At the Supreme Court

Sitting as the High Court of Justice **HCJ 6329/02**

In the matter of:

1. **_____Jaberi, ID No. _____**
2. _____ **A-shtiyeh, ID No. _____**
3. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**

All represented by counsel, Advocate Yossi Wolfson (Lic. No. 26174) and/or Lea Tsemel and/or Tarek Ibrahim (Lic. No. 31081) and/or Adi Landau (Lic. No. 29189) Hisham Shabaita (Lic. No. 17362) and/or Tamir Blank (Lic. No. 30016)

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The Petitioners

v.

Commander of IDF in the West Bank

The Respondent

Petition for *Order Nisi* and *Interim Order*

A petition for an *order nisi* is hereby filed which is directed at the respondent ordering him to appear and show cause why he should not refrain from demolishing the house of petitioner 1 and the house of the parents of petitioner 2, or damage it in any other way,

And alternatively:

a. Why he should not present the petitioners with reasoned and duly signed orders before he causes damage to the houses.

b. Why he should not allow the petitioners to appeal and make their arguments before him against the damage to the houses before such is caused by him.

c. Why he should not give the petitioners, if he rejects their appeal, an additional limited time to apply to this honorable court, before he damages the houses.

Petition for an Interim Order

A petition for an interim order is also filed which is directed at the respondent ordering him not to cause irreversible damage to the house of petitioner 1 and to the house of the parents of petitioner 2, including the demolition thereof, until the hearing of this petition is terminated.

The grounds for the petition of an interim order are as follows:

This petition concerns the houses of two families from Kafr Tal, Nablus district. On the night between July 18th and July 19th some members of the two families were arrested. The reason for this arrest is, probably, the fact that each family has a son who is wanted by Israel. At that night, members of two additional families were also arrested – the first from Kafr Tal and the second from the 'Askar refugee camp – while the Israeli press has reported that the reason for the arrest was the intention to deport them to Gaza in view of the involvement of their sons in terror attacks in Tel Aviv and Immanuel. The houses of these two families were exploded and destroyed at that same night, without any advance warning or an opportunity to a fair hearing.

Yesterday, a petition to prevent the forced deportation of the family members who were arrested to the Gaza Strip, was filed.

This petition is presently filed, to prevent the demolition of the houses. The petitioners are forced to turn to this honorable court already at this stage, and apply for the grant of an interim order, in view of respondent's failure to comply with the well rooted rule which was established in HCJ 358/88 The Association for Civil Rights in Israel and others v. The Central District Commander et al. IsrSC 43(2) 529, according to which a preliminary hearing must be held before houses are demolished under such circumstances.

House demolition is an irreversible step which causes severe injury. These are residential homes of families – men, women and children which are also used by them to make their living. Hence is the necessity that this interim order be granted, to

prevent the respondent from taking this measure before petitioners' arguments are heard.

The grounds for the petition are as follows:

The parties, the houses and their inhabitants

1. Petitioner 1, born in 1955, is the resident of Kafr Tal. She lives in the village, in a two story house, together with her family members. The house was built in the 1970's by her late father-in-law and is registered under his name. The estate of the father-in-law has never been distributed and although petitioner 1, her husband and family members reside in the house, it is owned by all of the heirs. The first floor is used by the family for animal breeding, from which it makes its living. The first floor also consists of: a cistern. The inhabitants of the house live on the second floor. Petitioner 1 and her spouse, born in 1949, who acts as the manager of the tutorial department at the Palestinian Ministry of Education, live in one room. The unwedded daughters of the couple live in the other room: _____ (20 years old), _____ (16 years old), _____ (14 years old and _____ (12 years old). The couple has three additional daughters who are married and do not live at home. The boys live in the third room - _____ is a 13 year old school student, and _____, is a 23 year old fourth year Geography student in the Al-Quds university. _____ is engaged to be married but has not married yet. In addition, this floor consists of a living room, a guest room, bath rooms and a kitchen.

   Another son of petitioner 1, _____, is wanted by Israel since January 2002 and was incarcerated in a Palestinian prison until the entry of IDF forces into Nablus in April.

   On the night between July 18, 2002 and July 19, 2002 the Israeli security forces arrested petitioner 1's spouse and her son _____. On that same night members of the 'Atsida family (of Kafr Tal) and of the 'Ajuri family (of the 'Askar refugee camp) were arrested and their houses were exploded forthwith. The Israeli news papers reported of the arrest of 21 family members of suspects in the carrying out of terror attacks against Israelis and of the intention to deport them to Gaza.

   A drawing of petitioner 1's house is attached and marked **P/1**.

2. The petition filed by petitioner 2 concerns the demolition of his parents' house. Petitioner 2 himself lives separately in a rented house.

   The house of petitioner 2's parents is an old single story house, to which building additions were added throughout the years. The last addition is a second floor which is used as a separate residential unit by his brother _____ and his family.

   The first floor of the house is used by petitioner 2's parents and his unwedded brothers. Petitioner 2's father is a 60 year old retired school principal. The father has medical problems in his right chest muscles and he is treated by

medications. The brothers who live at home are _____, a 29 year old third year accounting student in the Jerusalem Open University and is employed by the Palestinian National Security Forces; _____, is 19 years old and is employed by the Palestinian Preventive Security Service; _____, is 16 years old, a ninth grade student and _____, a 14 year old boy.

The apartment of _____, who is 35 years old, is located on the second floor. _____ has five daughters and one son who live with him and his wife in this apartment. The eldest daughter is 11 years old and the youngest son is a one year old baby. The apartment consists of two bedrooms, a living room, bath rooms, a kitchen and a balcony.

Petitioner 2, his brother _____ and his sisters do not live in the house being the subject matter of this petition.

Another brother of petitioner 2, _____, is wanted by Israel since January 2002, and was incarcerated in a Palestinian prison until the entry of IDF forces into Nablus in April.

On the night between July 18, 2002 and July 19, 2002 the Israeli security forces arrested the father of petitioner 2 and five of his brothers. On that same night members of the 'Atsida family (of Kafr Tal) and of the 'Ajuri family (of the 'Askar refugee camp) were arrested and their houses were exploded forthwith. The Israeli news papers reported of the arrest of 21 family members of suspects in committing terror attacks against Israelis and of the intention to deport them to Gaza.

A drawing of the house is attached and marked **P/2**.

3. Petitioner 2 is a registered non for profit association, which has been engaged, for many years, in the protection of human rights in the territories occupied by IDF forces in the West Bank and the Gaza Strip.

4. The respondent, the Commander of IDF forces in the West Bank, holds the territories in which the house is located under belligerent occupation, and has the rights and obligations granted to him by international law. The respondent is also the "military commander" under the Defence (Emergency) Regulations, 1945. As such, he has the power to issue forfeiture, sealing and demolition orders pursuant to regulation 119 of said regulations.

Exhaustion of remedies

5. On July 19, 2002, HaMoked for the Defence of the Individual (Hamoked) has conducted intensive communications with the office of respondent's legal advisor and with the state attorney's office regarding the sons of the two families of the petitioners. The communications focused on the family members who were arrested, but HaMoked has also referred to the issue of the demolition of the houses of the families.

Attached are HaMoked's letters concerning the two families of the petitioners. The letter refers in paragraph 5 thereof to the demolition of the houses (although, due to clerical error, it was drafted in a way which indicated that the houses have already been demolished like the houses of the two other families represented by us). In this letter Hamoked requested to be updated on "any action which was planned or which will be planned in connection with the family members".

Copies the letters are attached and marked **P/3-4**.

6. In response to said letter, Advocate Mandel, Director of HCJ Petition Department, wrote in a letter dated July 19, 2002 that "As of this date a decision to transfer any of your clients to the Gaza Strip has not been made."

   A copy of the letter is attached and marked **P/5**.

7. In view of the fact that the respondent uses to demolish houses of suspects of anti Israeli activity without an advance warning and in the dead of night, and in view of the fact that no reassuring message has been received concerning the houses of the petitioners' families, the petitioners are forced to turn to this honorable court already at this stage, to prevent the demolition of the houses without having been afforded the right to a fair hearing as required by law.

The Legal Argument

8. The petitioners will argue that the houses should not be damaged unless an order has been duly issued and unless the right to a fair hearing has been exhausted. With respect to the demolition itself, the petitioners will argue that no factual basis exists upon which grounds for demolition may be established, that a distinction should be drawn between the residential units (in the house of petitioner 2's family) of the parents and of the brother Ya'Kub, and that the harm caused to the families of the petitioners exceeds the principle of proportionality.

The right to be heard

9. The right to be heard is one of the fundamental rules of natural justice. "Its origin and foundation are rooted in Jewish heritage from time immemorial, and the sages of Israel regarded it as the most ancient fundamental right in human culture" (the words of the Vice President M. Elon in HCJ 4112/90 The Association for Civil Rights in Israel v. GOC Southern Command, IsrSC 44(4) 626, 637). It is well established in Israeli law that a person's property (as well as his status, reputation, etc.) may not be prejudiced without giving him the right to make his arguments. In its full scope, the right to be heard includes a notice to the effect that the authority is contemplating a decision that would prejudice such person; a specification of the authority's reasons and considerations; a presentation of the evidence underlying the authority's intention; and the grant of an opportunity to the injured person or his attorney

to raise arguments in writing or orally, including the presentation of evidence and examination of witnesses on their behalf.

10. The objective of a hearing is twofold: First, it is a primary principle of procedural fairness. A person's right to make his arguments before he is injured, even when it seems that he is unable to undermine the authority's considerations, derives from the recognition of his human dignity. Second, the hearing contributes to the quality of the administrative authority's decision. Through the hearing, the relevant person can draw the authority's attention to considerations and facts which it did not previously have before it. He may shed new light on the facts. The hearing is an important dam against unfounded or erroneous decisions.

11. In HCJ 358/88 The Association for Civil Rights in Israel v. GOC Central Command (hereinafter: the **Association for Civil Rights Judgment**), this honorable court was required to reconcile between the right to have a hearing and respondent's authorities pursuant to Regulation 119 of the Defence (Emergency) Regulations, 1945. The court held that:

> **(A) … except for matters involving military operational needs […] it would be appropriate that an order issued under Regulation 119 should include a notice to the effect that the person to whom the order is directed may select a lawyer and apply to the Military Commander before the implementation of the order, within a fixed time period set forth therein, and that, if he so desires, he would be given additional time, also limited in time, to apply to this court before the order is implemented.**
>
> **(B) The State may obviously apply to this court, in an appropriate case, and request that the hearing in a petition of this type be granted preference.**
>
> **(C) In urgent cases, the premises can be sealed forthwith, before the appeal or the hearing of the petition takes place - as opposed to demolition which, as stated above, is irreversible. In the event of an immediate sealing, as aforesaid, notice should also be given to the affected party, which will clarify that the right to appeal or file a petition remains unaffected.**

Thus, the court established the balance between the security interest in a swift and deterring execution of orders pursuant to Regulation 119, and the necessity to hold a hearing in a case when, as described therein, a harsh and

severe punishment is concerned, one of the main characteristics of which is its irreversibility.

Needless to note, that this rule has been implemented in practice by the respondent in the exercise of his authority for twelve years, including in severe states of emergency such as the period of the terror attacks in the Spring of 1996, when the respondent made sure that the injured parties were granted sufficient time to arrange for representation and to submit objections, and thereafter to turn to this honorable court. This procedure was once again entrenched in the judgment of this honorable court of March 19, 2002, HCJ 2264/02 (and five additional petitions) Mativ et al. v. The IDF Commander in the Gaza Strip (not yet published). Said case concerned the demolition of houses in the Gaza Strip. At least one of the petitions (HCJ 2329/02) was a general petition, which did not concern the demolition of a particular house, but rather the general procedure for demolishing houses throughout the Gaza Strip. The State declared that:

> **If a decision is made to demolish a house, other than due to operational reasons, an advance notice, with reasons, will be given concerning the demolition, so as to enable the owners of such house to appeal the demolition decision before the Military Commander; and if the appeal is rejected, no action will be taken to demolish the house for 48 hours following the rejection of the appeal, so as to enable the owners of the house to file a petition with the High Court of Justice.**

The deletion of said petition was based on this statement.

12. Indeed, the right to be heard is not an absolute right, and there are urgent circumstances in which granting the right to a hearing is not feasible. Prof. Itzhak Zamir, in his book **The Administrative Authority** (Jerusalem: Nevo, 1996, p. 806), cites as examples for such situations firefighters, who deem it necessary to break into a house in which a fire is raging, or into an adjacent house, or security forces who demand that a public hall be evacuated due to the fear that a bomb had been placed in it. The **Association for Civil Rights Judgment** also qualifies the obligation to grant a fair hearing when "there are military-operational circumstances, in which the conditions of time and place or the nature of the circumstances are inconsistent with judicial review; for instance, when a military unit is engaged in an operational action, in which it must clear away an obstacle or overcome resistance or immediately respond to an attack against military forces or against civilians which took place at that time, or similar circumstances…" This exception was implented in HCJ 4112/90 The Association for Civil Rights in Israel v. GOC Southern Command, IsrSC 44(4) 626). Said case concerned the demolition of houses not for deterrence purposes, but rather to enable a military control of a street that became a scene of violent acts against civilians and soldiers, which culminated in a brutal murder. The urgent need to act for the protection of the

lives of passers-by prevailed, in that case, over the obligation to properly implement the right to be heard, particularly considering the fact that a certain right to be heard was granted to the local inhabitants, including the opportunity to raise their arguments before military representatives and the legal advisors of the Military Commander who were present on the scene.

13. In our case, the exception established in the Association for Civil Rights Judgment does not apply, and the circumstances of HCJ 4112/90 do not exist. The demolition of the house is intended to create a general deterrence. It is not intended to meet an urgent military-operational need, or prevent the use of a house which poses an immediate danger to the lives of passers-by. The urgency is not different than that which existed in the demolitions of the houses which were discussed in the Association for Civil Rights Judgment, or which were executed over the last 12 years in accordance with the procedure established therein.

Absence of an order

14. Alongside the absence of a hearing, the intention to demolish the house is tainted by another defect, which concerns the fundamental principles of proper administration. No order was given to the petitioners – neither verbally nor in writing – specifying the respondent's decision concerning their house. In the absence of an order, the petitioners do not know whether an order was issued to damage the house pursuant to the Defence Regulations, what is the scope of the damage which was determined and which instructions accompanied the principal order, if any. It is doubtful whether the respondent even issued a methodical order, to guide the soldiers who carry out the task. Under such circumstances, "one will neither know, nor be able to know, what is permitted and what is not, and therefore he cannot be required to be law-abiding and to refrain from committing an unlawful act" (as held by this honorable court in a similar context in the early years of the State – HCJ 220/51 Asslan et al. v. The Military Governor of the Galilee, IsrSC 5, 1480, 1487). In addition, issuing the order in writing provides further assurance that the decision has been considered.

15. The obligation to publish the order so that it comes to the attention of the relevant persons is entrenched in Article 6 of the Proclamation on the Administration of Rule and Justice (West Bank Region) (No. 2), 5727-1967:

> **A proclamation, order or notice on my behalf will be published in any way I deem fit** (emphasis added, Y.W.).

The Military Commander may not issue orders surreptitiously, but is obligated to publish them. Indeed, according to Article 1 of the Order Regarding Defence Regulations (Judea and Samaria) (No. 378), 5730-1970, "any order may be issued orally". However, even then "the authority issuing the order will cause the notice on its taking effect to be given as soon as possible and in such manner as it shall deem fit".

This Honorable Court has emphasized that "the rules of proper administration prescribe that even though orders may be issued orally, when the urgency passes and if justified, an order should be given in writing" (HCJ 469/83 National United Bus Company et al. v. The Minister of Defence et al., IsrSC 92 (2) 1477).

Defects in the establishment of the factual foundation

16. In making such a serious decision, regarding the demolition of a house, it is essential for the respondent to rely on correct facts, which are based on the proper gathering and review of data (HCJ 802/89 Nasman v. The IDF Commander in the Region, IsrSC 44 (2) 601). On what factual data does the respondent base his intention - the petitioners do not know, since they have not been given a written and reasoned order. However, it is doubtful whether the respondent has the ability to establish a factual infrastructure which would enable him to take into account the considerations which he is required by case law to consider. In the absence of military presence in the area of the house, and in the absence of a hearing, the respondent does not have before him data on the structure of the house; on the potential dangers to nearby buildings or on the number, identity and special circumstances of the inhabitants of the house.

Absence of factual infrastructure concerning the terrorist suspect

17. The decision to demolish a house violates the constitutional property rights of the owners of the house and the constitutional rights of its inhabitants to shelter and dignity. As such, it should rely on clear, unequivocal and convincing evidence.

    See: EA 2/84 Neiman v. Chairman of the Central Elections Committee for the Tenth Knesset, IsrSC 39 (2) 225, 250.

    And with regard to authorities pursuant to the Defence (Emergency) Regulations, 1945:

    HCJ 159/84 Shahin v. Commander of the IDF forces in the Gaza Region, IsrSC 39 (1) 309, 327 (deportation order against an infiltrator);

    HCJ 672/87 Atamlla et al. v. GOC Northern Command, IsrSC 42 (4) 708, 710 (restriction order pursuant to Regulation 110);

    And, indeed, the respondent has relied in the past on particularly strong evidence. Thus, for instance, in HCJ 6026/94 Nazaal et al. v. Commander of the IDF forces in Judea and Samaria, IsrSC 48 (5) 338, (hereinafter: the "**Nazaal case**"), the identity of a suicide bomber was determined by the cumulative weight of publications made on behalf of the Hamas movement, police alerts and a comparison between tissue taken from the remains of the bomber's body and blood taken from his parents (p. 343 of the judgment). A similar accumulation of evidence led the Court to determine, in HCJ 1730/96

Sabih et al. v. Commander of the IDF forces in Judea and Samaria et al., IsrSC 50 (1) 353, (hereinafter: the **"Sabih case"**), that "there is no reasonable doubt as to the terrorist's identity", and that "we are satisfied that the evidence in respondent's possession justified his certain conclusion" (p. 360-361 of the judgment).

Our case concerns, apparently, two individuals who are wanted for interrogation by the security forces, but the nature of the evidence which exists against them is unknown.

Damage should be caused solely to the residential unit of the suspect

18. The house of petitioner 2's parents clearly consists of two noticeable separate residential units: the unit of the parents and the brother _____. Ya'Kub's residential unit is a separate unit, distinct from the unit in which his bachelor brother and parents live, and the respondent should not damage it..

19. The binding rule is that the respondent is required to check whether the suspect's residence may be considered as a residential unit separate and distinct from the rest of the building, and whether it may be demolished without harming the other parts of the building. If this is not possible, sealing that unit should be considered. (Sabih, p. 360, and see also HCJ 5510/92 Turkeman v. GOC Central Command, IsrSC 48 (1) 217, where the court, in the judgment of Justice (as then titled) Barak, held that the damage should be limited to the suspect's residential unit only, and since partial demolition of the structure is not possible, the less drastic measure of partial sealing of the building should suffice).

    The position of the Honorable Justice Cheshin is also known, according to which the respondent has no right whatsoever to order that additional residential units be damaged, other than the residential unit attributable to the terrorist suspect.

    See: HCJ 4772/91 Hizran v. Commander of IDF forces in Judea and Samaria, IsrSC 46 (2) 150; HCJ 2722/92 Alamarin v. Commander of IDF forces in the Gaza Strip, IsrSC 46 (3) 963 (where Justice Cheshin clarifies that the matter touches on the roots of the authority, as it should be construed in the spirit of Israel's basic principles), and also see the Nazaal case.

Proportionality

20. Reasonableness and proportionality are superior principles, which govern the scope of respondent's discretion. This is so in general, and this is particularly so in the exercise of such exceptional authority to injure innocent people who have caused no harm.

    It is well known that the measure embedded in the provisions of Regulation 119, is extreme and

> **severe, and should be used only after strict consideration and examination and only under special circumstances… Furthermore, Regulation 119 itself provides for various degrees of measures according to severity, starting with forfeiture only, through forfeiture accompanied by partial and full sealing, and ending with the demolition of the building. It is only natural that the severity of the measure used by the Military Commander correspond with the severity of the act that was committed by the inhabitant, and that only in special cases the measure of the demolition of the building be taken.**

The words of the Honorable Justice Barak (as then titled) in HCJ 361/82 Chamri v. The Regional Commander of Judea and Samaria, IsrSC 36 (3) 439, 443.

In another case, the court reviewed an order to demolish a house which was inhabited by a man who was convicted of cold-blooded murder. Having held that the authority should be exercised in accordance with the principles of relativity and proportionality, the court ruled, by Justice (as then titled) Barak:

> **It seems to me that demolishing the entire building would constitute a measure that is "disproportionate" – hence also unreasonable – between the murderous behavior of Muhammad Turkeman and the suffering that will be inflicted on the elder brother's family. Under these circumstances, it seems that the reasonable route was that which provided for partial demolition only. As we have seen, this route is impossible. Under these circumstances, the less drastic measure - of partial sealing – which is also very severe, should be employed.**

(HCJ 5510/92 Turkeman v. The Minister of Defence et al., IsrSC 48 (1) 217, 220).

And see also the detailed opinion of President Barak in HCJFH 2161/96 Sharif v. Home Guard Commander, IsrSC 50 (4) 485, 490.

These statements are particularly appropriate in our case, in which no hearing was held and no essential examinations were conducted regarding the possible damage that the demolition of the buildings may cause. Any doubt as to the scope of the terrorist suspect's activities, any doubt as to the scope of the injury to the inhabitants of the house and their neighbors, should operate in favor of the petitioners. Once the respondent chose to act in conditions of uncertainty and without adequate factual basis, he must employ a margin of

caution, lest he disproportionately violates the constitutional rights of the inhabitants of the house. The respondent's desire to exhaust his authority should yield to the concern that under the conditions of uncertainty in which he operates, he might disproportionately injure the property and dignity of innocent people.

Judicial review under fire

21. We are in the midst of continuous violent clashes which have already taken a heavy death toll on both Palestinian and Israeli sides. The atrocities and the number of the wounded and dead which increases from day to day are infuriating and mandate the taking of every possible action to stop the bloodshed. The urge to take desperate actions is great, provided that something is done. The urge to take acts of vengeance is also great. Under the harsh impression of the events, the exercise of discretion in a pertinent and settled manner is difficult. It is difficult to take into consideration the rights of those who are regarded as part of the "enemy". However, these conditions actually impose the obligation to exercise the discretion in a strict manner, so as to prevent any deviations from its proper course.

> **It is our duty to preserve a lawful governance, even when the decisions are difficult. Even when the cannons roar and the muses are silent, the law exists, and acts, and determines what is permissible and what is forbidden; what is legal and what is illegal**.

President Barak in HCJFH2161/96 Sharif v. GOC Home Front Command, IsrSC 50(4) 485, 491.

And it should be added: periods such as these put democracy to the test. Precisely for times such as these the court has been designed to act as a blocking and balancing body.

Thus, when the cry of Sodom and Gomorrah was great, the Lord did not hastily efface them from the face of the earth. "*I will go down now, and see whether they have done altogether according to the cry of it, which is come unto me*" he says (Genesis 18:21), and these words were interpreted by our sages as attesting to the obligation to conduct a factual examination and a hearing before an action is taken (see Vice President Elon, as then titled, in said HCJ 4112/90, p. 638). And in that matter it was so said:

> **That be far from thee to do after this manner, to slay the righteous with the wicked: and that the righteous should be as the wicked, that be far from thee: Shall not the Judge of all the earth do right?**
> (Genesis 18:25)

22. And even if the language of Regulation 119 allows to act in this manner, to harm innocent people as a lesson for all to see, then we are obligated, and the respondent is obligated to interpret and exercise the authority in accordance with the above spirit. Having failed to examine what should have been examined, and having failed to hear the persons who had the right to be heard, the respondent must not be permitted to leave a large family without a roof over its head, and should continue to pursue peace and security in other ways.

It was so held by this honorable court, in a judgment rendered by the honorable Justice Cheshin:

> **This is a basic principle which our people have always recognized and reiterated: every man must pay for his own crimes. And in the words of the prophet: "The soul that sins, it shall die. The son shall not bear the iniquity of the father, neither shall the father bear the iniquity of the son; the righteousness of the righteous shall be upon him, and the wickedness of the wicked shall be upon him." (Ezekiel 18:20). One should punish only cautiously, and one should strike the sinner himself alone. This is the Jewish way as prescribed in the Law of Moses: "The fathers shall not be put to death for the children, nor the children be put to death for the fathers; but every man shall be put to death for his own sin." (II Kings14:6)**
>
> **…since the establishment of the State - certainly since the Basic Law: Human Dignity and Liberty – when we have read regulation 119 of the Defense Regulations, we have read it and vested it with our values, the values of a free, democratic Jewish state. These values directly lead us to the ancient times of our people, and be our times no different than former times: they shall say no more the fathers have eaten sour grapes and the children's teeth are set on edge. Every man who eats sour grapes, his teeth will be set on edge.**
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> (HCJ 2006/97 Abu Rara Janimat v. GOC Central Command, IsrSC 51(2) 651, 654-655; and see also the judgment rendered by the honorable Justice Cheshin in HCJ 4722/91 Hizran et al. v. Commander of IDF forces in Judea and Samaria,

IsrSC 46(2) 150; in HCJ 4722/92 Alamarin. v. IDF Commander in Gaza Strip, IsrSC 46(3) 693; and in HCJ 6026/94 Nazaal et al. v. Commander of the IDF forces in Judea and Samaria, IsrSC 48(5) 338).

And see also the judgment rendered by the honorable President in CrimFH 7048/97 A v. Minister of Defense, IsrSC 54(1) 721, 741-742.

23. In view of the urgency of the matter and the circumstances in the Area which prevented a meeting between the petitioners and their counsel, this petition is based on data provided by the family members over the phone, and is supported by the affidavit of HaMoked's Executive Director. For the same reasons, the powers of attorney attached to this petition were transmitted by fax.

On all of the foregoing grounds, the honorable court is moved to issue an *Order Nisi* and an Interim Order as requested at the outset of the petition, and, after hearing respondent's response, make them absolute.

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Yossi Wolfson, Adv.

Counsel to the Petitioners

Jerusalem, July 20, 2002, 11 Av, 5762