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At the Supreme Court
Sitting as the High Court of Justice

HCJ 970/14

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The Petitioners

v.

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

Represented by the State Attorney's Office,
Ministry of Justice, Jerusalem
Telephone: 02-6466590; Fax: 02-6467011

The Respondents

Respondent's Preliminary Response to the Petition

Following the decision of the Honorable Justice D. Barak-Erez dated February 6, 2014, and following the extensions which were given by the honorable court, the respondents hereby respectfully submit their response to the petition, as follows:

Preface

1. This petition concerns petitioners' request of the honorable court to order the respondents to appear and show cause, why the restrictions, which prevent Palestinian residents from passing through the checkpoint located on that part of route 466 which connects between Ramallah and Al-Bireh – and route 60 (hereinafter: the **DCO checkpoint** or the **checkpoint**), should not be removed.

2. The respondents will argue that the petition should be denied in the absence of cause for intervention by the honorable court. As will be specified below, currently, the limitation of the passage through the checkpoint is based on weighty transportation and security reasons.

Nevertheless, it should already be noted, that respondent's professional position is that **the DCO checkpoint may be opened for free movement of the Palestinian population, subject to the execution of works in junction No. 90 to adjust it to the heavy traffic volumes which are expected as a result of the opening of the checkpoint.** Thereafter, and according to need, it will be decided whether additional works will be required to adjust route 466 to the traffic volumes which will be created on site. Currently, the opening of the checkpoint without the execution of the required works is expected to cause significant traffic volumes and expose the passengers in the area to severe safety and security risks.

It should be pointed out that despite the fact that a comprehensive solution for the traffic needs in said area requires both the adjustment of junction 90 as the widening of route 466, **the respondents are willing to enable the opening of the checkpoint for free passage after the adjustment of the junction for an interim period, subject to an evaluation of the security condition at that time.** During that period the actual impact of the opening of the checkpoint on the traffic in the area will be examined, and a decision shall be made as to whether the opening of the checkpoint requires the completion of the works for the widening of route 466.

The Civil Administration prepares for the planning of the required adjustments and acts to promote them, in order to enable the opening of the DCO checkpoint for free passage, as aforesaid. All, as will be specified below.

3. Firstly, to the main facts relevant to the matter.

The main facts relevant to the matter

4. The DCO checkpoint is located at the north-east entrance of Al-Bireh village, on that part of route 466, which connects between route 60 and Al-Bireh, Ramallah, Beit El settlement and the adjacent IDF and Civil administration camps, including the headquarters of the Judea and Samaria Division, the Civil Administration, Binyamin Regional Brigade, the headquarters of the Israel Border Police and DCO Ramallah (the junction which connects between route 466 and route 60 will be hereinafter referred to as: **junction 90**).
5. Route 466 was actually built in 1995 on land which was expropriated for military purposes, within the framework of IDF's re-deployment outside the Palestinian cities following the execution of the interim agreements between the state of Israel and the PLO. Said re-deployment included, *inter alia*, the building of "by-passing road" to enable the movement of Israeli vehicles outside Palestinian population centers.
6. Until the road was built, Israeli citizens and IDF soldiers who had to travel from the Beit El area to the other parts of the Area, had to pass through the cities of Ramallah and Al-Bireh. Therefore, the purpose for which the road was built was to enable security forces and Israeli citizens to travel safely between Beit El settlement, the adjacent IDF camps and Civil Administration facilities, and route 60 and other parts of the Area, and to remove the security risk involved in the passage through Palestinian population centers (including in Area A).
7. The planning of route 466 which was built according to a military expropriation order was based on previous planning by the Civil Administration of 1994, which was included in the planning scheme

of Al-Bireh and in the detailed scheme the Al-Bireh industrial zone. However, in fact, due to the urgent need to build the road, and in view of the attempt to limit, to the maximum extent possible, the areas which were expropriated by the military order for its construction, the road was built in relatively low standards, so that currently, **this is a narrow road which consists of one traffic lane in each direction without adequate shoulders as required by road conditions, all of which limit the volume of traffic which can pass through it.**

A map of the area, on which are marked: the DCO checkpoint, route 466 and the other main traffic arteries in the area, and the traffic routes between Al-Bireh and the villages located to its east and north, is attached and marked **R/1**.

A photocopy of the land expropriation order No. E/9/95 (extension of validity and adjustment of border lines) dated December 5, 2012 is attached and marked **R/2**.

The limitations which were imposed on the passage through the checkpoint upon the eruption of the second intifada and the gradual removal thereof

8. After the eruption of the vast violent incidents in the Judea and Samaria area in the beginning of the previous decade, the military commander decided that the closing of the checkpoint for the passage of vehicles, with the exception of vehicles which received permits to pass through and emergency vehicles, was required due to security needs.
9. Throughout the years, and in view of the evaluation of the security condition, it was decided to increase the number permits to pass through the checkpoint, so that currently about 1,000 individuals are allowed to pass through the checkpoint, in addition to staff members of about 130 international organizations (including Palestinian employees of said organizations).

Thus, for instance, an examination conducted by DCO Ramallah during January 2014 indicates that an average of about 3,400 vehicles pass through the checkpoint on a daily basis. About 1,500 vehicles enter Ramallah and Al-Bireh through the checkpoint, and about 1,900 vehicles leave Ramallah and Al-Bireh through the checkpoint, towards junction 90.

10. Furthermore, it should be noted, that at night – commencing from 22:00 until 06:00, during which heavy traffic volumes are not expected along route 466, the IDF **allows free passage of vehicles through the checkpoint.**

Plans for the widening of route 466 and junction 90 and their adjustment to heavy traffic volumes

11. A few years after route 466 was built, the planning agencies discussed the plan for the widening and improvement of its traffic conditions - "plan No. 982 – road 4490 in the part of Al-Bireh north – route 60" (hereinafter: the **plan**). In the context of these discussions it was clarified, back in 1999, that in order to provide a solution for the traffic requirements of the population, the road should be turned into a two lane road consisting of two lanes in each direction. And indeed, within the framework of the plan, which was approved on February 2, 2009, the building of a two-lane road is planned.
12. It should be noted that this plan has not yet been realized, and that its realization is conditioned upon the preparation of a detailed scheme and upon the grant of building permits. In addition, it involves the allocation of a proper budget and the expropriation of private land for the widening of the road. It should be further noted, that the project involves the issue of a tender and like any project, during its execution unexpected difficulties may arise.

13. Nevertheless, in order to examine the possible opening of the checkpoint even before the widening of the road, the respondents requested to carry out traffic counting in route 466. The traffic counting which was carried out for the Civil Administration in April 2012 indicated that, *prima facie*, a broader opening of the checkpoint may be allowed, even without the widening of route 466, and subject to the adjustment of junction No. 90, in view of the fact that according to the traffic counting which was carried out, the capacity of each lane of the road is of about 700 vehicles per hour, whereas currently about 100 vehicles travel through each direction of the road per hour during "rush hours" (between 08:00 to 16:00). According to the evaluation of Rom Engineering and Traffic Ltd., which executed the counting, the expected traffic volume as a result of a complete opening of the checkpoint, will not exceed, during "rush hours", 500 vehicles per hour in each direction.

A photocopy of the traffic counting report which was executed at the request of the Civil Administration is attached and marked **R/3**.

14. In view of the above, although a comprehensive solution of the traffic needs in the above area requires both the adjustment of junction 90 and the widening of route 466, the respondents are willing to allow the opening of the checkpoint for free movement for an interim period, after junction 90 is adjusted, during the period which would follow the adjustment of the junction and until the road shall have been widened. During said interim period the actual impact of the opening of the checkpoint on the traffic in the area will be examined, and a decision will be made as to whether the opening of the passage in the checkpoint requires the completion of the works for the widening of route 466, or not.
15. In any event, as will be elaborated in detail below, the professional position of the relevant officials, including Staff Officer Transportation at the Civil Administration is that **the opening of the checkpoint requires the widening and adjustment of junction 90 safety-wise**, a project which is estimated at about five million NIS. As part of the project, the junction will be adjusted to larger traffic volumes. Among other things, a roundabout or traffic lights would be installed in the junction and an acceleration lane heading south would be added in a manner which would significantly reduce the anticipated heavy traffic volumes.
16. The Civil Administration allocated one million NIS for the planning of the junction, and a request for the execution of the planning was transferred by the Staff Officer Transportation to Netivei Israel – National Transport Infrastructure Company Ltd. The planning is expected to be executed over a period of about six months.

A photocopy of a letter dated May 29, 2014 from the Staff Officer Transportation to Netivei Israel, together with a financial undertaking for the planning of the adjustment of junction 90, is attached and marked **R/4**.

Respondents' position

17. The respondents will argue that the petition should be denied. As specified below, the military commander is empowered to limit traffic on a certain road, when the safeguarding of security or public safety in the Area so requires. In our case, weighty transportation and security considerations caused the military commander to decide to limit traffic through the DCO checkpoint.

Furthermore, as specified above, the respondents are willing to allow the opening of the DCO checkpoint for the entire population, after junction 90 shall have been arranged and adjusted to the heavy traffic volumes which are expected upon the opening of the checkpoint. Namely, according to the respondents, there is a solution which the respondents are striving to implement. The respondents will argue that under these circumstances, there is no room or need to decide in the petition, since, as aforesaid, as soon as junction 90 is arranged, the respondents are willing to enable the opening of the checkpoint, subject to an evaluation of the security condition at that time.

The above notwithstanding, and so as not to leave petitioners' arguments unanswered, we shall specify below the underlying normative infrastructure which applies in our case. Thereafter, we shall specify the reasons which underlie the decision of the military commander to limit traffic in the DCO checkpoint, at this present time, and for as long as junction 90 has not been adjusted.

The normative infrastructure

18. As is known, ever since the six day war, the Judea and Samaria area (hereinafter: the **Area**) is subject to belligerent occupation. Accordingly, and as was held by the court in its judgments, the rules of belligerent occupation constitute the normative framework for the activity of IDF Forces in the Area. The court further held, that in addition to the rules of international law, the local law which was in force prior to the six day war, the military security legislation and the fundamental principles of Israeli administrative law also apply to the Area, in which the checkpoint being the subject matter of the petition is located.

(See for instance, HCJ 3103/06 **Sholomo Valero v. State of Israel**, TakSC 2011(1), 2345 (2011); HCJ 1661/05 **Regional Council Hof Aza v. Prime Minister Sharon**, IsrSC 59(2), 481, 511 (2005); HCJ 393/82 **Jam'iat Iscan Al-Ma'almoun v. Commander of IDF Forces in Judea and Samaria Area**, IsrSC 37(4) 785, 792-793 (1983); HCJ 785/87 **Afo v. Commander of IDF Forces in the West Bank**, IsrSC 42(2) 1, 50 (1988); HCJ 2056/04 **Beit Sourik Village Council et al. v. Government of Israel**, IsrSC 58(5), 807, 826-827 (2004); HCJ 606/78 **Suleiman Taufiq 'Ayub et al. v. Minister of Defence**, IsrSC 33(2), 113, 116-117 (1979)).

19. The principle rules of international law concerning belligerent occupation are established in the Hague Convention (IV) Respecting the Laws and Customs of War on Land (1907) (hereinafter: the **Hague Convention**) and the Regulations annexed thereto, the provisions of which have the status of international customary law; and in the Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War 1949 and the Protocol Additional to the Geneva Convention of 12 August 1949 Relating to the Protection of Victims of International Armed Conflicts (Protocol I, 1977), the customary provisions of which also constitute part of the Israeli jurisprudence. (See HCJ 7015/02 **'Ajuri v. Commander of IDF Forces in the West Bank**, IsrSC 56(6) 352, 364 (2002); HCJ 769/02 **The Public Committee against Torture in Israel v. Government of Israel** (reported in Nevo, December 14, 2006).
20. As specified above, along the rules of international law and the law concerning belligerent occupation, the fundamental rules of Israeli public law also apply in the Area. According to these rules the military commander in the Area, must ensure, on the one hand, that the security interests which are required for the protection of the occupying power are maintained, and that the needs of the local population which resides in the area which is subject to belligerent occupation are satisfied, on the other.

Relevant to this matter are the words of the Honorable President Beinisch in H CJ 3969/06 **Head of Deir Samit Village Council, Muhammad ‘Abed Mahmoud al-Harub v. Commander of the IDF Forces in the West Bank** (reported in Nevo, October 22, 2009):

According to the principles of Israeli public law, the military commander must act, *inter alia*, fairly, reasonably and proportionately, properly balancing between the liberty of the individual and public interest - and all whilst taking security needs into account. [Emphasis added – the undersigned].

The authority to impose traffic limitations

21. The relevant provision to our case is that of Article 43 of the Regulations Respecting the Laws and Customs of War on Land, annexed to Hague Convention (IV) (hereinafter: the **Hague Regulations**), which provides as follows:

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

The above Article grants the military commander vast authority to take any measure available to him to ensure public safety and security in the area under belligerent occupation, and even obligates him to take such measures. See on this issue H CJ 9593/04 **Morar v. IDF Commander in Judea and Samaria** (reported in Nevo, June 26, 2006):

Indeed, there is no dispute that it is the duty of the military commander to ensure public order and the security of the inhabitants in the area under his command. Article 43 of the Hague Regulations sets out this duty and authorizes the military commander to take various measures in order to carry out the duty...".

In addition, beyond the vast authority granted by Article 43 of the Hague Regulations for the purpose of taking measures to protect the security of the Area, it grants vast authority to ensure public order in a variety of fields, including to secure the safety of road transportation. See in this context H CJ 393/82 **Jam'iat Iscan v. Commander of IDF Forces in Judea and Samaria Area**, IsrSC 37(4) 785, 792-793 (1983):

The first part of Article 43 of the Hague Regulations vests in the military government the power and imposes upon it the duty to restore and ensure public order and safety... The Article does not limit itself to a certain aspect of public order and safety. It encompasses all aspects of public order and safety. Therefore, **this authority – alongside security and military matters – applies also to a variety of “civilian” issues** such as, the economy, society, education, welfare, hygiene, health, **transportation** and other such matters to which human life in modern society is connected. [Emphases added – the undersigned].

22. According to Article 43 of the Hague Regulations, in the context of security legislation, section 316 of the Order regarding Security Provisions [Consolidated Version] [Judea and Samaria] (No. 1651), 5770-2009 (hereinafter; the **Order regarding Security Provisions**) establishes the specific authority of the military commander to impose traffic limitations:

(A) A military commander or a person acting with the general or special authorization of a military commander is empowered, in an order or by providing directives or in another manner to:

(1) Prohibit, limit or regulate the use of certain roads or to determine lanes on which vehicles or animals or persons shall pass, whether in general or in particular. [Emphasis added – the undersigned].

23. A similar provision is included in regulation 126 of the Defence (Emergency) Regulations, 1945, entitled "Control of Highways" which provides that:

A Military Commander, if he considers it necessary in the interests of public safety, the defence of Israel, or the maintenance of public order so to do, may by order provide for the stopping up or diversion of any highway, or for prohibiting or restricting the exercise of any right of way or the use of any waterway, and any person who contravenes any such order shall be guilty of an offence against these Regulations.

24. Hence, within the framework of the vast authorities granted to the military commander pursuant to Article 43 of the Hague Regulations, pursuant to section 316 of the Order Regarding Security Provisions and pursuant to Defence Regulations, the military commander has the authority to impose traffic limitations. In this context, the military commander is empowered to limit traffic on a certain road, or even prohibit it altogether, when the need to maintain security or public order in the Area so requires.

It should be noted that the duty of the military commander to ensure the safety and security of the residents of the Area, applies to all inhabitants of the Area under belligerent occupation, including Israeli and Palestinian residents alike.

25. Following the description of the normative infrastructure which applies to the case at hand, we shall continue to specify the transportation and security reasons which underlie the decision of the military commander to limit traffic in the DCO checkpoint.

The transportation reasons which prevent the complete opening of the checkpoint

26. As aforesaid, route 466 was built according to low standards due to the urgency which was involved in its construction upon the implementation of the interim agreements. Consequently, it is a road with one traffic lane in each direction with no shoulders, which limits the traffic volume that can pass through it.

In addition, according to the position of the professional officials at the Civil Administration, junction 90, which connects between route 466 and route 90, is a very dangerous junction safety wise, particularly in the absence of an acceleration lane heading south, the absence of traffic lights or a roundabout for the arrangement of the integration between the roads, etc.

27. Hence, the opening of the checkpoint – which will undoubtedly lead to a significant increase in the volume of the traffic on site – combined with a low security standard, both of the road as of the junction, **will pose significant transportation risk to all passengers on route 466, as to the passengers on route 60 which is the most central traffic artery in the area.**

It should be further noted that even today, when the passage through the checkpoint is allowed only to permit holders, heavy traffic volumes are created along route 466, on the lane heading towards route 60, particularly in the afternoon, when many vehicles exit Ramallah through the DCO checkpoint towards route 60.

Thus, for instance, an examination conducted by DCO Ramallah in January 2014 indicates that the number of vehicles which travel from Ramallah and Al-Bireh toward junction No. 90 between 14:00 – 18:00 may amount to about 1,500 vehicles, as noted above.

28. As specified below, other than transportation difficulties which may arise as a result of the opening of the checkpoint and the increased heavy traffic volumes which may follow, the increased heavy traffic volumes also create a severe security problem. Moreover, such volumes may also harm the inhabitants of Ramallah, Al-Bireh and the adjacent villages, as they may hinder the passage of Palestinian emergency vehicles on route 466, which can currently move freely thereon.
29. Towards the end of this part, it should be noted that in the petition, the petitioners quote an internal letter of Staff Officer Transportation at the Civil Administration which was obtained by them, according to which traffic through the DCO checkpoint was prevented due to security reasons and that there was no transportation preclusion for its opening. It should be clarified that the Staff Officer Transportation indicated, when inquired, that although it was not specifically stated in the above quoted internal letter, **according to his professional opinion, junction 90 had to undergo the required adjustments before the checkpoint could be opened for traffic.** Staff Officer Transportation advised that the response which was given was a general response, according to which the opening of the checkpoint was feasible, transportation wise, and that in said internal letter the Staff Officer Transportation did not go into the specific details which would be unable, according to him, the opening of the checkpoint. On this issue, see paragraphs 15 and 16 above.

Security reasons which prevent the complete opening of the checkpoint

30. As specified above, the security risk posed by the opening of the checkpoint for free passage of vehicles is affected by the transportation aspects of this step. It is evaluated that the opening of the checkpoint for free passage, without executing the required adjustments in junction 90 and route 466, will cause heavy traffic volumes. Such volumes may have severe security implications as follows:
31. **Firstly**, route 466 is the only access road to the IDF camps and Civil Administration facilities located near Beit El settlement, including the headquarters of Binyamin Regional Brigade, which does not require protected passage through Palestinian villages. Therefore, traffic volumes along this road may prejudice the operational ability of IDF Forces to promptly respond to security threats in the Area, particularly in view of the fact that route 466 is a narrow, single lane road, with no shoulders, as described above.
32. **Secondly**, security agencies evaluate that heavy traffic volumes along the road may expose the passengers to increased security risk. Thus, for instance, such volumes may enable, more easily, the

throwing of stones and Molotov cocktails at vehicles which are held up along the road as a result of heavy traffic, the passengers may be exposed to risks of shooting or abduction, etc.

The security incidents which occurred during the last year in an additional junction located in the Ramallah area – the Adam junction - may illustrate the security risk which may be created as a result of heavy traffic in the relevant area. In this junction, in which heavy traffic volumes are frequently registered, several security incidents occurred during rush hours. Thus, for instance, on December 23, 2013 an Israeli police officer who directed the traffic in the junction was stabbed by an anonymous person who fled the scene; on January 22, 2014 a vehicle collided with a police car which stood in the junction and fled the scene; on April 1, 2014 a terrorist tried to open fire at an Israeli vehicle which passed through the junction – this incident ended up without casualties due to a malfunction in the terrorist's gun; in addition, several attempts to break into Israeli vehicles (manned) were registered in the junction area, which were held up on site due to heavy traffic congestions. **It should be noted, that such attempts may result in the abduction of an Israeli citizen.**

Moreover, it should be noted that currently Molotov cocktails and stone throwing at Israeli vehicles which travel on route 466 are also registered from time to time. Thus, for instance – between January – April 2014, four incidents of Molotov cocktails throwing at Israeli vehicles which drove by were registered. This means that if under the current circumstances, in which traffic volumes on route 466 are relatively low, security incidents occur from time to time, one may only imagine what can happen as a result of a substantial increase in traffic volume, which will be created, as aforesaid, as a result of the opening of the checkpoint.

33. **Thirdly**, route 466 is the only access road for Israeli citizens who wish to reach the Beit El settlement and exit it. Heavy traffic volumes along said route may also put the Israeli citizens in Beit El at risk, by limiting the ability to provide prompt assistance to inhabitants who may need urgent medical evacuation.
34. Therefore, the above indicates, that respondents' decision to limit traffic in the checkpoint at this time is a reasonable, proper and proportionate decision, the purpose of which is to protect the entire population in the checkpoint area, both Israeli and Palestinian residents, and which is undoubtedly within the realm of the administrative discretion vested in the military commander.
35. We hereby note once again, that although a comprehensive solution for the transportation needs in said area requires the adjustment of junction 90 as well as the widening of route 466, the respondents will enable a gradual opening of the checkpoint for free passage, for an interim period, following the adjustment of junction 90, during the period which will follow the adjustment of the junction and until the road shall have been widened. During that period the actual impact of the opening of the checkpoint on the traffic in the area will be examined, and a decision shall be made as to whether the opening of the checkpoint requires the completion of the works for the widening of route 466. As noted above, the respondents currently prepare the plans for the adjustment of junction 90, and a budget has already been allocated in favor of said planning.
36. According to the evaluation of the Civil Administration, the planning and execution of the works for the adjustments of the junction are expected to be completed by the end of 2015. It should be noted that, naturally, it is only an approximated evaluation, since the project involves the issue of a tender, and like any project, during its execution unexpected difficulties may arise.
37. In response to petitioners' arguments in the petition, we wish to specify herein the existing transportation alternatives, other than through the checkpoint.

The current transportation alternatives

38. To complete the picture, despite the fact that the opening of the checkpoint for free passage of vehicles may provide the Palestinian inhabitants of the Area an additional access road to the Ramallah area, it should be noted, that the inhabitants already have available to them, at this time, efficient and convenient access roads which lead into and out of said area. We shall hereby present the alternative roads, and will specify their lengths and travel times thereon, as indicated by an examination which was conducted by the respondents on March 10, 2014, between 07:45 – 08:45, which are rush hours:
- a. **From the DCO checkpoint to 'Ein Yabrud Village** – a road 8.1 Km long, which passes through the Jilazun and Dura al Qar' villages. The travel time which was measured is 13 minutes.
 - b. **From the DCO checkpoint to Beitin village** – a road 11.6 Km long. This road is composed of the road mentioned in sub-section (a) above and from another road 3.5 Km long. The travel time which was measured is 17 minutes.
 - c. **From the DCO checkpoint to the Deir Dibwan village** – a road 14.7 Km long. This road is composed of the road mentioned in sub-section (a) above and from another road 6.6 Km long which passes through the Beitin village. The travel time which was measured is 11.3 minutes.
 - d. **From the DCO checkpoint to Silwad village** – a road 9.8 Km long. This road is composed of the road mentioned in sub-section (a) above and from another road 2.4 Km long. The travel time which was measured is 16 minutes.

See exhibit R/1, a map on which said travel routes are marked.

39. It should be further noted, that on July 10, 2013, an additional entrance to Ramallah was opened from route 60, through route 465 (the "British Police" junction) and a part of route 466 which passes through the Jilazun village, which shortens the way between Ramallah and the communities on its north, following works executed by the Civil Administration in junction 278 ('Ein Sinia roundabout), which connects between route 465 and route 60, in which the sum of four million NIS was invested. It should be further noted that the Palestinian Authority has recently closed this road due to upgrade works, which are carried out therein. The works are funded by USAID, and are expected to terminate within a few months.

All of the above indicate that the impact of the checkpoint on Palestinian residents, who do not hold a permit to pass through the checkpoint, is minimal. There is no doubt that the certain inconvenience caused to the population as a result of the limited passage through the checkpoint cannot be compared to the security and transportation reasons which currently prevent its full opening.

40. We would also like to comment, and not incidentally, on the attempt to create within the framework of the petition, a representation according to which the petitioners were ostensibly given misleading information. In this context it should be emphasized, as indicated by the above details, that the information which was given to the petitioners accurately reflects the factual situation, particularly with respect to the transportation and security risks which prevent, at this time, the opening of the checkpoint. It is regrettable that the petitioners chose to selectively use internal correspondences which came into their possession, in an attempt to present the respondents in a

negative light, with no justification. Furthermore, the quotes in the petition from protocols of the planning committees pertained mainly to a two-lane and wide road which was planned – but which, in fact, does not exist. Hence, such parts of the protocols of the planning committees which pertain to the future planning of the road are not indicative of the position of the professional officials concerning the current situation.

Conclusion

41. Against the certain impingement inflicted on the Palestinian population and its ability to use access roads as a result of the restrictions imposed on the passage through the checkpoint, there are weighty transportation and security reasons, which prevent the opening of the checkpoint to the entire population, at this time.
42. Moreover. Respondents' professional position is that **the DCO checkpoint may be opened for free passage of the Palestinian population, subject, firstly, to the execution of works for the adjustment of junction 90 to heavy traffic volumes. Thereafter, the need to adjust route 466 will be examined.** The opening of the junction without executing the required works is expected to cause significant traffic volumes and to expose the passengers in the Area to severe safety and security risks, as specified above.
43. The respondents will argue that the decision of the military commander to approve the opening of the DCO checkpoint subject to the adjustment of junction 90 is a proper and reasonable decision, which is based on justified reasons which pertain to the security of the inhabitants of the Area and their safety – Israeli citizens and Palestinian residents alike.

As is known, according to case law, the honorable court does not enter the shoes of the professional body and does not replace the discretion of the military commander with its own discretion. Relevant to this issue are the words of the court in H CJ 3607/10 **Shurat HaDin – Israel Law Center et al. v. Minister of Defence** (Reported in Nevo, June 27, 2010):

The rule is that this court, sitting as a High Court of Justice, does not enter the shoes of the competent military official, and does not replace the discretion of the military commander with the discretion of the court (see H CJ 2056/04 **Beit Sourik Village Council v. Government of Israel**, IsrSC 58(5) 807, 843 (2004)). The military commander, who exercises discretion in matters concerning public safety, has the military and operational expertise, as well as the relevant data and a wide security perspective. The military commander also bears the responsibility for the security of the area under his command. Hence, in the examination of the security issues under his responsibility, the military commander is vested with broad discretion. The court attributes to the position of the military commander considerable weight and its judicial review will be exhausted by the examination of the lawfulness of the decision of the military commander, and its compliance with the obligating legal norms (H CJ 1005/89 **Aga v. Commander of IDF Forces in the Gaza Strip**, IsrSC 44(1) 536, 539 (1990); H CJ 7015/02 **'Ajuri v. Commander of IDF Forces in the West Bank**, IsrSC 56(6) 352, 375-376 (2002); H CJ 11651/05 **Beit Arye Local Council v. Minister of Defence**, paragraph 9 ([Reported in Nevo] May 21, 2006); paragraph 27 of the first judgment). Said norms include, *inter alia*, the duty to take into account considerations which pertain to the security of the Area, from which arises the consideration concerning the protection of the security and

safety of Israelis who use the road; the rights of the Palestinian residents who are "protected residents"; and the protection of the rights of the Israelis who live in the Israeli settlements in the Area. (paragraph 28 of the first judgment; HCJ 10356/02 **Hess v. Commander of IDF Forces in the West Bank**, IsrSC 58(3) 443, 455-456 (2004); HCJ 4289/05 **Beir Naballa Local Council v. Government of Israel**, paragraphs 33-34 ([Reported in Nevo], November 26, 2006)).

[Emphasis added – the undersigned]

44. In view of all of the above, the respondents will argue that the petition should be denied in the absence of cause for the intervention of the honorable court in the decision not to open, at this time, the DCO checkpoint, to the entire population. Furthermore, the respondents are of the opinion that the petition should also be denied in view of the fact that a decision was made to open the checkpoint, in the interim period, after the execution of the adjustment works in junction 90 and subject to a security evaluation at that time. The respondents are of the opinion that the above provides an adequate solution for the relief requested in the petition.
45. The facts specified in this response with respect to the security reasons for the limitation of the passage through the DCO checkpoint at this time, are supported by **the affidavit of the Commander of the Binyamin Brigade**, which is attached hereto.

The facts specified in this response with respect to the planning procedures and the current transportation alternatives, are supported by the affidavit of the **Deputy Director of Infrastructure Unit at the Civil Administration**.

The facts specified in this response with respect to the transportation reasons for the limitation of the passage through the DCO checkpoint at this time, are supported by the affidavit of the **Staff Officer Transportation**.

Today, 13 Sivan, 5774

June 11, 2014

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