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At the Supreme Court Sitting as the High Court of Justice **HJC 7369/10**

1. **a-Z'atari**
2. **HaMoked – Center for the Defence of the Individual, founded by Dr. Lotte Salzberger - Registered Association**

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The Petitioners

V

Commander of IDF Forces in the West Bank

Represented by the State Attorney's Office
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Response of the Respondents

1. In accordance with the decision of Honorable Justice H. Melcer of October 11, 2010 and with the motion in consent to extend the date, the Respondent hereby respectfully submits his response to the Petition.
2. The subject of the Petition is the Petitioners' request to allow Petitioner 1 (hereinafter: **the Petitioner**) to leave for Jordan in order to continue from there to Yemen for purposes of academic studies.
3. The Respondent's position that the remedy sought in the petition cannot be granted for reasons of security and therefore the petition must be rejected.

Updated information available to security officials indicates that the **Petitioner is in contact with terrorists and there is concern that his departure will harm the security of the Area.**

4. The Petitioner is a resident of Bethlehem, age 19, unmarried with no children. His departure abroad was approved in the past in 2007 and 2009; the Petitioner reached

the Allenby Bridge on September 20, 21 and 24, 2010 with the intent to go abroad. However, his departure was prevented for security reasons.

5. In late September 2010, the Petitioner contacted the Bethlehem DCO regarding the security issue relating to him. On October 11, 2010, before processing of his application in accordance with regulations was completed, the present petition was submitted.
6. As is known, when the IDF entered the Judea and Samaria Area, these territories were declared as closed zones. Entry into and exit from these territories requires approval by the Commander of the IDF Forces in the Area or someone authorized by him. This is in accordance with the Order regarding Closed Zones (West Bank Area)(No.34), 5727-1967. See also Clause 90 of the Order regarding Security Provisions (Judea and Samaria)(No.378), 5730-1970
7. The basis for declaring the Area closed zone, including the issue of departure from the Area, is, among other things, security considerations. That is, concern of security risks that could arise as the result of permitting free entry into and exit from the Area which could be exploited for maintaining connections with terror organizations and those engaged in hostile activities for various purposes (recruitment, orders, missions, and similar activities)
8. In exercising his discretion on matters relating to entry into and exit from the Area, the military commander is required to estimate the security risk involved in granting the request in whole or in part. This is in order to prevent improper use of the freedom to travel outside the Area and return thereto. He is also required to consider the vital overall interest of maintaining the security of the Area on the one hand and the desire of residents of the Area to depart from the area for any purpose on the other.
9. During the course of the years, this Honorable Court has heard many petitions regarding the military commander's authority to prevent entry into and exit from the Area. In its verdicts, this Honorable Court has repeatedly upheld the legal validity of the security legislation, while approving the security considerations taken into account by the military commanders of the Area when making decisions regarding the movement of residents into and out of the Area (see for example: H CJ 9293/01 **MK Muhammad Barakeh v. Minister of Defense**, IsrSC 56(2) 509 (2000).

With respect to the considerations regarding preventing departure from the Area, the Court has explicitly held that when an administrative authority in the area of the military government examines a request to enter or depart the Area, it is authorized to evaluate the security risks involved in responding to the request.

10. As stated, and in accordance with security legislation, case law as well as the rules of international law, since the Judea and Samaria Area is under military rule, and in light of its being declared a closed zone in accordance with security legislation, departure from the Area is based on the discretion of the military commander or a person authorized by him for this purpose.
11. It is the opinion of the Respondent that security considerations are uppermost in all the political agreements with the Palestinian Authority and that they are interwoven within the text of said agreements. All the agreements are subject to the principle that the State of Israel is responsible for general security of the periphery of the Area and the crossing points. Israel has the responsibility [to defend against] external threats and the overall responsibility for the security of Israelis and for the security of the Area which remains under belligerent occupation.

12. It is the opinion of the Respondent that he is in charge of security and public order at all the crossing points into and out of the Judea and Samaria Area and that these crossing points remain under Israeli authority according to the agreement, including the authority to prevent departure from the Area. This is even more compelling considering the circumstances of time and place and in light of the reality in the Area
13. In light of the security situation, and with the current intelligence information available to security officials and which indicate that **the Petitioner is in contact with terrorists and that there is concern that his departure abroad will harm the security of the Area**, the Respondent's position is that, under the circumstances, the Petitioner's request to be allowed to go abroad cannot be approved.

The intelligence information that forms the basis for the opposition to approve the Petitioner's departure abroad will be presented as needed to the Honorable Court, with the approval of the counsel for the Petitioners, *ex parte*, and *in camera*.

14. In light of the above, this Honorable Court is requested to reject the petition and instruct the Petitioner to pay the costs

Today, 6 Cheshvan 5775

14 October 2010

(signed)

Leora Veiss- Bansky, Adv.

Deputy Attorney General