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**At the Supreme Court**  
**Sitting as the High Court of Justice**

**HCJ 970/14**

- In the matter of:
1. **Musa Farah Musa Hadid, Mayor of Ramallah, ID No. \_\_\_\_\_**
  2. **Fuzi 'Abd al-Hafiz Ibrahim Dar al-Abd, Mayor of Al-Bireh, ID No. \_\_\_\_\_**
  3. **Hassan Jamil Hassan Mesbeh, Mayor of Deir Dibwan, ID No. \_\_\_\_\_**
  4. **Tawfik Musa Abd al-Fatah Mustaffa, Head of Beitin Village Council, ID No. \_\_\_\_\_**
  5. **Faleh Sa'id 'Abdallah Sa'ed, Mayor of Al Mazra'a al Sharqiya, ID No. \_\_\_\_\_**
  6. **'Abd a-Rahman Saleh Mustaffa Saleh, Mayor of Silwad, ID No. \_\_\_\_\_**
  7. **Oni Hassan Mahmed Sha'eib, Head of Ein Yabrud Village Council, ID No. \_\_\_\_\_**
  8. **Nadim Viktor Nickola Barakat, Mayor of Al Tayba, ID No. \_\_\_\_\_**
  9. **Eid Halil Ibrahim Hamed, Head of Deir Jarir Village Council, ID No. \_\_\_\_\_**
  10. **Abd Mahmoud 'Abd Jaba'iyeh, Head of Rammun Village Council**
  11. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger - RA**

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**The Petitioners**

v.

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

**The Respondents**

### **Petition for *Order Nisi***

A petition for an *order nisi* is hereby filed which is directed at the respondents ordering them to appear and show cause, why the restrictions, which prevent Palestinian residents, with the exception of those

who hold VIP passes and staff members of international organizations and emergency vehicles, from passing through the DCO checkpoint located on road 466, should not be removed.

## Preface

Petitioners 1-10 are the mayors of Ramallah and Al-Bireh and heads of eight municipalities and councils located to their east. The shortest and fastest way from Al-Bireh and Ramallah to the communities located to their east, is via road 466. The respondents set up a checkpoint on the road (hereinafter: the **DCO checkpoint**, Initials of: District Coordination Office), which is staffed seven days a week, between 06:00 – 22:00.

Contrary to other checkpoints in the West Bank, Palestinian vehicles are allowed to pass through the DCO checkpoint. However, unfortunately, **the passage is allowed only to about 1,000 Palestinians who hold VIP passes**, to emergency vehicles and staff members of international organizations. **All other Palestinian residents**, including more than 100,000 residents living in the towns and communities headed by petitioners 1-10, and many other residents who need to go in and out of Ramallah, which serves as the governmental center of the Palestinian Authority, **are barred from passing through the DCO checkpoint.**

**As a result of the restricted passage through the checkpoint, the way which the residents of the communities represented by petitioners 1-10 must take becomes significantly longer. High and unnecessary costs of time and money are caused to the residents and their basic rights are directly violated, including the right to freedom of movement, freedom of occupation, the right to own property, to education and dignity.**

Petitioners 1-10 have contacted, through petitioner 11, the respondents, and requested them to remove the restrictions, but the respondents refuse to do so.

**Respondent 2 based the refusal on security and traffic related reasons, some of which explicitly contradict the contents of the opinion of military officials and the Civil Administration which was prepared at the request of respondent 2, for the purpose of giving a response to the petitioners, and of the Civil Administration documents which were before him.**

As the petitioners will prove, the refusal to allow the passage through the checkpoint to all of the Palestinian residents, rather than to a limited group only, injures, on a daily basis, the residents of the communities who are forced to take a long bypass road, which in parts is narrow, with no shoulders, which winds through other villages and significantly elongates their way, both in terms of the length of the road as well as in terms of traveling time.

The refusal to allow the passage through the checkpoint injures the entire population that lives in the communities represented by petitioners 1-10, which includes, *inter alia*, sick people who have difficulties arriving to the hospitals, employees who have difficulties arriving to their workplaces, students who have difficulties arriving to their education institutions, etc.

And it should be emphasized that this petition concerns solely the grant of permission to pass through the checkpoint, to all Palestinian residents. The petition does not raise questions which relate to the opening or closing of roads for Palestinian traffic or settlers traffic, since road 466, which is blocked by the checkpoint, is open, on its east side, for both Palestinian and settlers traffic.

**Taking into consideration all of the above, the honorable court is requested to schedule a hearing in the petition as soon as possible, and to allocate a short period of time for respondents' response, since experience shows that sometimes, respondents' response makes a hearing in the petition redundant.**

## The Factual Infrastructure

### The Parties to the Petition and the Factual Background

1. Petitioner 1 is the Mayor of Ramallah. The city of Ramallah consists of about 32,000 inhabitants. Petitioner 2 is the Mayor of Al-Bireh, The city of Al-Bireh consists of about 60,000 inhabitants. Petitioner 3 is the Mayor of Deir Dibwan, a community which consists of about 5,700 inhabitants. Petitioner 4 is the Head of Beitin Village Council, a community which consists of about 2,300 inhabitants. Petitioner 5 is the Mayor of Al Mazra'a al Sharqiya, a community which consists of about 4,800 inhabitants. Petitioner 6 is the Mayor of Silwad, a community which consists of about 6,600 inhabitants. Petitioner 7 is the Head of Ein Yabrud Village Council, a community which consists of about 3,200 inhabitants. Petitioner 8 is the Mayor of Al Tayba, a community which consists of about 1,500 inhabitants. Petitioner 9 is the Head of Deir Jarir Village Council, a community which consists of about 5,100 inhabitants. Petitioner 10 is the Head of Rammun Village Council, a community which consists of about 4,000 inhabitants.
2. Petitioner 11 (hereinafter: **HaMoked**) is a not-for-profit Association which acts to promote the human rights of Palestinians in the Occupies Palestinian Territories (OPT).
3. Respondent 1 is the military commander of the West Bank area, on behalf of the State of Israel, which holds the West Bank under belligerent occupation over forty six years. The initial request concerning the issue being the subject matter of the petition was made to him.
4. Respondent 2 (hereinafter: the **legal advisor**) is the legal advisor of respondent 1, and respondents' refusal to remove the restrictions at the DCO checkpoint was made and delivered under his name.
5. As indicated by the data specified in section 1 above, the communities headed by petitioners 1-10 consist of over 100,000 inhabitants.
6. Thousands of the inhabitants of these communities, which are located east of Ramallah and Al-Bireh, make their living in Ramallah and Al-Bireh or study in education institutions located therein. Teachers, nurses and physicians from Ramallah and Al-Bireh work in the communities located to their east and these two cities are the nearest urban center to these communities. Higher education institutions, a large variety of high schools, hospitals, public institutions etc. are located in Ramallah.
7. The shortest and fastest way from Ramallah and Al-Bireh to the nine municipalities and councils located to their east, is via road 466, in the part between City Inn intersection and route 60 (it should be noted that the shortest and fastest way from Beitin passes directly from the village to road 466, without going through route 60, but the exit from Beitin to road 466 was blocked by another barrier).
8. The relevant part of the road was built in 1995 and has been repaired and widened a few times since then. As will be proved by the petitioners below (by official documents), **and contrary to respondents' argument, the road was initially built to serve the Palestinian population and it has also been, arguably, repaired and widened, for the benefit of the Palestinian population.**
9. Until the eruption of the second intifada, the road served the Palestinian Population which could use it freely.
10. When the second intifada broke out, in the beginning of the 2000's, the respondents set up a checkpoint **in order to prevent Israelis from entering** Al-Bireh and Ramallah. **The soldiers at**

**the checkpoint did not prevent the passage of the Palestinian population through the checkpoint, in and out of Ramallah and Al-Bireh.**

11. The checkpoint was later blocked off to Palestinian traffic as well.
12. A few years ago the DCO checkpoint was transferred to its present location. The DCO checkpoint is open for traffic daily, between 06:00 – 22:00, and contrary to other checkpoints in the West Bank, Palestinian vehicles are allowed to pass through it. However, unfortunately, **the passage is allowed only to about 1,000 Palestinians who hold VIP passes**, to emergency vehicles and staff members of international organizations. **All other Palestinian residents**, including more than 100,000 living in the towns and communities headed by petitioners 1-10, and many other residents who need to go in and out of Ramallah, which serves as the governmental center of the Palestinian Authority, **are barred from passing through the DCO checkpoint.**
13. The restricted passage through the checkpoint causes severe and ongoing injury to the Palestinian population and Palestinian economy.
14. **As a result of this restriction, the time and distance required to get to Ramallah and Al-Bireh from the communities located to their east, have greatly increased. Thus, for instance, the report published by the office for the coordination of humanitarian affairs of the UN – OCHA in September 2012, entitled : "Update on Movement and Access in the West Bank" noted that the distance from Beitin to Ramallah and there-from increased from 3 Km. to about 15 Km., and that the travelling time increased from 10 minutes to about 30-40 minutes, due to the fact that the Palestinians living in the area must take a detour, which passes through Ein Yabrud and Dura al Qar'.**

For demonstration purposes, it's like a person who wishes to go from this honorable court to the residence of the president of the state of Israel, and instead of taking the shortest and fastest way, is forced to go through Menachem Begin road to the French Hill junction, and from there through Chaim Bar Lev Blvd., The Government Complex (Kiryat Hamemshala), Sheik Jarrah, the new gate, Jaffa gate, Sultan's pool, Hebron road and the neighborhoods Bakaa and the German Colony, to his destination. Someone may possibly be glad for occasionally having the opportunity to carry out the command "*Walk about Zion and go around her*", but how will a person feel if he is compelled to take this long road each and every day?

For demonstration purposes, the road presently taken by the local Palestinian inhabitants from Beitin to Ramallah is marked in purple, and the shortest but blocked way is marked in blue on the map attached hereto and marked **P/1**.

15. **According to the OCHA report, as a result of the longer routes from Beitin to Ramallah, travelling costs rose by 300% and more:** travelling cost by bus rose by 350% (from 2 NIS to 7 NIS) and the travelling cost by taxi rose by 500% (from 10 NIS to 50 NIS)!

A copy of the relevant part of the OCHA report is attached hereto and marked **P/2**.

16. The report published by B'Tselem on September 10, 2013 entitled "13 years of closure: Once a vibrant commercial center, Beitin near Ramallah has become a ghost village", describes the severe injury caused to Beitin's inhabitants as a result of the blocking off of the two entrances to the village and the placement of the DCO checkpoint on the road leading from the village to Al-Bireh:

At present, the village is accessible only through the northern entrance that leads to the village of 'Ein Yabrud. To get from Beitin's northern exit to Al-Bireh one must follow a 15-kilometer

long route that snakes around nearby villages, instead of driving just one kilometer or so from the village's main exit to Al-Bireh. The cost of one-way public transportation from the village to Ramallah rose sharply from 2 NIS before the entrance was blocked off to 7 NIS thereafter (one way fare).

New businesses and residents who had moved to the village because of the convenient access to Al-Bireh and Ramallah left due to the roadblocks. About 25 businesses closed down and eight residential construction projects were put on hold. According to [formerly – the undersigned] Head of the Village Council Diab Muhammad Badwan, about half of the village's 1,000-person work force are currently unemployed. The rest hold office jobs in Ramallah or in businesses and agriculture in the village and in the area...

The blocked entrances also harmed agricultural livelihoods in the village. Some 1,000 farmers in the village, the vast majority of whom grew fruit trees such as apricot, fig, plum and grapes and would sell their produce in the Ramallah market, either on their own or through greengrocers who came to the village to buy the produce. After the village entrances were blocked, the cost of transporting the produce to Ramallah shot up and greengrocers stopped coming to the village. At present, no more than 100 people in the village earn their livelihood from agriculture...

In 1995, a new, modern medical center was established in the village to serve the residents of the entire area. It closed after the entrances to the village were blocked...

The blocked entrances also had a detrimental effect on education. Teachers who were not residents of the village left their jobs at the village schools. Before access was blocked, about 250 students studied in schools in Ramallah, which are considered better than the schools in the village, but because of the difficulty of getting to school, the number has shrunk to 100. The main road in the village is now deserted. Very few cars pass through and many of the businesses by the side of the road are closed. Buildings stand vacant and agricultural lands have been neglected. In addition, the blocked access to route 60 has cut off Beitin from the village of Burqah to the south, severing the strong ties between the two villages. Students from Burqah studied in schools in Beitin; Burqah residents came to Beitin for medical care. The head of the village council described the effects that the blocked entrance has had on social ties with residents of nearby villages, which were often fundamental to residents' lives: "People used to come over in the evening, just to play cards, or visit. They don't anymore. People have a hard time getting in and out of the village and they only come for family celebrations."

(all emphases in the petition were added – the undersigned).

A copy of B'Tselem's report is attached hereto and marked **P/3**.

17. A report from August 2010, which was ordered by the USAID organization, entitled "Movement and Access, Impact Evaluation: The Beit El DCO Checkpoint and Old Route 60 Obstacles" evaluated that the **surplus transportation costs caused as a result of the closure of the checkpoint amounted to about 28 million NIS per annum**. The above cost is borne by Palestinians who use private vehicles and public transportation, due to the need to use alternative, longer and more congested roads. According to the report, **an additional damage of 56 million NIS per annum was caused to Palestinian commerce due to the increase of transportation costs and decline in the scope of commercial activity**.
18. The report concludes by stating that:

**"Removal of the permit restrictions at the Beit El DCO checkpoint would have the greatest regional benefit, reducing travel time, distance and costs by more than NIS 84 million per year. It would relieve congestion along the northern and southern routes, particularly along the Jaba road and at the Qalandiya checkpoint.** While the Civil Administration has expressed concerns with high traffic volumes potentially affecting access of military vehicles from Beit El, improved traffic arrangements could allow for unimpeded access for emergency vehicles."

A copy of the report is attached and marked **P/4**.

19. However, the damage caused to the single Palestinian resident is not adequately illustrated by these considerable amounts. In the report which was published, as aforesaid, by the office for coordination of humanitarian affairs of the UN – OCHA in September 2012 (P/2 above), the organization reviewed relaxations which improved the Palestinians' freedom of movement. With respect to the access in and out of Ramallah and Al-Bireh from the east, the report indicates that the opening of gates on the road between 'Ein Yabrud and Jilazun facilitated the access from the east. However, the report states that:

**"Notwithstanding said relaxation, due to the prolonged restrictions imposed at the DCO/Beit El checkpoint more than 50,000 Palestinians living east of the city are forced to use tertiary road infrastructure, which involves traveling through residential areas in narrow and winding ways, which is time consuming and often involves risks.** The road which leads to the checkpoint serves only Israelis from the nearby Beit El settlement and military base."

20. **The significant elongation of the road of the residents of the communities represented by petitioners 1-10, causes them high and unnecessary costs in time and money, and their basic rights are being directly violated, including the right to freedom of movement, freedom of occupation, the right to own property, the right to education, health and dignity.**

## **Exhaustion of Remedies**

21. On April 8, 2013, the undersigned (Y.E.) contacted Major General Nitzan Alon, commander of the West Bank, and requested him to act for the removal of the restrictions preventing Palestinian residents, other than those holding VIP passes, from going in and out of Ramallah and Al-Bireh through the DCO checkpoint on road 466.

A copy of the letter dated April 8, 2013 is attached hereto and marked **P/5**.

22. On April 24, 2013 the letter of corporal Osher Boaron, legal assistant in the security and criminal division, on behalf of the legal advisor, was received, which stated that "We take action to examine the allegations specified in your letter: and also: "As soon as the examination is completed, you will be advised."

A copy of the letter dated April 24, 2013 is attached hereto and marked **P/6**.

23. On May 12, 2013, as no pertinent response to the letter has been received, the undersigned wrote to the legal advisor, and requested his pertinent response not later than May 23, 2013, and noted that after said date the petitioners would feel free to initiate legal proceedings.

A copy of the letter dated May 12, 2013 is attached hereto and marked **P/7**.

24. On June 9, 2013 the letter of Captain Tamar Bokia, advisor officer on operational and human rights issues in the security and criminal division, on behalf of the legal advisor, was received, which stated that "Following our above referenced letter, we make the required inquires *vis-à-vis* the relevant agencies in order to respond to your letter", and that "Regretfully, despite the sincere efforts, we have not yet succeeded to complete the above inquiries and upon their conclusion we will be able to get back to you."

A copy of the letter dated June 9, 2013 is attached hereto and marked **P/8**.

25. On June 25, 2013 the undersigned had a telephone conversation with Captain Bokia. In their conversation Captain Bokia said that she had received all comments she should have received from the various agencies and that she was still waiting for one more clarification. She also added that she was hoping to send the final response to undersigned's letter "within the next three weeks."

26. In view of the fact that about four weeks have elapsed from said conversation, and no answer has been received, the undersigned sent Captain Bokia, on July 22, 2013, a reminder, and requested to receive an immediate answer on the matter.

A copy of the letter dated July 22, 2013 is attached hereto and marked **P/9**.

27. On August 8, 2013 the undersigned had another telephone conversation with Captain Tamar Bokia. In the conversation Captain Bokia apologized for the delay and said that the undersigned's letter would be answered during the following week.

28. As no answer has been received during the consecutive week, the undersigned tried to reach Captain Bokia over the phone on August 18, 2013 and August 19, 2013, with no success.

29. Since Captain Bokia has not contacted the undersigned, despite the fact that he left her a message on August 18, 2013, the undersigned called Captain Bokia again on August 20, 2013, but was told that she was in a meeting and that she would call him back. Later that day, a soldier named Marina called the undersigned, and told him that she was calling on behalf of Captain Bokia and that there was still no answer to his request. In response to the undersigned's question, Marina said that Captain Bokia did not tell her when an answer to the request would be given.
30. As no pertinent answer has been received, the undersigned wrote, on August 22, 2010 [*sic*], a "pre HCJ" letter to the director of the High Court of Justice department at the state attorney's office and requested her intervention "with military officials to cause them to remove the restrictions preventing the free passage of Palestinian residents through the DCO checkpoint" and that "should the relevant officials decide not to remove the restrictions, you are hereby requested to order them to specify the grounds therefore." The letter also stated that "**136 days elapsed since we have contacted Major General Alon** and other than repeated promises for a pertinent response, no pertinent response has yet been received", and "**In a last attempt to prevent the need to file a petition, we shall wait until September 3, 2013 to receive an answer to our letter** (emphases appear in the original).

A copy of the letter dated August 22, 2013, without its exhibits which were attached above, is attached hereto and marked **P/10**.

31. On August 25, 2013 a letter was received, signed by Mr. Aviram Bromfman, intern of Osnat Mandel, director of the High Court of Justice department at the state attorney's office, which stated that "Your letter was transferred to the relevant agencies for their comments. Once the handling of the matter is concluded, an answer shall be transferred to you by the handling agency."

A copy of the letter dated August 25, 2013 is attached hereto and marked **P/11**.

32. On September 17, 2013 another letter signed by Mr. Bromfman was received which stated as follows:

"On September 10, 2013, within the framework of this pre HCJ and in response to your letter dated August 22, 2013, the answer of Captain Tamar Bokia, advisory officer on operational and human rights issues at the security and criminal division, on behalf of the legal advisor, was sent to you... The response of chief superintendent advocate Amit-Fink [the mistake appears in the original – the undersigned] was given in response to your letter to the High Court of Justice department and it constitutes a final answer within the framework of this pre HCJ...

Upon receipt of the above answer, which was already received by you on September 10, 2013, the handling of your request was concluded."

A copy of the letter dated September 17, 2013 is attached hereto and marked **P/12**.

33. In view of the fact that the answer of Captain Bokia, referred to in Mr. Bromfman's letter, **has not been received**, the undersigned had a telephone conversation with Mr. Bromfman on the date of receipt of his letter, and told him that the letter of Captain Bokia had not been not transferred to him.

34. Following the conversation of the undersigned with Mr. Bromfman, the above letter of Captain Bokia, on behalf of the legal advisor, was sent to the undersigned on that very same day (hereinafter: **respondents' response**). Some of the documents which were gathered by the legal advisor for the formulation of his response were attached to respondents' response. The answer stated that "Under the current circumstances, the checkpoint cannot be opened for the passage of all inhabitants of the Area", and that this position was based on two reasons:

"Firstly, according to the evaluation of security agencies, the opening of the checkpoint would create a significant **security risk** for the passengers the road [*sic* in the original – the undersigned] which connects between route 60 and Al-Bireh north, *inter alia*, due to the heavy traffic volumes which are expected therein and the security condition in the Area.

Secondly, traffic wise, the road which connects between route 60 and Al-Bireh north is not suitable, at this time, for heavy traffic volumes. Therefore, according to the evaluation of the professional agencies, the opening of the checkpoint to free traffic is expected to cause heavy traffic volumes on this road, and particularly in the junction which connects between this road and route 60, in a manner which would encumber the realization of the main purpose of the road (emphasis appears in the original).

Respondents' response further stated as follows:

Furthermore, the harm caused to the Palestinians living in the area, who do not hold a permit to pass through the DCO checkpoint, is minimal. The inhabitants of the area have available to them several efficient and convenient access roads to and from the city, including the following main roads:

- a. From the Ramallah area towards the 'Ein Sinya roundabout to route 60 – this road was opened for transit of the entire Palestinian population on July 10, 2013 after that part of the road was repaired and a roundabout was built in the 'Ein Sinya area which enables safe entry into route 60. The travel time on this road, which is only 8.1 Km. long, amounts to about eight minutes. It should be emphasized that the opening of the above part of the road shortens the way between Ramallah and the villages and communities to its north, and even shortens the travel time of Ramallah inhabitants to the other parts of Judea and Samaria, through the British police junction.
- b. From the Ramallah area through 'Ein Yabrud and entering route 60 – the travel time on this road which is 5.8 Km. long, amounts to about six minutes.

- c. From the Ramallah area to the village of Beitin (via the village Dura al Qar') – the travel time on this road which is 12 Km. long amounts to about 10 minutes.

Finally, the letter stated that "Taking into account the security and traffic related risks involved in the opening of the road for traffic, and in view of the fact that the inhabitants of the area have available to them an alternative road system which gives their transportation needs a quick and efficient solution, it was decided that there was no room for changing the passage policy in the DCO checkpoint."

A copy of respondents' response which was received on September 17, 2013 (dated September 10, 2013) is attached hereto and marked **P/13**.

**The Contradictions between respondents' response and the opinions of military agencies and the Civil Administration which were prepared for the purpose of giving the response and documents of the Civil Administration which were before the respondent and the facts as they really are on scene**

35. As aforesaid, respondents' refusal to open the DCO checkpoint to Palestinian traffic is based on several arguments, which should be examined one by one. The arguments are as follows:
  - a. "The part of the road mentioned in your letter was built on land which was expropriated for military purposes, during 1995, within the framework of IDF's re-deployment outside the Palestinian cities following the interim agreements between the state of Israel and the PLO. The purpose of the road is to enable the security forces stationed along the road and the inhabitants of the settlement of Beit El to move towards route 60 and the other parts of Judea and Samaria, and remove the security risk involved in the travel of Israelis in Al-Bireh and Ramallah." (section 2 of P/13).
  - b. "The opening of the checkpoint will create a significant security risk for the passengers the road [*sic* in the original – the undersigned] which connects between route 60 and Al-Bireh north, *inter alia*, in view of the heavy traffic volumes which are expected therein and the security condition in the Area."
  - c. "Traffic wise, the road which connects between route 60 and Al-Bireh north is not suitable, at this time, for heavy traffic volumes. Therefore, according to the evaluation of the professional officials, the opening of the checkpoint to free traffic is expected to cause heavy traffic volumes on this road, and particularly in the junction which connects between this road and route 60, in a manner which would encumber the realization of the main purpose of the road." (section 4 of P/13).
  - d. "The harm caused to the Palestinians living in the area, who do not hold a permit to pass through the DCO checkpoint, is minimal. The inhabitants of the area have available to them several efficient and convenient access roads to and from the city, including the following main roads:
    - a. From the Ramallah area towards 'Ein Sinya roundabout to route 60 – this road was opened for transit of the entire Palestinian population on July 10, 2013 after that part of the road was repaired and a roundabout was built in the 'Ein Sinya area which enables safe entry into route 60. The travel time on this road, which is only 8.1 Km. long, amounts to about

eight minutes. It should be emphasized that the opening of the above part of the road **shortens the way between Ramallah and the villages and communities to its north**, and even shortens the travel time of Ramallah inhabitants to the other parts of Judea and Samaria, through the British police junction.

- b. From the Ramallah area through 'Ein Yabrud and entering route 60 – the travel time on this road which is 5.8 Km. long, amounts to about six minutes.
- c. From the Ramallah area to the village of Beitin (via the village Dura al Qar') – the travel time on this road which is 12 Km. long amounts to about 10 minutes."

**Respondents' argument that "The purpose of the road is to enable the security forces stationed along the road and the inhabitants of the settlement of Beit El to move towards route 60 and the other parts of Judea and Samaria" is contradicted by respondents' own documents.**

- 36. As aforesaid, the respondents argue that the part of the road was built on land which was expropriated for military purposes, following the Oslo Accords, rather than for the benefit of the Palestinian population. **It is therefore surprising to find out that the documents relied on by the respondents, describe a completely different picture.**
- 37. On November 24, 1999 a meeting of the "Subcommittee for Transport Issues" of the "Supreme Planning Council" was held which discussed, *inter alia*, "plan No. 982 – road 4490 in the part of Al-Bireh north – route 60", the road on which the DCO checkpoint is placed. Part of the protocol of said meeting was transferred to the undersigned, by the legal advisor, along with his response to the letters which were sent to him. The following are the words of Mr. Shimon Farahang, planner, in page 5 of the protocol:

This road it was planned before the Oslo Accords when there was a thought to return Ramallah to the Authority and a road should have been built very quickly. The road did not go through any statutory proceeding and we had it passed by an expropriation order, and we were working with people from the Ministry of Justice who did not understand the traffic needs and according to their instructions we had to build the road in very low standards: later on, after said road I said that I would not be willing to build roads in such low level and since then in the Ministry of Justice, Talia Sasson was replaced and we have slowly improved the situation.

The representative of the Ministry of Defence, Lieutenant Colonel Zvika Kadman, asked Mr. Farahang: "Why do we need to change the situation?" and Mr. Farahang answered:

The results were severe, in certain parts there were accidents and people were killed, and thereafter problems commenced in the slope.

It turns out that this is actually a very convenient exit road from Ramallah and A-Bireh and there are trucks, busses and taxis

which pass along this road. I do not think that, at present, the road should be improved but for the future, a typical scheme of a two lane road should be made, taking into account the following considerations:

Planned speed – 70-80 – not less and in certain parts 70 kmh, as there is no other choice. Altogether there are 4-5 alternatives, they were planned in a scale of 1:1000, and were carefully examined.

And in page 8 of the protocol, architect Daniel Halimi, deputy director of the planning office and chair of the committee added:

Regardless of the Oslo Accords, we have conceived this road in the planning office, when we have planned the Al-Bireh town plan and the detailed plan of the Al-Bireh industrial zone.

38. **Namely, the 1999 protocol indicates that, contrary to respondents' response, the part of the road was planned "before the Oslo Accords" and "Regardless of the Oslo Accords", as part of the "Al-Bireh town plan and the detailed plan of the Al-Bireh industrial zone" and not as a military road, the purpose of which was to enable movement of military forces, and that the widening of the road for the benefit of the Palestinian Population has already been discussed in 1999, since "It turns out that this is actually a very convenient exit road from Ramallah and A-Bireh and there are trucks, busses and taxis which pass along this road."**

Copies of the relevant pages of the protocol dated November 24, 1999 are attached hereto and marked **P/14**.

39. On December 3, 2001 a discussion was held by the Objections Subcommittee of the "Supreme Planning Council" in which the objection of two Palestinian residents to the widening of the road was discussed, who claimed that this would cause damage to their lands. Mr. Gil Limon, assistant to the legal advisor, who represented the legal advisor in said discussion, said as follows (who in P/13 above stated, as recalled, that the road was not planned for the benefit of the Palestinian population) in page 2 of the protocol:

The expropriation order was issued due to the urgent need to build the road, the statutory and safety aspects are currently being regulated.

This road serves the general public, Palestinians and Israelis, and it is important to regulate it safety wise.

And architect Daniel Halimi, deputy director of the planning office added immediately:

The existing road has one lane. The proposed road will have two lanes due to the transportation needs to serve the entire population.

And Mr. Limon added (in page 3 of the protocol):

The road exists and serves the Palestinians and the Israelis since 1995. The purpose of the widening is – to prevent accidents and decrease traffic volumes in the exit from the city.

And architect Halimi immediately supports him again and says:

A year and-a-half ago the road was used to such an extent that it was congested. This road is for public use.

Namely, "This road serves the general public, **Palestinians and Israelis**" and the purpose of its widening is "to prevent accidents and **decrease traffic volumes in the exit from the city.**" These were the words of the legal advisor's representative in the discussion held by the Objections Subcommittee. And it should be emphasized. No statement was made in the discussion to the effect that the purpose of the road was to enable the security forces or the Beit El settlers to use it, as argued by the respondents in their response (P/13 above).

A copy of the protocol dated December 3, 2001 is attached hereto and marked **P/15**.

40. On April 19, 2005 the Objections Committee rendered its decision in the objections to the widening of the road submitted by the Al-Bireh municipality, 13 Al-Bireh's residents and 10 residents of Beitin. In a sort of an absurd play and reversed roles, the reasons raised by the objecting parties are very similar to the arguments raised by the respondents in their response. However, the objections were rejected in a detailed decision of the committee, which spreads over nine pages, to which major Timor Pessa, assistant to the legal advisor, was also a party, as the representative of the legal advisor, on whose behalf, as is recalled, respondents' response was signed.

The objections were described as follows, in section 7 of the decision:

As aforesaid, the main argument of the objecting parties is that the purpose of the above referenced plan is to bypass the temporary nature of the military expropriation order and that the fact that said road was initially built and constructed through an expropriation order, leads to the conclusion that while the plan under discussion was prepared and while the route under discussion was established in the plan no planning considerations were taken into account. It was further argued in this context, that the road was built for military purposes rather than for the needs of the local population, and that in this framework the interests of the local population in general and of the Al-Bireh population in particular, were not taken into consideration. It was further argued that there was no factual basis to the claim that the conditions of the route of the existing road and that the field of vision in several segments needed improvement, and that several alternative roads to the proposed road currently existed which passed nearby the Palestinian villages in the area and served well the needs of the local population, and that the existing road and the proposed changes therein according to plan 982 were not needed.

Namely, we see that the objecting parties raised almost the same arguments which were argued by the respondents in their current response: the road was built for military needs rather than for the benefit of the local population, there is no need to widen it and there are several alternatives which serve well the needs of the local population.

Since these are exactly the same arguments which were made by the respondents in their current response, the acceptance of the objections by the committee was only likely. Surprisingly, the committee rejected all these arguments and stated:

We have examined this argument and concluded that it had no merit. Firstly, the route of the road which was established in the expropriation order is based on planning from 1994 which was prepared by an engineer on behalf of the planning office in the Judea and Samaria area according to its instructions, for non military purposes. The route of the road, according to the expropriation order, has only implemented the route which was prepared by the engineer as early as 1994.

Namely, **contrary to the argument made by the respondents in their response, the road was planned for non military purposes!**

And it was further stated:

To the crux of the matter, primary planning considerations support the mere existence of the proposed road as well as its route according to the plan under discussion.

Firstly, the proposed route constitutes an important connection between the urban area of Ramallah – Al-Bireh and the main road No. 60, which is the main road that crosses the Ramallah area and the Samaria area lengthwise;

Namely, this is an important road the purpose of which is to connect between Ramallah and Al-Bireh and road 60, the same connection which the DCO checkpoint prevents!

And also:

Secondly, the proposed route provides for another entrance, from the north, to the urban fabric of Al-Bireh – Beitin – Jilazun;

Namely, the importance of the road lies only in the fact that it opens up **an additional entrance from the northern part of the West Bank into the urban fabric of Al-Bireh – Beitin – Jilazun!**

And in addition:

Thirdly, the proposed route constitutes part of a transportation system, which removes from the centers of the cities the high traffic volume which encumbers the entire population, and shifts it to alternative roads in the periphery. In this context, we would like to note that the Al-Bireh and Ramallah area, which constitutes a single and complete urban unit, may be accessed by a limited number of roads, none of which reaches the unit through non built-up areas. The route under discussion, which allows access to the urban unit from non built-up areas, applies principles of modern planning as it provides a road which facilitates access to the center of the unit, bypassing the

congested urban fabric. Such route relieves the heavy traffic volumes in the centers of the cities and anyone wishing to leave the urban area may use this road (see on this issue: HCJ 6592/94 **Hebron Municipality v. Minister of Defence**, IsrSC 50(2) 617, 622);

Namely, contrary to the argument raised by the respondents in their response, according to which the opening of the checkpoint to unrestricted traffic was expected to cause heavy traffic volumes on this road, the route of the road was specifically designed to **relieve the heavy traffic volumes in the centers of the cities which encumber the entire population, and facilitate access to Al-Bireh and Ramallah through areas which are not built-up.**

And finally,

Fourth, the proposed route also applies principles of modern planning by the actual promotion of economic and municipal processes in the urban area of Ramallah and Al-Bireh. This is proved by the fact that at the end of said road (a place known as "Judea and Samaria Junction"), a new gas station, hotel and additional residential building were erected immediately after the road was built.

Namely, **this road will promote processes of economic and municipal development in the urban area of Ramallah and Al-Bireh!**

41. Thereafter the committee discusses in detail the argument that the road was not built to serve the needs of the local population and totally rejects it. And it is so stated by the committee:

The argument that the above mentioned road was not built to serve the needs of the local population has no merit. As aforesaid, the road in the proposed route in the plan was built to provide convenient access from Al-Bireh and Ramallah and from the villages in the area to route 60, the purpose of which is to bypass the congested urban areas. A road which serves this purpose cannot be far from the above referenced villages.

And also:

Our response to the argument of the objecting parties, according to which the use by the local population of this road is very limited, is twofold:

Firstly, the fact that the use by the Palestinian population of the existing road in recent years was limited, cannot be disregarded. The considerations which caused such limited use were military-operational considerations in view of the violent events which occurred in the Area in the recent years. However, once the circumstances are changed, normal use of the road would most probably be made possible. In this context, it should be noted that prior to the outbreak of the violent events the local Palestinian population used this road on an ongoing basis.

Secondly, planning and the preparation of planning plans, is a forward looking process. Proposed planning requires long term consideration and cannot be satisfied by taking into consideration only a given state of affairs. As is known, modern planning must establish the desirable policy for the current and future physical development of the area. The planning authorities are responsible for securing an intelligent and professional urban and regional planning, a very important role which may affect the nature of the area and the life therein for many years.

Namely, "The road in the proposed route in the plan **was built to provide convenient access from Al-Bireh and Ramallah and from the villages in the area to route 60, the purpose of which is to bypass the congested urban areas.**" Neither a military road nor security purpose but rather a road for the convenience of the local population which "prior to the outbreak of the violent events... **used this road on an ongoing basis**", and although its use of the road in 2005 was limited, "once the circumstances are changed, normal use of the road would most probably be made possible." The planning of the road is therefore forward looking. And it was further stated as follows:

We have examined the arguments of the objecting parties on this issue and found them to have no merit. The plan under discussion is coordinated with a plan for the expansion of the Al-Bireh industrial zone, which was submitted to the planning office by the Al-Bireh municipality, the processing of which has not yet been completed. What is it all about? Under the plan which was proposed by the Al-Bireh municipality, the above referenced area should have been designated for both residential and industrial purposes. This approach was not acceptable to the planning office, which believed that correct planning principles warrant separation between residence and industry. The planning office has further noted in this context that a road system having a road width which suits an industrial zone should be outlined. On this issue, the above referenced plan implements this approach. This road system is proposed in the above plan and constitutes a central artery in the expansion plan of the Al-Bireh industrial zone. The above plan takes into consideration the anticipated traffic developments which may arise from said industrial zone and the intensification of the urbanization process in the urban area Ramallah – Al-Bireh. Therefore, the road was planned as a two-lane road, to answer the scope of anticipated traffic volumes as is appropriate for an access road leading to a city. The Al-Bireh municipality amended the Al-Bireh industrial zone plan and incorporated the road into the plan.

**"Therefore, the road was planned as a two-lane road, to answer the scope of anticipated traffic volumes as is appropriate for an access road leading to a city."**

A copy of the decision dated April 19, 2005, is attached hereto and marked **P/16**.

42. **To conclude this issue, the argument that the relevant part of the road was built on land which was expropriated for military purposes, following the Oslo Accords, rather than for**

**the benefit of the Palestinian population, was completely refuted by the above protocols. Why did the legal advisor make an argument which contradicts the documents which were before him and the protocols and decisions of which he was a party?**

**Respondents' argument that the opening of the checkpoint would cause a significant security risk for the passengers on the road, *inter alia*, in view of the anticipated heavy traffic volumes on the road and the security condition in the Area**

43. This argument is mere words. The security argument relies on "the anticipated heavy traffic volumes on the road" and the "security condition in the Area", that and no more.
44. The respondents do not describe a specific security risk which deviates from the security condition in the Area. And indeed, the comments of the commander of the Binyamin Regional Brigade, which was also transferred together with respondents' response, shows that the security argument is a very weak argument in this case. And it was so stated in the comments of the Brigade's commander:

**Unreasonable traffic volume in junction 90** – the opening of the Focus checkpoint to Palestinian traffic **will create very heavy and unreasonable traffic volumes in the junction.** It should be noted that even to date there are heavy traffic volumes in certain hours which cause significant damage to the fabric of life and a security problem which arises from said traffic volumes.

And also:

**Junction 90 – Qalandiya** – anyone having a sound head on his shoulders understands that the opening of the 'Focus' checkpoint **will turn junction 90 into a congested, non secure and unsafe junction.**

And:

**Traffic volumes which constitute an operational problem** – the traffic volumes which will be created on route 466 (in the connecting segment between the exit from Beit El and the exit from Ramallah) and junction 90 will pose an operational and security problem and may create an **unreasonable security risk** arising from Israeli – Palestinian encounters and from vehicles standing at the outskirts of the Beitin village which already poses a threat of stone and Molotov cocktail throwing at the passengers on road 466 from route 60 to Beit El.

And in other words, the above security threat is merely an argument according to which the opening of the DCO checkpoint will cause heavy traffic volumes in the junction which connects between route 60 and road 466 and will pose a risk to vehicles standing at the outskirts of the Beitin village. Why should Israeli vehicles stand at the outskirts of the Beitin village? How will the risk to Israeli vehicles increase by not knowing whether all vehicles on the road are Israeli vehicles? No answers were given to these questions.

A copy of the comments of the Brigade commander bureau of April 14, 2013 is attached hereto and marked P/17.

45. **And it should be emphasized, that no separate argument concerning a security threat was raised other than the argument that a security risk may be created as a result of traffic volumes. Traffic volumes may not be desirable but they cannot hide behind an argument of a "significant security risk", when the opening of a road which was designed to serve the Palestinian population is concerned.** If traffic lights should be installed in the junction or any other security measure should be taken, the respondents will most certainly know how to do it. But since we have reached transportation issues concerning traffic volumes, we should examine respondents' next argument.

**Respondents' argument that "Transportation wise, the road which connects between route 60 and Al-Bireh north, is not suitable, at this time, to serve heavy traffic volumes", is also refuted by respondents' own documents**

46. It should be noted that this is a surprising argument. Firstly, it should be noted that the road was planned specifically for this purpose: to serve heavy traffic volumes. In paragraph 41 above we have quoted the decision of the Objections Subcommittee of the Supreme Planning Council, which stated that **"Therefore, the road was planned as a two-lane road, to answer the scope of anticipated traffic volumes as is appropriate for an access road leading to a city."**
47. Furthermore, the statement that **"Accordingly to the evaluation of the professional agencies, the opening of the checkpoint to free traffic is expected to cause heavy traffic volumes on this road, and particularly in the junction which connects between this road and route 60, in a manner which would encumber the realization of the main purpose of the road", is an argument which contradicts the evaluation of the same professional agencies.**
48. The comments of Mr. Yisrael Efriat "Staff Officer Transportation – Ma'az and the Inspector of Transportation, Judea and Samaria" the supreme authority on transportation matters, was also transferred along with respondents' response. The legal advisor requested the Staff Officer Transportation to comment on a number of specific questions:

8. Staff Officer Transportation – your comments on the following issues are requested:
  - a. When was road No. 466 from route 60 towards Beit El built?
  - b. Were the residents of Ramallah and the residents of the village councils near Ramallah allowed to pass through said checkpoint in the past?
  - c. Is there any preclusion, transportation wise, for the opening of the checkpoint for free passage of Palestinians? If there is any such preclusion, please specify the grounds therefore.

The Staff Officer Transportation responded as follows:

1. **Response to the questions in your above letter:**

- a. Paragraph 8a – I don't know when the road was built but the undersigned knows this road for more than 20 years.
- b. Paragraph 8b – Yes, in the past road No. 466 served the residents of both Ramallah and Beit El.
- c. Paragraph 8c – The road was blocked based on security reasons [a checkpoint was placed] and there is no transportation preclusion for the opening of the checkpoint.

A copy of the response of the Staff Officer Transportation dated June 2, 2013 is attached hereto and marked **P/18**.

49. It is needless to point out that this decisive answer, according to which "**there is no transportation preclusion for the opening of the checkpoint**", completely contradicts the statements made in respondents' response.
50. **Moreover, as aforesaid and in view of the fact that the argument concerning a security risk is based on the argument concerning heavy traffic volumes and is not a stand-alone argument, the position of the professional agencies that there is no transportation preclusion for the opening of the checkpoint, in fact, undermines respondents' argument that the removal of the restrictions would create a significant security risk.**
51. It should be further emphasized that the traffic volume which would be added, as argued by the respondents, to the junction connecting between route 60 and road 466, would be significantly lower than projected by the respondents. And why?

As specified in paragraph 8 above, the shortest way from Beitin to the DCO checkpoint (which is marked in blue on the map which was attached as P/1) is blocked with a dirt mound. The petitioners assume that if their petition is accepted and the DCO checkpoint is opened for free passage of Palestinians, this dirt mound, which constitutes a sort of an "addition" to the DCO checkpoint, would also be removed. In such an event, many of the Palestinian residents residing in the communities headed by petitioners 1-10, will prefer to travel from Beitin directly to the DCO checkpoint without going through route 60.

52. **After the petitioners have proved that the first three arguments in respondents' response had no merit, the time has come to examine whether there is truth in the argument that: "The damage caused to the Palestinian residents of the area, who do not hold a permit to pass through the DCO checkpoint, is minimal. The residents of the area have available to them several efficient and convenient access roads to and from the city."**
53. The above said shows that this argument has been completely refuted by the Objections Committee of which the representative of the legal advisor was personally, a party. Paragraph 40 above, includes a quote from the decision of the Objections Committee, which states as follows: "In this context, we would like to note that the Al-Bireh and Ramallah area, which constitutes a single and complete urban unit, may be accessed by a limited number of roads, none of which reaches this unit through **non built-up areas. The route under discussion, which allows access to the urban unit from non built-up areas, applies principles of modern planning as it provides a road which facilitates access to the center of the unit, bypassing the congested urban fabric.**"

54. Namely, not only that the part of the road was built to serve as a main road from Al-Bireh and Ramallah to route 60 and *vice versa*, the importance of the road is in that it is a two lane road which facilitates access to and from the cities, **through non built-up areas**.
55. The three "alternative" roads presented by the respondents (see paragraph 35d above), do not constitute any alternative. The first road, from the Ramallah area towards the 'Ein Sinya roundabout is not relevant for the communities located east of Al-Bireh and Ramallah as stated in respondents' response itself that it shortened the way from Al-Bireh and Ramallah to the communities located to their north.
56. The comments of DCO Ramallah dated August 6, 2013, stated the following regarding the first alternative:

"The implications of closing the checkpoint to the entire population living in the area are minimal, especially in view of the fact that there are alternative ways which were opened in recent years to facilitate the access between Ramallah and the rural area located east of the city. Among other things, the barrier in 'Ein Yabrud (across Ofra) was removed and currently vehicles go up to route 60 through this junction, and in the last month an additional very central junction was opened ('Ein Sinya roundabout – 278) which connects the old route 60 with the new route 60, and **thus, significantly shortens the access to Ramallah for those who arrive from the northern part of Judea and Samaria. The access to the eastern villages is from the villages of 'Ein Yabrud or Silwad.**"

Namely, the first alternative shortens the access to Ramallah only for those who come from the north and is not relevant to our case.

A copy of the comments of DCO Ramallah of August 6, 2013 is attached hereto and marked **P/19**.

57. **The second and third alternatives are in fact the same alternative.** Both require going through a winding and narrow road, through the villages of 'Ein Yabrud' and Dura al Qar'. The difference is that from 'Ein Yabrud one can go under route 60 to the communities located to its east, take route 60 and go south or north (the alternative marked in yellow), or continue to Beitin (the alternative marked in purple). The part of the road which marked by a broken line on the map is narrow, winding and without shoulders and goes through a congested urban area.
58. According to the data provided in respondents' response, which are based on information received by the respondents from DCO Ramallah in P/19 above (and we shall immediately explain the importance of this detail), the road from the Ramallah area through 'Ein Yabrud until it converges with route 60, is 5.8 Km. long, and the travel time thereon is six minutes.
59. There is no way to refer to these two pieces of information other than as "perplexing". With respect to the length of the road, it is unclear from where it was measured by the respondents. However, logically, when several alternatives are compared, they should all share the same starting point. Namely, since the respondents try to compare between (a) a trip from Al-Bireh and Ramallah, through the City-Inn junction and through the DCO checkpoint up to route 60; and (b) a trip from Al-Bireh and Ramallah, through the City Inn junction, Dura al Qar' and 'Ein Yabrud up to route 60, the point shared by these two ways is the City Inn junction.

60. **From the point it converges with route 60, the road through 'Ein Yabrud and Dura al Qar' up to the City Inn junction, which is still far from Ramallah, is 9.2 Km. long rather than 5.8 Km** (the point which is located in a distance of 5.8 Km. from the convergence with route 60 is marked on the map near the Jilazun refugee camp). How did the respondents measure 5.8 Km.?
61. With respect to the travel time, even if we take into account a distance of 5.8 Km. rather than 9.2 Km., a simple calculation shows that if the measured travel time was six minutes, the average speed was 58 Kmh. **How did the respondents manage to go through a narrow and winding local road in an average speed which exceeds by 8 Km. the average permitted speed in a local road?**
62. The respondents have even managed to pass the last 12 Km. on a winding and local road up to Beitin, in only ten minutes, an average speed of 72 Kmh. The respondents have either erred in their data, or breached the law and drove in a dangerous speed or had their journey shortened miraculously.
63. It should be further noted that the above data contradict the contents of the e-mail message which was sent to the international community on July 7, 2013, which announced the opening of the road from Ramallah to the north and was signed by First Lieutenant Yam Atir, International Organizations Officer **in DCO Ramallah itself. The same DCO Ramallah which claimed that traveling this road took only six minutes.** The message stated as follows:

**"Traveling from Ein Y'brud to Ramallah during rush hour can take up to 45 minutes. This is because the road passes through residential areas and areas that are unstable and or unsuitable for driving.** Therefore, as part of a desire to improve the accessibility of the Palestinian population to Ramallah City, the Civil Administration has promoted the opening of a new route between Ein Y'brud Junction and Ramallah City on Old Road 60."

**This means that DCO Ramallah determines, on the one hand, in a response to Palestinian residents, that the implications of closing the checkpoint are minor, since there is an alternative road the travel time on which amounts to six minutes, and on the other hand, in an announcement to the international community, it states that traveling the very same road takes up to 45 minutes because the road passes through residential areas and areas that are unstable and or unsuitable for driving. Enough said.**

A copy of the electronic mail message dated July 7, 2013 is attached hereto and marked **P/20**.

64. The rights of the Palestinian residents, including the Palestinians living in the communities represented by petitioners 1-10, to freedom of movement, freedom of occupation, the right to own property, to education and dignity, are impeded on a daily basis. **The petitioners used their best efforts to nullify the need to file the petition. However, in view of respondents' refusal to remove the restrictions preventing the free passage of Palestinian residents through the DCO checkpoint, based on reasons which are not one hundred percent true to the facts as they really are, the petitioners had no alternative but to apply to this honorable court.**

## The Legal Argument

65. The petitioners claim that respondents' failure to remove the restrictions which impede the freedom of movement of the Palestinian residents, including more than 100,000 Palestinians who reside in the communities headed by petitioners 1-10, causes the residents high and unnecessary economic costs and waste of time, and severely, unreasonably and disproportionately violate their rights to freedom of movement, freedom of occupation, the right to own property, the right to health, education and dignity.

### The violated rights

66. In view of the fact that the violated rights are recognized as fundamental rights by both Israeli law and International law, the petitioners will not encumber the honorable court by a long presentation of their arguments in order to establish the status of said rights and will do it in a nut shell only.

### The right to freedom of movement

67. The right to internal freedom of movement or intrastate freedom of movement is recognized by Israel and International law and as held by this honorable court, it is also entrenched in customary international law.
68. In HCJ 1890/03 **Bethlehem Municipality v. State of Israel**, IsrSC 59(4) 736, 754-755 (2005), it was held as follows:

**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 which is derived from the right to liberty (President Barak and Justice Cheshin in HCJ 5016/96 **Horev v. Minister of Transport**, IsrSC 51(4) 1, pp. 59 and 147 respectively (hereinafter: **Horev**)). In addition, there are some authorities according to which 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 the above mentioned **Horev** case... In that case, President Barak said that freedom of movement is 'one of the more basic rights' (*ibid.*, p. 49), that the right to freedom of movement 'is in the forefront of human rights' (*ibid.*, 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.*, p. 53). The President also added in the above **Horev** case 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.*, p. 49). It should be noted that similar remarks with regard to the status of the freedom of movement were also made by the justices who did not agree with President Barak's majority opinion in **Horev** (see, for example, the remarks of Justice Cheshin *ibid.*, p. 147 and the remarks of Justice Tal, p. 181). On the status of freedom of movement in Israeli law following **Horev** see also Y. Zilbershatz, 'On Freedom of Movement within the State: following HCJ 5016/96 **Horev et al. v. Minister of Transport et al.**, 4 *Mishpat uMimshal* (1998) 793, at pp. 806-809 (hereinafter: **Zilbershatz**).

**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, Article 12 of the International Covenant on Civil and Political Rights, 1966, Article 13 of the Universal Declaration of Human Rights, 1948, and Article 2 of the fourth Protocol of the European Convention on Human Rights, 1950) and it seems that it is also enshrined in customary international law (see Zilbershatz above, pp. 800-801).

69. There is no doubt that the restrictions barring the free passage of Palestinian residents through the DCO checkpoint violate the residents' right to freedom of movement.

### **The right to freedom of occupation and the right to own property**

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

Additional grounds ... are found in the basic right to freedom of occupation, which was recognized in this Court in its judgments even before the Basic Law: Freedom of Occupation was enacted... Israeli law may not be directly applicable in the Area, but this Court applies its basic principles to the military commander of the Area and his subordinates by virtue of their personal powers as members of state authorities acting in the Area on behalf of the State... in the same manner in which it applies the principles of administrative law to them.

HCJ 3940/92 **Jarar v. The Commander of the Judea and Samaria Area**, IsrSC 47(3) 298, 304-305 (1993).

71. A person's right to own property was also recognized as a basic right by Israeli law. Section 3 of the Basic Law: Human Dignity and Liberty states: "There shall be no violation of the property of a person."
72. As aforesaid, many residents living in communities east of Ramallah and Al-Bireh work therein and residents of said cities work in the communities to their east.
73. As broadly described above, the longer distance takes a heavy toll on the residents on a daily basis, both in terms of time and money, and impedes their right to freedom of occupation and right to own property.

### **The right to health**

74. The main international document concerning the right to health is Article 12 of the International Covenant on Economic, Social and Cultural Rights which provides 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.**" Prof. Eyal Gross notes that "In view of the proliferation of provisions concerning the right to health in international human rights conventions, other international documents... **many are of the opinion that the right to health is currently**

**recognized as a universal right, which is also recognized as forming part of customary international law" (Eyal Gross "Health in Israel: between right and commodity" *Economic, Social and cultural rights in Israel* 437, 445 (Yoram Rabin and Yuval Shani editors, 5765)).**

75. In general comment 14 of the UN Committee on Economic, Social and Cultural Rights, the Committee has interpreted Article 12 of the Covenant and gave it a specific meaning. According to the Committee, the right to health also includes the right to timely access to health services (paragraph 17 of the 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."**

76. This honorable court has also held that **"A person who does not have access to elementary medical treatment, is a person whose human dignity was violated."** (LCA 4905/98 *Gamzo v. Yesha'ayahu*, IsrSC 55(3) 360, 375-376 (2001)).
77. The long detour which must be taken in order to reach the hospitals and medical centers in Ramallah and Al-Bireh, other than by ambulances which are allowed to pass through the DCO checkpoint, severely violates the right to health and the right to timely access to health services of the residents of the communities located east of Ramallah and Al Bireh, which, God forbid, may also put lives at stake.

### **The right to education**

78. In HCJ 2599/00 *Yated – Not for profit Association of Parents of Children with Down Syndrome v. Ministry of Education*, IsrSC 56(5) 834, 841 (2002) (hereinafter: *Yated*) it was so stated:

**The right to education has long been recognized as a basic human right.** This right is entrenched in the Universal Declaration of Human Rights of 1948, which provides, in Article 26 thereof that every person has the right to education and that education must be free, at least in the elementary and fundamental stages. The International Covenant on Economic, Social and Cultural Rights of 1966, which was ratified by Israel in 1991, declares in Article 13 thereof that education should be directed to the full development of the human personality and sense of dignity, for the strengthening of the respect for human rights and fundamental freedoms. It also determined that elementary education should be compulsory and freely available to all. The right to education is also entrenched in Articles 28 and 29 of the Convention on the Rights of the Child, 1989, which was also ratified by Israel in 1991.

79. Article 28(1) of the Convention on the Rights of the Child, which was mentioned in **Yated**, provides the "States Parties recognize the right of the child to education" and that the States Parties will:
- (b) Encourage the development of different forms of secondary education, including general and vocational education, **make them available and accessible to every child**, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
  - (c) **Make higher education accessible to all** on the basis of capacity by every appropriate means;
  - (d) **Make educational and vocational information and guidance available and accessible** to all children.
80. As specified above, many pupils and students from the communities located east of Ramallah and Al-Bireh study in these cities. The extension of the road violates the right of the pupils and students to education.

### **The right to dignity**

81. The right to human dignity was recognized as a basic right by Israeli law. Section 2 of the Basic Law: Human Dignity and Liberty provides that: "There shall be no violation of the life, body or dignity of any person as such", and Section 4 provides that: "All persons are entitled to protection of their life, body and dignity."
82. The right to dignity was also recognized by International law. Thus, for instance, Article 27 of the Fourth Geneva Convention provides that:
- Protected persons are entitled, in all circumstances, **to respect for their persons, their honor**, 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..."
83. The failure to remove the restrictions which prevent the free passage of Palestinian residents through the DCO checkpoint, violates the human dignity of the residents. Furthermore, unlike other checkpoints which discriminate between Israeli citizens and Palestinians, the DCO checkpoint is not closed for the passage of Palestinians. On the contrary. Most of the people who pass through the checkpoint on a daily basis are Palestinians having a VIP status. It is therefore not surprising that the residents feel **discriminated against and humiliated**, to the extent that their human dignity is violated.
84. It should be noted that many of petitioners 1-10 hold VIP passes which allow them to pass through the checkpoint. Therefore, the opening of the checkpoint for the passage of the entire Palestinian population may infringe on the convenient passage which they currently enjoy. However, as public

servants, they prefer to waive their private convenience for the benefit of the entire residents represented by them.

### **The duty of the authority to act fairly and to furnish reliable information**

85. The authority's duty to act fairly is considered to be the first duty imposed on the authority, from which other specific duties are derived. In HCJ 840/79 **Contractors and Builders Center in Israel v. Government of Israel**, IsrSC 34(3) 729, 745-746 (1980), President Barak (as then titled) stated as follows:

The state, through those who act on its behalf, is the trustee of the public, and the public interest and properties were entrusted to it to be used for the benefit of the public at large... this special status imposes on the state the obligation to act reasonably, honestly, based on pure motives and in good faith. The state must not discriminate against, act arbitrarily or in bad faith, or be in a conflict of interests situation. It must comply with the rules of natural justice. Shortly, it must act fairly.

86. One of the specific duties which derive from the authority's duty to act fairly is the duty to furnish reliable information. Thus, Prof. Daphna Barak-Erez states that "**It is needless to point out that the duty to act fairly which is imposed on the authority obligates it to disclose the real reasons upon which the decision was based**" and refers on this issue to HCJ 4422/92 **Ofran v. Israel Land Administration**, IsrSC 47(3) 853, 861 (1993), where the court criticized the unfairness embedded in the concealment of the real reason for the decision made by the Israel Land Administration (Daphna Barak-Erez **Administrative Law** Volume A 424-425 (2010)).
87. As specified in length in paragraphs 35-63 above, the respondents refused to remove the restrictions which prevent the free passage of Palestinian residents through the DCO checkpoint, and gave reasons which are not one hundred percent true to the facts as they really are, whether such reasons contradict the contents of other documents provided by the respondents, or whether such reasons contradict the fact as they really are on site.

### **Conclusion**

88. The petitioners are hopeful that they have succeeded to demonstrate to the honorable court the severe injury caused to the Palestinian residents, including more than 100,000 residents who live in the communities headed by petitioners 1-10, day by day, and the great suffering caused to the residents whose access to health services, employment and education is encumbered, as well to residents who "just" wish to reach the nearby city in order to go to a governmental office, to buy a pair of shoes, buy food or eat in a restaurant.
89. Respondents' conduct, which is in contrary with a proper conduct of an administrative authority, unnecessarily extends the suffering of the residents represented by petitioners 1-10 and the violation of their rights, causes them significant and unnecessary financial costs, wastes the time of HaMoked's employees and of the attorneys working in the High Court of Justice department at the State Attorney's Office, unnecessarily wastes the invaluable time of the justices and employees of this honorable court, and indirectly impinges on other litigants whose cases are pending before this honorable court. The petitioners request this honorable court to clarify to the respondents the

severity of their actions, or more precisely, their omissions, in its decisions as well as in its consideration of the issue of the costs and legal fees.

90. In view of all of the above, the honorable court is hereby requested to issue an *order nisi* as requested in the beginning of this petition, and after receiving respondents' reply, make the order absolute, and order the respondents to pay petitioners' costs and legal fees.
91. In addition, the honorable court is requested to schedule an early hearing in the petition and order the respondents to file their response within a short period of time.
92. This petition is supported by affidavits and powers of attorney which were signed before an attorney in the West Bank and were sent to HaMoked by fax, subject to coordination by phone. The honorable court is requested to accept these affidavits and powers of attorney, taking into consideration the objective difficulties involved in a meeting between the petitioners and their legal counsels.

5 Adar A 5774  
February 5, 2014

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Counsel to the petitioners

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Nitzan Aloni, Advocate  
Counsel to the petitioners