societies everywhere have always treated the right to family life as a supreme value. This right is not limited to the right to establish a family but also includes the right to normal family life, the right of children to visit their parents, to assist them as needed and to be supported by them as required, to celebrate holidays and family occasions together and to share grief and mourning.
39. The Supreme Court has repeatedly emphasized the great importance of the right to family life in many judgments and especially in the one given in **Adalah** (H CJ 7052/03 **Adalah v. Minister of Interior**, not published, given on May 14 2006). For example, Honorable Justice (at that time) Barak wrote in Paragraph 25 of his verdict:

It is a primary and basic obligation to maintain, nurture, and preserve **the most basic social and advanced unit in the history of mankind, that was, is, and will be the foundation that preserves and ensures the existence of human society – that is, the natural family...** Family relations...lie at the basis of Israeli law. The family performs a role that is central and vital in the life of the individual and the life of society. Family relationships, which are protected by law and which the law wishes to develop, are the strongest and most meaningful relationships in human life.

And in the judgment in [H CJ 2245/06 Dobrin v. Israel Prison Service](#) (not published, given on June 13 6 2006) Honorable Justice Procaccia writes (in Paragraph 12 of the verdict):

On the scale of constitutional human rights, **the constitutional protection of the right to parenthood and family comes after the protection of the right to life and to the integrity of the human body.** The right to integrity of the human body is intended to protect life; the right to family is what gives life significance and meaning...

This right is therefore very high on the scale of constitutional human rights. It is of greater importance than property rights, the freedom of occupation and even the privacy of the individual. It reflects the essence of the human experience and the concrete realization of an individual's identity.

40. Family rights are recognized and protected by international public law. Article 46 of the Hague Regulations sets forth:

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

In **Stamka** (HCJ 3648/97 **Stamka v. Minister of Interior** IsrSC53(2)728,787, the Court held that:

Israel has an obligation to protect the family unit under international conventions.

See also: Articles 17 and 23 of the International Covenant on Civil and Political Rights, 1966; Articles 12 and 16(3) of Universal Declaration of Human Rights, 1948; Article 12 of the European Convention on Human Rights; Article 27 of the Fourth Geneva Convention; Article 10(1) of International Covenant on Economic Social and Cultural Rights of 1966; the Preamble to the Convention on the Rights of the Child 1989.

41. When the obstruction makes it difficult for parents to visit their children and for children to visit their parents and grandparents it violates the residents' right to family life.

The right to health

42. The primary international source on the right to health is Article 12 of the International Covenant on Economic Social and Cultural Rights which determines that: "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.. Professor Aeyal Gross notes that "In light of the many articles dealing with the right to health in international human rights instruments and other international documents...**many are of the opinion that that the right to health is now recognized as a universal right and also recognized as part of customary international law**". (Aeyal Gross: "Health in Israel: Between A Right and A Commodity", **Economic, Social, and Cultural Rights in Israel**, 437,445 (Yoram Rabin and Yoav Shani, editors, 2005 [in Hebrew]).
43. In General Comment No. 14 of the UN Committee on Economic Social and Cultural Rights, the Committee interpreted Article 12 of the Convention and gave it substantial content. According to the Committee, the right to health includes the right of timely access to health services (section 17 of the General Comment):

The creation of conditions which would assure to all medical service and medical attention in the event of sickness (art 12.2(d)), both physical and mental, includes the provision of **equal and timely access** to basic preventive, curative, rehabilitative health services and health education; regular screening programmes; **appropriate treatment of prevalent diseases, illnesses, injuries and disabilities, preferably at community level**"

44. This Honorable Court has also ruled the **"a person who has no access to elementary medical service is a person whose human dignity has been violated** (LCA 4905/98 **Gimzo v N. Yeshayahu** IsrSC 55(3) 360, 375-376).
45. The significant increase in travel time and the significant impairment of the residents' access to hospitals and clinics, either by private car or ambulance violate the right to health and may even violate their right to life.

The right to education

46. In the verdict in HCJ 2599/00 **Yated – Children with Down Syndrome Parents' Society v. Ministry of Education** IsrSC 56(5) 834,841 the Court held:

The right to education has long been recognized as one of the basic human rights. It is anchored in the Universal Declaration of Human Rights of 1948 which establishes in Article 26 that every person has the right to education, and that education must be provided at no cost in at least the first and basic stages. The International Covenant on Economic Social and Cultural Rights of 1966 which was ratified by the State of Israel in 1991 declares in Article 13 that education is directed at the full development of the human personality, sense of dignity and at strengthening respect for human rights and basic freedoms, and it established that basic education must be compulsory and available to everyone at no cost. The right to education is also anchored in Articles 28 and 29 of the Convention on the Rights of the Child of 1989 which was also ratified by Israel in 1991.

47. Article 28 of the Convention on the Rights of the Child which was mentioned in the Yated verdict, establishes that two of the obligations States Parties undertake are to:

3. Make **higher education accessible to all** on the basis of capacity by every appropriate means;
4. Make **educational and vocational information and guidance available and accessible** to all children.

48. A significant increase in the time it takes a student to travel to and from university every day is a violation of currently enrolled students' right to education and may violate the right to education of future candidates, particularly female candidates who would prefer to forgo post secondary education because of the time they would have to waste travelling every day.

The right to freedom of occupation and property

49. The basic principle of freedom of occupation was recognized as a basic right in Basic Law: Freedom of Occupation and it also applies to the OPT:

An additional reason...is found in the basic right to freedom of occupation, which was recognized in decisions of this court even before Basic Law: Freedom of Occupation was enacted...

Although Israeli law is not directly applicable in the Area, this court applies its basic principles to the Military Commander of the Area and his subordinates acting pursuant to personal powers granted to them as state authorities acting on behalf of the State therein... .. exactly as the general administrative law applies...

H CJ 3940/92 **Jerar v. Commander of Judea and Samaria Area**
IsrSC 47(3)298, 304.

50. The right to property is also recognized as a basic right in Israeli law. Article 3 of Basic Law: Human Dignity and Liberty: "There shall be no violation of the property of a person."
51. As mentioned, many residents work in Ramallah and its vicinity and the extending the trip to the city is a violation of their rights to freedom of occupation and property. The rights of freedom of occupation and property of residents of Ras Karkar who have lands on the other side of the obstruction are also violated as a result of the restriction on access to their lands.

The right to dignity

52. A person gets up one morning and begins his journey to work in Ramallah, as he does every day, when he discovers to his surprise that the road is blocked. He does not know why the road is blocked and no alternative route had been prepared for him. It is therefore not surprising that the Petitioners and many of the residents of their communities sense discrimination and humiliation that amount to a violation of their human dignity. The fact that the residents were never told the reason for the obstruction only deepens their feelings of humiliation and degradation.
53. The right to dignity is also recognized as a basic right in Israeli law. Article 2 of Basic Law: Human Dignity and Liberty establishes that: "There shall be no violation of the life, body or **dignity** of any person as such". Article 4 establishes: "All persons are entitled to protection of their life, body and **dignity**".
54. The right to dignity is also recognized in international law. For example, Article 27 of the Fourth Geneva Convention establishes that:

Protected persons are entitled, in all circumstances, **to respect for their persons, honour**, their family rights, their religious convictions and practices, and their manners and customs. **They shall at all times be humanely treated** and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity...

On the obligation to respond to letters within a reasonable time

55. It is a known rule that "the obligation to act with appropriate speed is one of the primary lessons of proper administration" (I. Zamir, **Administrative Power** (volume 2, Nevo, 5756), 717).
56. In HCJ 1999/07 **Galon v. Government Committee for Investigating the Events of the Campaign in Lebanon 2006**, this Honorable Court held:

"A reasonable time" is a relative term. Its purpose is to set the limits on the obligation of an authority to act within a reasonable period of time, according to the circumstances of the issue, and taking into account all the conflicting interests and considerations. The requirement for a public authority to act within a "reasonable time" derives from practical constraints that can create difficulties for the authority to prepare for performing the action on the one hand, and, on the other hand, by the strength and importance of acting promptly, both with respect to the general interest and with respect to the individual's interest. **When it comes to human rights or important public interests, such as the public's right to freedom of information and exercising the freedom to examine government actions, the term "reasonable time" for action receives special significance**" (not published, paragraph 8 of the judgment of Honorable Justice Procaccia, given on April 19 2007).

This Honorable Court has further stated that, on issues of human rights:

When the remedy is principally reparation for a violation of basic individual rights , there is room to expect a more rapid resolution of the issue and correction of the irregularity for reasons of safeguarding basic individual rights and maintaining the authority's duty to respect and uphold constitutional law.
"As a rule, the proper remedy for human rights violations is compelling the authority to fulfill them immediately.

HCJ 8060/03 K'adan v. **Israel Land Administration**, not published, given on April 26 2006, paragraph 13 of the verdict.

57. Accordingly, Article 11 of the Law of Interpretation, 5741-1981, establishes that:
- Authorization or obligation to perform an action without a time limit for the performance thereof – means that there is an authorization or obligation to perform the action in a timely manner
...
58. **Section 2 of the Law Amending Administrative Procedure (Decisions and Reasons) 5718 – 1958** reinforces this obligation and defines clear timeframes by determining that a public servant must answer requests directed to him in writing within no longer than 45 days. In certain cases, listed in the law, there is

no obligation to respond within 45 days, but in any event, the applicant must be notified of the reasons in writing within 45 days.

59. **The Attorney General has clarified** the obligation to respond to requests as soon as possible and in no more than 45 days **in his directives** – which are binding on the Respondents – Directive No. 3.1004 – Law Amending Administrative Procedure (Decisions and Reasons) 5718-1981, Article c.1.). **A parallel order was established in the Orders of the Ministry of Defense**, which, of course, are also binding on the Respondents (Order of Ministry of Defense No.10.06 –Public Conduct and Legal Aspects of the Activities of Ministry of Defense Staff, Article 21).
60. **Military orders** also impose an obligation to respond in writing as soon as possible and within 45 days:

Section 4 of General Staff Order 08.0101 – Applications by Civilian Entities - Duty to Provide Detailed Response establishes that:

A soldier who receives a letter from a civilian entity and who is authorized to handle the subject of the request, shall respond to the applicant promptly and no later than 45 days from receipt of the appeal.

In Article 6.a of the order, it is established that:

When there is justification to delay a response to the applicant according to Article 5 above - the soldier shall notify the applicant promptly and in writing (but no later than 45 days from the date of receipt of the application) of the reason for the delay in providing a response...

61. The petitioners wrote to the Respondents but the Respondents did not honor the petitioners with any kind of response.
62. This unlawful conduct by the Respondents needlessly prolongs the suffering of the Petitioners and the violation of their rights and causes them considerable and unnecessary expenses. It is also a waste of time for HaMoked's employees, the attorneys of the HCJ Department in the State Attorney's Office. It unnecessarily wastes the precious time of the justices and staff of this Honorable Court, and indirectly harms other litigants whose cases are pending before this Honorable Court.
63. **The Petitioners request the Honorable Court to make the severity of the Respondents's actions, or more precisely, their omissions clear to them, both in its decisions and in deliberating on the issue of costs and legal fees.**

Summary

64. The Petitioners hope that they have succeeded in demonstrating to the Honorable Court, the severe and daily injury caused to the Petitioners and the

residents of the communities that they represent. The considerable suffering caused to those who are unable to visit relatives, those who require urgent medical care and whose access is delayed, those who, on a daily basis, encounter difficulties in reaching places of education and employment, and even those who are "just" interested in reaching the nearby city in order to go to government offices, purchase a pair of shoes, buy groceries, or dine in a restaurant.

65. In light of all the above, this Honorable Court is requested to issue an *order nisi*, as sought, and after receiving the response of the Respondents to render it absolute and instruct the Respondents to pay the Petitioners' costs and legal fees.
66. The Honorable Court is also requested **to schedule an early date for hearing the petition and to grant the respondents the shortest time possible for submitting their response, since experience has shown that the Respondents' response often obviates the need for a hearing of the petition.**
67. This petition is supported by affidavits and powers of attorney signed before an advocate in the West Bank and sent by fax to HaMoked following telephone coordination. The Honorable Court is requested to accept these affidavits and powers of attorney, given the objective difficulties regarding a meeting between the Petitioners and their counsel.

5 Cheshvan, 5771
13 October 2010

Yadin Eilam, Adv.
Counsel for the Petitioners