At the Supreme Court
Sitting as the High Court of Justice

HCJ 1891/10
Scheduled for: a preliminary hearing, February 21, 2013, before the Honorable Justice Vogelman

_____ Jarbo'a et al.
all represented by counsel, Adv. Elad Cahana and/or Ido Bloom and/or Yotam Ben Hillel and/or Hava Matras-Irron and/or Sigi Ben Ari and/or Daniel Shenhar and/or Leora Bechor

Of 4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

1. **Military Commander of the West Bank Area**
2. **Coordinator of Government Activities in the Territories**
   Represented by the State Attorney's Office,
   Ministry of Justice, Jerusalem
   Tel: 02-6466157; Fax: 02-6467011

The Respondents

Respondents' Response in preparation for the Preliminary Hearing

The respondents hereby respectfully submit their response in preparation for the preliminary hearing which is scheduled for February 21, 2013 as follows:

1. This petition concerns petitioners' request to order the respondents to show cause why they should not allow petitioner 2, petitioner 1's wife, and their children, petitioners 3-4, all of them residents of the Gaza Strip, to travel to Judea and Samaria (hereinafter: the **Area**) together with the father of the family – petitioner 1, via Israel, for the purpose of living and residing in the Area.

2. As specified in respondents' preliminary response, with respect to petitioner 1 (hereinafter: **petitioner 1**), who is registered with the population registry as a resident of the Area, the

respondents are willing to enable him to travel to the Area. In this context it was pointed out that in view of negative security information which existed against petitioner 1, the respondents agreed to enable petitioner 1 to enter the Area on the condition that he did not travel from the Gaza Strip to the Area through the territory of the State of Israel.

The respondents wish to update, that according to information provided by security agencies, an updated examination conducted by security agencies indicates that the passage of petitioner 1 through the Gaza Strip to the Judea and Samaria Area via the State of Israel may be allowed, subject to restrictions on passage hours and subject to petitioner 1's escort according to the civil administration procedures. It should be clarified, that for the purpose of obtaining escort, petitioner 1 must coordinate same with DCO Erez and the costs of such escort would be borne by petitioner 1.

Therefore, **with respect to petitioner 1's request to return to the Area, the respondents will reiterate that the petition is redundant and should be deleted**. We hereby emphasize once again, that contrary to the petition, the respondents do not condition petitioner 1's return to the Area on his cooperation with security agencies.

3. With respect to petitioners 2-4, their request in fact constitutes **an application to relocate to the Judea and Samaria Area**. As has already been specified in the preliminary response to the petition, in fact, the general issue which arose in the petition pertains, in its entirety, to the "Procedure for Handling Applications by Gaza Strip Residents for Settlement in Judea and Samaria" (hereinafter: the **procedure for the handling of settlement applications**), which was established by the respondents and was presented before this honorable court within the framework of the hearing in HCJ 660/08 and in a number of petitions which were consolidated there-under (hereinafter: the **consolidated petitions**). At a later stage, petitioner 5 filed a general petition which challenged the provisions of the procedure which was formulated, HCJ 2088/10 and HCJ 4090/10 (hereinafter: the **general petition**).

4. Under these circumstances, the respondents argued in the preliminary response to the petition, that the general decision concerning the procedure for the handling of settlement applications, whether given in the general petition or in the consolidated petitions, may directly affect the matter of petitioners 2-4 in this petition, and in any event, they would be able to re-apply to this honorable court in their specific matter after a decision was made, to the extent they have a cause for that matter (see and compare: HCJ 8911/09 **Abu Mustaffa v. Commander of Judea and Samaria Area** (reported in Nevo January 25, 2010).

5. As indicated by the chain of events in the petition, the petition was scheduled for a hearing after respondents' preliminary response was submitted. However, prior to the date of the hearing of the petition which was scheduled for April 30, 2012, the parties submitted an agreed application for the cancelation of the hearing and for the filing of an updating notice by the petitioners, following a decision in the general petition.

6. As known, on May 24, 2012, a judgment was given in the general petition. The honorable court rejected the general petition, and held, *inter alia*, as follows:

> "…
> 18. As known, this court is not inclined to put itself in the shoes of the competent authorities when it comes to security expertise. These authorities bear full responsibility for maintaining security and public order – in our matter, both in Israel and in the Judea and Samaria Area. The difficult security situation which we experience is not new and it seems that, sadly, respondents' description of the potential risk embedded

in allowing free travel between Gaza and the Judea and Samaria Area is not unfounded. **Under these circumstances, and in view of the current situation, it seems obvious that free travel may not be allowed between Gaza and the Judea and Samaria Area as requested by the petitioners and that the establishment of a restrictive policy on this issue complies with respondents' obligation to maintain the security of both Israel and the Area. Under these circumstances, we have also failed to find that the mere establishment of a restrictive policy concerning the issue of allowing passage between Gaza and Judea and Samaria Area was unreasonable**.

19. However, we have no doubt that the restrictive policy which was adopted by the respondents has particularly harsh ramifications on residents who are not involved in terror activity and are forced to be separated from their relatives. Without elaborating in this context on the scope of the obligations and the source of the rights which are violated as a result of its implementation, we clearly understand that this policy separates, sometimes artificially, between Palestinians who live in the two areas and who wish to maintain or create normal family relations. Everyone agrees that the situation at issue is extremely complex and requires the adoption of solutions which would not entirely block the possibility of travel between Gaza and the Judea and Samaria Area, properly balancing them against the weighty security considerations. *Prima facie*, the respondents are aware of the difficulty created by the situation and a few very limited exceptions to the travel policy were established in the procedure, which mostly pertain to clear medical needs, the need for nursing care or minor children. These exceptions are indeed appropriate, yet it seems that a too restrictive approach was taken, which, in certain circumstances, is overly rigid. This is all the more so in view of the fact that these exceptions mainly involve populations in need of special care and support (the sick, the elderly and minor children). Therefore, it may be appropriate to apply these exceptions in a manner that would enable these groups to maintain relations with their immediate family members, even if they have more distant relatives in the Gaza Strip.

    Furthermore, it should be noted that the procedure contains a "basket clause" which grants the coordinator of government activities in the Territories discretion to consider each application on its merit, even if it does not meet the criteria stipulated in the procedure but does meet the prerequisites regarding the absence of a security preclusion (section 8 of the procedure) and the applicant's being an immediate family member (section 9 of the procedure). It seems to us that subjecting the discretion of the coordinator of government activities in the Territories to the condition set forth in section 9 of the procedure, which requires that the person seeking to travel be an immediate family member only, may, in the real world, turn this clause into a dead letter. Considering the severe injury caused by the implementation of the restrictive policy, it would be appropriate for the coordinator of government activities in the Territories to exercise the discretion granted in this clause in such a manner that would minimize the injury as much as possible within the existing security constraints. Thus, for instance, despite the fact that we found no cause to intervene in the policy to disallow, as a general rule, relocation and settlement in the context of marriage in which the spouses live in the two areas, it seems to us that there is no room to place a flat ban on all

such applications. Thus, in exercising his discretion in this context, it would be appropriate for the coordinator of government activities in the Territories to consider, before making such a decision, the overall circumstances relating to the couple, including their age, the entire family relations and the location of the extended family unit, and all of the above would be given appropriate weight in making a final decision on the matter.

20. **We conclude by saying that in view of the current security situation and subject to our comments with respect to the examination of the possibility to broaden the criteria stipulated in the procedure being the subject of the petition to a certain extent, we did not find that cause for intervention in respondents' policy on settlement by Gaza residents in the Judea and Samaria Area was established. In our above determination, we have also considered the fact that this policy involves dominant political aspects which are of the issues in which this court does not normally intervene. In view of the aforesaid, we did not find that petitioners' claims regarding the forum in which the applications are processed establish cause for intervention, as arguments of this sort lie at the heart of the relationship between Israel and the Palestinian Authority.**

Nevertheless, we assume that this policy will be periodically revisited according to security assessments and that inasmuch as relaxations can be introduced with respect to these aspects, the respondents will act accordingly. We have therefore decided to dismiss the petition in HCJ 2088/1.
…"

[emphases added – M.F.]

7. According to the aforesaid, following the judgment in the general petition, administrative work by all relevant agencies has commenced for the examination of the comments of the honorable court which were specified above. In the context of the above examination, meetings were held on this issue in the State Attorney's Office.

8. As of the date of this response, the respondents are in the midst of the examination process of the judgment in the general petition within the context of which the possibility of updating the procedure for the handling of settlement applications is examined. **It should be clarified, as was also indicated by the judgment in the general petition, that this issue incorporates security as well as political aspects**.

9. Upon the completion of the examination and in view of its conclusions, a decision will be made as to the manner by which the specific cases which are pending before the honorable court will be handled, including the specific case being the subject matter of this petition.

10. Under these circumstances, following the completion of the above administrative work in which all relevant agencies take part, including security and political agencies, the petitioners will be able to submit a new application to the administrative authority in their matter according to the procedure for the handling of settlement applications.

The respondents are of the opinion that under these circumstances, there is hardly any room for leaving the petition pending before the court. Clearly, after a new decision is made in their matter by the

administrative authority, the petitioners will be able, to the extent required, to apply to the honorable court in their specific matter after the decision, if and to the extent they have a cause to do so.

11. Alternatively, and to the extent that the honorable court decides that the petition shall remain pending, the respondents will request to submit an updating notice within 90 days about the progress made in the administrative work concerning the procedure for the handling of settlement applications.

Today, 8 Adar 5773
February 18, 2013

(signed)

Moriya Freeman, Advocate
Chief Assistant to the State Attorney