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At the Supreme Court
Sitting as the High Court of Justice

HCJ 6156/10

In the matter of:

1. _____ **Kabha, ID No.** _____
Resident of the Palestinian Authority
2. **HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger - RA**

all represented by counsel, Advocate Yadin Eilam
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The Petitioners

v.

Military Commander of the West Bank Area

The Respondent

Petition for Order Nisi

A petition for an *order nisi* is hereby filed which is directed at the respondent ordering him to appear and show cause why he should not direct to stop the detention and humiliation of petitioner 1 (hereinafter: the **petitioner**) at the Reihan crossing.

Request for Urgent Hearing

The Petitioner resides in Barta'a ash-Sharqiya in the Jenin region, which constitutes part of the Barta'a enclave located in the seam zone. The petitioner has a permanent resident permit in the seam zone, valid until November 2, 2011. In view of the fact that the petitioner resides in the enclave, he is forced to go through the Reihan crossing (which is also known as the Barta'a checkpoint) whenever he wishes to travel to the east side of the separation fence and whenever he wishes to return to his home.

The Reihan crossing is manned by soldiers, as well as by personnel of a private security company. As of May 2010, the petitioner is being detained by the personnel operating the crossing whenever he wishes to pass through the crossing. Detention times last between 30 minutes to three hours.

Each time the petitioner is requested to wait, and then enter a small room, take off his clothes and stay in his underwear only. Then, two security guards enter and the room and search him manually, and only after the above humiliating process ends, the petitioner is set free to go on his way.

The petitioner has no idea why he is detained and humiliated at the checkpoint on a daily basis. When the petitioner asks the security guards at the checkpoint why they detain him, sometimes the petitioner receives no answer and sometimes he is told that these are the instructions of the Israel Security Agency (ISA).

Each passing day increases petitioner's feelings of humiliation, suffering and helplessness. It should be emphasized that the residents of the enclaves need many products and services, which may only be obtained in the cities located on the east side of the separation fence, all the more so the petitioner, a store owner, who must pass through the Reihan crossing almost on a daily basis, and who therefore experiences again and again delays and humiliations at the checkpoint.

This honorable court held, in many judgments which were rendered in seam zone petitions, that the damage inflicted on the inhabitants as a result of the erection of the separation fence should be minimized to the maximum extent possible. **In view of the above, the honorable court is requested to schedule the petition for a hearing at the earliest date possible and to direct the respondents to submit their response within a very short period of time which will be prescribed, in view of past experience which shows that occasionally, respondent's response nullifies the need to hear the petition on its merits.**

The Factual Infrastructure

1. From the erection of the separation fence a permit regime was applied according to which a Palestinian resident who wishes to enter the seam zone must have a permit. Two petitions were filed with this honorable against the permit regime: HCJ 9961/03 **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger v. The Government of Israel** and HCJ 639/04 **The Association for Civil Rights in Israel v. The Commander of IDF Forces in Judea and Samaria** (the two petitions hereinafter: the **permit regime petitions**). Judgment in these two petitions are yet to be rendered and the petitioners wish to clarify to the honorable court that by filing this petition they do not retract their position that the permit regime should be revoked and they hope that the honorable court adopts their above position in its judgment.

This petition is filed for the purpose of solving the practical problem of the petitioner and it demonstrates to the honorable court that beyond the argument that the permit regime runs contrary to fundamental principles of Israeli administrative and constitutional law and contrary to international humanitarian law and international human rights law, the permit regime also fails to "minimize the harm caused to them (the Palestinian residents – Y.E.) to the maximum extent possible" (see: HCJ 10905/05 **Mayor of Jayyus v. Prime Minister**. Not reported. Given on September 9, 2009, paragraph 43 of the judgment. Hereinafter: **Jayyus**).

2. The petitioners argue that the respondent conducts himself in a sort of a slippery slope. In order to obtain the approval of this honorable court for the construction of the fence, the respondent undertook that the damage that would be inflicted upon the population which was harmed by the construction of the fence would be minimal. After the honorable court granted its approval and the fence was erected, the respondent breached his undertakings, and the condition of the residents who were harmed by its erection deteriorates on a daily basis.

The Parties to the Petition and the Factual Background

3. Petitioner 1 is a 23 year old Palestinian resident, who resides in Barta'a ash-Sharqiya in the Jenin region, which is located in the seam zone.
4. Petitioner 2 (hereinafter: **HaMoked**) is a not-for-profit association which acts to promote human rights of Palestinians in the Occupied Palestinian Territories (OPT).
5. The respondent is the military commander of the West Bank area, on behalf of the State of Israel, which holds the West Bank under belligerent occupation for over forty three years.
6. In 2002, the government of Israel decided to erect a separation fence. The separation fence, which was completed in 2003, turned the community in which the petitioner resides, together with six additional communities, into an enclave.
7. The petitioner is the owner of a store for the sale of cellular phones which is located in the community in which he lives. The petitioner has a permit of a permanent resident of the seam zone valid from November 2, 2009, through November 2, 2011.

A copy of the petitioner's permit of a permanent resident of the seam zone, is attached and marked **P/1**.

8. In view of the fact that the petitioner lives in the enclave, he is forced to pass through the Reihan crossing, whenever he wishes to travel from his home to the east side of the separation fence and whenever he wishes to return to his home. The crossing is manned by soldiers as well as by personnel of a private security company.
9. As of May 2010, **the petitioner is detained by the personnel operating the crossing whenever he wishes to pass through the crossing. The detention times last between 30 minutes to three hours. Since the petitioner travels out of and back into the seam zone on the same day, he is detained twice a day.** When the petitioner asks the security guards at the crossing why they detain him, sometimes the petitioner receives no answer and sometimes he is told that these are the instructions of the ISA.
10. Thus, for instance, on June 4, 2010, the petitioner was detained for three hours on his way out of the Barta'a enclave, from 07:30 until 10:30, and for an additional hour on his way back, between 13:00 to 14:00; on July 25, 2010, the petitioner was detained between 08:00 to 08:30 on his way out of the enclave, and between 12:30 to 13:30 on his way back thereto; On August 10, 2010, at 09:20, the petitioner called HaMoked and said that he had reached the Reihan crossing at 08:00, was told to exit the taxi in which he was driving and was detained. HaMoked representatives tried to reach, by phone, the civil administration "humanitarian desk", to no avail. At 09:45 the petitioner was allowed to go on his way.
11. The petitioner travels from his home in Barta'a to the east side of the separation fence, by shuttle taxi. The fact that the petitioner is detained and is not allowed to go on his way with the other passengers, deepens his feelings of humiliation and harms his reputation. Each time, the petitioner is ordered to wait on a bench near the post of the security guards. Thereafter, he is directed to enter a small room, take off his cloths and wait in his underwear only, for long minutes and sometimes for an hour and more. Then two security guards enter the room and search him manually, and only after the above humiliating process ends, the petitioner is allowed o go on his way.

12. About eight months ago the petitioner was summoned for an ISA interrogation. The interrogation was conducted by an ISA interrogator called Zohar and took for an about an hour. The ISA interrogator asked the petitioner questions about his way of life, his friends and family members. A substantial part of the interrogation concerned questions about one of petitioner's female friend on the social utility "facebook". The petitioner understood from said ISA interrogator that one of petitioner's "facebook" friends is an employee of the security company which operates the Barta'a checkpoint. In addition, in said interrogation the petitioner was asked by the ISA interrogator whether it was true that illegal residents were staying in Barta'a, and the petitioner replied that it was a well known fact. The ISA interrogator suggested that the petitioner would help him and tell him where the illegal residents were staying, and that in return, he would give the petitioner any assistance he may wish, such as the issue to the petitioner of an entry permit into Israel. The petitioner rejected the proposal and told the ISA interrogator that he had his business, his livelihood, and he did not need an entry permit into Israel. The petitioner also told the ISA interrogator that if he needed information, he could turn to Barta'a local council.
 13. The petitioner, who is a law abiding resident, declares that he has no connection with any activity against the security of the Area and that he has no idea why he is humiliated and detained on a daily basis at the checkpoint. In June 2010, the petitioner turned, through the municipality of Barta'a, to the Israeli DCO, in an attempt to clarify the reason for the detention, but no response was received.
 14. On July 25, 2010, the undersigned wrote, on behalf of the petitioners, to respondent's legal advisor and requested him to intervene in petitioner's matter with the security agencies, so that the latter cease petitioner's detention and humiliation at the Barta'a checkpoint. Section 8 of the letter states as follows: **"In view of the great urgency and the daily harm caused to my client, your response not later than August 12, 2010 would be appreciated.** After the above date we would have no alternative but to turn to court, but we are hopeful that the matter may be resolved without judicial intervention."
- A copy of the letter dated July 25, 2010, is attached and marked **P/2**.
15. Unfortunately, until the filing of this petition, and although the petitioners waited ten additional days beyond the date on which respondent's response was requested, no response was received, and the petitioners are forced, once again, to bother the honorable court with a petition for a remedy which could have seemingly been obtained without judicial intervention.
 16. **After the petitioners have used their best efforts to avoid the need to file this petition, and as all their efforts were to no avail, and since more than three months have passed during which the petitioner has been detained and humiliated at the checkpoint day in and day out, and in view of the fact that respondent's legal advisor failed to respond to petitioners' letter, the petitioner was left with no alternative but to turn to this honorable court and request remedy.**

The Legal Argument

17. The violation of petitioner's rights is severe and occurs on a daily basis. Whenever the petitioner passes through the Reihan crossing, he is forced to suffer humiliations which violate his human dignity. Furthermore, from the commencement of the detentions and humiliations at the checkpoint, the petitioner has significantly reduced his travels from Barta'a, and his freedom of movement was severely harmed. In addition, in view of the fact that petitioner's daily travels from Barat'a are required for the purpose of maintaining his business, petitioner's freedom of occupation and right to

own property are violated. The violation of petitioner's rights runs contrary to respondent's obligations.

18. The petitioner turned to the respondent in June 2010, shortly after the detentions and humiliations have commenced, through the municipality of Barta'a, in an attempt to clarify the reason for the detention, but no response was received. Since no response has been received and in view of the fact that the humiliations and detentions persisted, the petitioner turned to HaMoked and requested legal assistance. As aforesaid, on July 25, 2010, the petitioners wrote to respondent's legal advisor and requested his intervention. In view of the fact that the injury caused to the petitioner is not only severe but also occurs on a daily basis, and in view of the fact that the detentions and humiliations commenced about three months before the date of said request and that about a month passed from the date of petitioner's initial application to the respondent, the petitioners requested respondent's response within a period of 19 days, and the petition is filed, as aforesaid, after an additional period of ten days. It seems that the respondent does not take notice of the words of this honorable court, according to which:

To the extent the requested remedy concerns an amendment of a violation of a fundamental human right, a more expeditious regularization and amendment of the matter is expected, due to the need to protect fundamental human rights and to uphold the obligation of the authorities to respect and abide by the constitutional law. As a general rule, the appropriate remedy against the violation of human rights is to obligate the authorities to immediately realize them.”

HCI 8060/03 **Q'adan v. Israel Land Administration**, not reported. Given on April 26, 2006. Paragraph 13 of the judgment (all emphases in the petition were added – Y.E.)

The norms which obligate the respondent

19. The respondent is obligated to act according to international humanitarian law and the occupation laws included therein.

The respondent is also obligated to act according to international human rights law, and primarily the UN conventions concerning civil and political rights and concerning social and economic rights. It was so held in the opinion of the International Court of Justice concerning the separation fence. This honorable court has also examined respondent's acts according to these norms. In certain instances, the honorable court noted that the examination was made without making a decision on the applicability of human rights conventions to an occupied territory (for instance: HCl 7957/04 **Mara'abe v. The Prime Minister of Israel**, TakSC 2005(3) 3333 paragraph 24), and in other instances the conventions were applied with no reservation (for instance: HCl 3239/02 **Marab v. IDF Commander**, TakSC 2003(1) 937; HCl 3278/02 **HaMoked: Center for the Defence of the Individual v. Military Commander in the West Bank**, IsrSC 57(1) 385).

In addition, as an Israeli public authority the military commander is subject to the norms of Israeli public law, including the commitment to human rights and the prohibition to violate them disproportionately.

See, for instance: HCl 393/82 **Jam'iat Iscan Al-Ma'almoun Al-Tha'auniya Al-Mahduda Al-Mauliya v. Commander of IDF Forces in the Judea and Samaria Area**, IsrSC 37(4) 785 (hereinafter: **Jam'iat Iscan**); HCl 10356/02 **Haas v. Commander of IDF Forces in the West**

Bank, IsrSC 58(3) 443; HCJ 2056/04 **Beit Sourik Village Council v. Government of Israel**, IsrSC 58(5) 807.

20. In the **Physicians for Human Rights** judgment this honorable court held that:

In the context of the assimilation of humanitarian laws, **it should be emphasized, that the duty of the military commander, is not restricted merely to preventing the army from harming the lives and dignity of the local residents... He also has a "positive" duty... He must protect the lives and dignity of the local residents, all subject to the restrictions of time and place.**

HCJ 4764/04 **Physicians for Human Rights v. Commander of IDF Forces in Gaza**, IsrSC 58(5) 385, 407.

21. The petitioners argue that a daily humiliation and harassment at the checkpoints and a violation of petitioner's fundamental rights, may not be reconciled with respondent's obligation to "protect the lives and **dignity** of the local residents."

The violated rights

The Right to Dignity

22. As described above, whenever the petitioner passes through the Reihan crossing, he encounters humiliations which amount to violation of his human dignity. The fact that the petitioner was never told why he was detained and humiliated, only deepens his sense of humiliation and degradation.

23. A person's right to dignity was recognized as a basic right in Israeli jurisprudence. 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**."

24. 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 honour**, 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..."

Freedom of Movement within the state

25. The freedom of movement within state boundaries is recognized by Israeli law and by International law and as held by this honorable court, it is also entrenched in international customary law.

26. In HCJ 1890/03 (**Bethlehem Municipality v. State of Israel**, IsrSC 59(4) 736, 754-755) it was stated as follows:

Freedom of movement is one of the basic human rights and it has been recognized in our jurisprudence both as an independent basic right ... and as a right that is derived from the right to liberty (*per* President Barak and Justice Cheshin in HCJ 5016/96 **Horev v. Minister of Transport**, IsrSC 51(4) 1, pages 59 and 147 respectively) (hereinafter:

Horev). In addition, there are some authorities who are of the opinion that 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 **Horev** case... In that case, President Barak said that **freedom of movement was 'one of the more basic rights'** (*ibid.* at page 49), that **the right to freedom of movement "is in the first rank of human rights"** (*ibid.*, at page 51) and that **freedom of movement was "a freedom that is on the very highest level of the scale of rights in Israel"** (*ibid.*, at page 53). The president also added in the above **Horev** case that **"as a general 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.*, at page 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 instance, the remarks of Justice Cheshin *ibid.*, at page 147, and the remarks of Justice Tal at page 181). On the status of freedom of movement in Israeli jurisprudence following **Horev**, see also Y. Zilbershatz, 'On Freedom of Movement within the State: Following H CJ 5016/96 *Horev v. Minister of Transport et al.*,' 4 *Mishpat uMimshal* (1998) 793, 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 instance, 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 **would appear that it is also enshrined in customary international law** (see the above Zilbershatz, at pages 800-801).

27. Paragraph 14 of the **Yanun** judgment provides as follows:

"The petition before us concerns agricultural areas that are owned by Palestinian inhabitants and which are closed by the order of the military commander. Therefore, **the right to security and the protection of physical integrity is opposed by considerations concerning the protection of the rights of the Palestinian inhabitants, and in view of the nature of the case before us, we are mainly concerned with the right to freedom of movement and property rights.** In the judgment given in H CJ 1890/03 **Bethlehem Municipality v. State of Israel** (not reported yet), we said that **the freedom of movement is one of the most basic human rights.** We noted that in our legal system the freedom of movement has been recognized both as an independent basic right and also as a right which is derived from the right to liberty, and that there are some authorities which hold that it is a right which is derived from human dignity... The freedom of movement is also recognized as a basic right in international law and this right is enshrined in a host of international conventions... **It is important to emphasize that in our case we are not**

concerned with the movement of Palestinian residents in nonspecific areas throughout Judea and Samaria but rather with the access of the residents to land that belongs to them. In such circumstances, where the movement takes place in a private domain, especially great weight should be afforded to the right to the freedom of movement and the restrictions imposed on it should be reduced to a minimum. It is clear that restrictions which are imposed on the freedom of movement in a public area should be examined differently from restrictions which are imposed on a person's freedom of movement within the area which is connected to his home and the former cannot be compared to the latter...

Freedom of Occupation and the Right to own property

28. In view of the fact that the petitioner is, as aforesaid, the owner of a store for the sale cellular phones in Barta'a, his livelihood depends on daily relations with suppliers, other stores and individuals in the cellular telephone industry, most of whom are located on the other side of the separation fence. In view of the fact that no one wishes to suffer humiliations and detentions on a daily basis, the petitioner was forced to reduce the frequency of his passages through the Reihan crossing. Said reduction causes damage to petitioner's business and income, and thus his fundamental rights for freedom of occupation and ownership of property are violated.
29. In addition, the respondent, as an administrative authority is subject to the basic principles of Israeli law in all of his actions, including the basic principle of freedom of occupation, which was recognized as a fundamental right in the Basic Law: Freedom of Occupation:

Additional grounds ... are found in the basic right to freedom of occupation, which was recognized in this Court's case law 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.

30. A person's right to own property was also recognized as a fundamental right in Israeli jurisprudence. Section 3 of the Basic Law: Human Dignity and Liberty provides: "There shall be no violation of the property of a person."

About the Separation Fencel, the Seam Zone and the Petitions concerning them

31. The infringement of petitioner's rights results directly from the erection of the separation fence which divides between petitioner's home and the vast majority of the occupied territory, which is located east of the separation fence.
32. A large number of petitions were filed with this honorable court against the erection of the separation fence. This petition does not concern the separation fence itself. This petition concerns the violations of petitioner's rights which occur whenever he tries to travel from one side of the separation fence to the other.

33. In **Jayyus**, it was held by this honorable court as follows (in paragraph 32 of the judgment):

"Within the duty to protect the rights of the residents of the Area, **the military commander must take into consideration the injury which may be caused to the rights of the protected residents** – those whose lands are expropriated for the erection of the fence, those who are separated from their lands by the fence which divides between them, **and those whose access to the big cities which are located near their villages, where they are provided with health, education, religion, employment and such other services, is burdened by the fence...** In this context it should be emphasized, that the human rights of the local residents consist of a host of human rights. Thus, for instance, Article 27 of the Fourth Geneva Convention provides... that the protected residents 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. The Article further provides that that 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. All of the above, subject to the required balances *vis-à-vis* competing rights of other persons or public interests. Similarly, Article 46 of the Hague Convention (IV) Respecting the Laws and Customs of War on Land, 1907 (hereinafter: the **Hague Convention**) provides that **the rights of the local residents to life, honor, freedom of religious convictions and practices, family life and private property must be respected. The right to own property and the manner by which private property of the local residents should be treated are also entrenched in and protected by Articles 23(g) and 52 of the Hague Convention and by Article 53 of the Fourth Geneva Convention.**"

The permit regime

34. The petitions which concerned the route of the separation fence, did not engage, in general, with the question of whether, after the erection of the fence, the Palestinian residents who wanted to enter the seam zone would have to obtain a permit for that purpose, what would be the procedure for obtaining such permit, etc.
35. In the permit regime petitions the petitioners requested to revoke the declaration under which the seam zone was declared as a closed military area and to revoke the orders which were issued thereunder, which obligate Palestinian residents who wish to enter the seam zone to obtain entry permits. In said petitions, the first of which was filed aforesaid, in 2003, judgments have not yet been given.
36. In view of all of the above, it will be interesting to see what the respondents had to say in the permit regime petitions about the Reihan crossing. Respondents' updating notice, which was filed with this honorable court on May 25, 2009, stated as follows:

Actions taken after the submission of the Statement of Response to improve the entry arrangements into the Seam Zone

Upgrade and civilianization of the Reihan Crossing

47. Section 147 of the statement of response noted that the possibility to civilianize some of the gates in the seam zone was examined.
48. In May 2007, a substantial change was made, when the Reihan crossing was upgraded and civilianized. Within the framework of this step, it was decided that the crossing, which is located about 4.3 KM away from East Barta'a, would serve the residents of the villages Barta'a, Um-Reihan and some other villages in the seam zone, for the purpose of entering the Judea and Samaria area.
49. Said step has a special significance, in view of the fact that, as aforesaid, the vast majority of the seam zone residents live in east Barta'a.

And thereafter:

52. The Reihan crossing provides a proper solution for the needs of the inhabitants. It provides high standard service, using advanced technologies which simplify the examination process at the crossing.
 53. In this context, it should be noted, that advanced security detection systems for pedestrians as well as for vehicles are installed in the Reihan crossing, which are intended to shorten the security check process and simplify it. Thus, for instance, in April 2008 a human scanning system which enables high standard security check by radio waves only, was introduced at the crossing.
 54. Ever since the above scanning system was introduced, the need to conduct individual security checks in inspection rooms has significantly reduced. However, it should be emphasized, that even before the system was introduced, the guards who conducted the security checks made sure that optimal conditions were kept in the inspection rooms, subject to inevitable security limitations; in addition, specific security checks for men and women were conducted in separate rooms, with the exception of cases in which the individuals who underwent the security checks were family members, and subject to the woman's consent.
37. **Needless to point out that the petitioner refutes the content of respondents' notice which does not reflect his personal experience.**

The prohibition to recruit collaborators who are members of the protected populations

38. As described in paragraph 11 above, the petitioner was requested to collaborate with the ISA. The hardships endured by the petitioner while passing through the Reihan crossing, commenced following petitioner's refusal to collaborate with the ISA and the petitioner was told that the detentions and humiliations were inflicted on him according to ISA's instructions.
39. The demand to collaborate runs contrary to international law. Thus, for instance, Article 31 of the Geneva Convention relative to the Protection of Civilian Persons I Time of War provides that "No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties". According to Article 147 of the same convention, a violation of the prohibition established in Article 31, constitutes a grave breach of the convention. A grave breach of the convention, according to Article 146, obligates a party to the convention "to search for persons alleged to have committed or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts." Article 44 of the Hague Convention of 1907 also provides that "A belligerent is forbidden to force the inhabitants of territory occupied by it to furnish information about the army of the other belligerent, or about its means of defense."
40. This honorable court has already held as follows, and it seems that said comments are relevant, by analogy, to our case:

In balancing between these conflicting considerations, which shall prevail? In my opinion, **the considerations in favor of forbidding the army from using a local resident prevail...** a basic principle, which runs like a golden thread through the laws of belligerent occupation, is the prohibition to use protected residents as a part of the war effort of the occupying army. The civilian population is not to be used for the military needs of the occupying army...They are not to be "volunteered" for cooperation with the army... **Also derived from this principle is the prohibition to use coercion (physical or moral) against protected persons in order to obtain intelligence.**

HCJ 3799/02 **Adalah – The Legal Center for Arab Minority Rights in Israel v. GOC Central Command, IDF**, not reported, October 6, 2005, paragraph 24 of the judgment.

Conclusion

41. The respondent violates petitioner's fundamental rights.
42. The petitioner has the right to pass through the Reihan crossing, while travelling from one part of an occupied territory to another, without the endurance of insults and humiliations.
43. In view of all of the above, the honorable court is requested to issue an *order nisi* as requested in the beginning of this petition, and after receiving respondents' response, make the order absolute and order the respondent to pay petitioners' costs and legal fees.
44. In addition, the honorable court is requested to schedule the petition for a hearing as soon as possible and to prescribe a very short period of time for the submission of respondent's response, in view of the daily damage caused to the petitioner, and in view of past experience which shows that sometimes, the submission of a response, renders the hearing of the petition on its merits, redundant.

45. This petition is supported by an affidavit which was signed before an attorney in the West Bank and was sent to HaMoked by fax, subject to coordination by phone. The honorable court is requested to accept this affidavit and the power of attorney which was also sent by fax, taking into consideration the objective difficulties involved in a meeting between the petitioner and his legal counsels.

9 Elul 5770
August 19, 2010

Yadin Eilam
Counsel to petitioners