Before the Appeals Committee

Pursuant to Section 85 of the Order Regarding Defense Regulations (Judea and Samaria) (No. 378), 5730 – 1970

In the matter of: **1. K. 'Ajuri**
2. A. A 'Asida

all represented by attorneys Yossi Wolfson
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The Appellants

v.

Commander of IDF Forces in Judea and Samaria
(by Major Ronen Atzmon)

The Respondent

Brief on behalf of the Respondent

1. In accordance with the decision of the Committee, of 8 August 2002, the Prosecution respectfully submits the Respondent's brief herein.

Background

2. The many and severe acts of terror, which began at the end of September 2000 and have continued to the present, have caused the death of more than 600 persons, injuries to thousands of persons, and grave economic damage in Israel and in the area. Among the particularly conspicuous acts are the suicide and sacrificial attacks that resulted in the deaths of many Israelis. This phenomenon of lethal attacks constituted a major component of the Palestinian terror by means of an infrastructure operating in three spheres: the perpetrators sphere, the accomplices and dispatchers sphere, and the assisting and supporting persons sphere. In battling terror – and the infrastructure that supports it and enables it to exist – the commander of IDF forces in Judea and Samaria (hereafter – the Respondent) has for a long time employed numerous measures. Among his actions, the Respondent has detained large numbers of persons suspected of involvement in

terror; detained "specific" "wanted persons"; dispatched soldiers into areas of the Palestinian Authority; imposed curfews, closures, and prohibited Palestinians from entering or leaving cities in the territories; carried out targeted killings; increased enforcement and punishment for offenses related to hostile terrorist activity; ordered administrative detentions; and destroyed houses in which terrorists had lived.

3. As part of the complex of measures taken by the Respondent, and upon the directive given by the political echelon, the Respondent recently decided to take another *preventive-deterrent* measure, which he had not previously taken, directed primarily against persons in the sphere of individuals who assist and support suicide terrorists and who dispatch them: assigning the residence – in the Gaza Strip – of a relative of the terrorist. This measure will be taken against a relative who is deemed to have *personal blame* in connection with his relative, i.e., assisted his terrorist relative, supported him, or encouraged him, to an extent that entails a certain danger also from the person who is the subject of the order.

4. In light of the professional opinion that the General Security Service gave to the Respondent, the conception underlying this measure is that the measure contains a *preventive* aspect by eliminating assistance to terrorists by those persons whose residence is assigned to the Gaza Strip, and also a *deterrent* aspect – deterrence of the terrorist (if he is still wanted), of other terrorists, and of other relatives and/or other persons considering giving assistance to their terrorist relatives.

5. The legality of the requested measure was examined both by the legal advisor for Judea and Samaria, the judge advocate general, and the attorney general. All were of the opinion that the measure is lawful and is consistent with the powers of the commander of IDF forces in Judea and Samaria, and complies with the principles and rules of Israeli and international law. As we shall see below, assigning the residence of the Appellants to the Gaza Strip is not only lawful, it is justified, both in principle and in the specific case of each of the Appellants.

Role of the Committee and its powers

6. The role of the Committee is to *recommend* to the commander of IDF forces in Judea and Samaria regarding the justification for the issuance of assigned residence orders in the matter of the Appellants herein. On this point, an analogy can be made from the High Court's opinion in HCJ 765/88, *Shachshir v. Commander of IDF Forces in Judea and Samaria, Piskei Din* 43 (2) 242, which dealt with the appeal against an order to expel a person from the region. The Committee's decision, quoted in the opinion, states, inter alia:

> **… for the role of the Committee is to examine objectively the considerations taken into account by the regional commander and whether these consideration are proper in formulating the expulsion decision. We have a duty to**

examine the evidential grounds that preceded the decision to send notification of the expulsion orders.

7. The Respondent's position, as set forth in the Committee's hearings, is that the proceeding which is the subject of the appeal is not a completely judicial proceeding, but a quasi-judicial administrative one, similar to a judicial review of administrative detention. The hearing procedures, the examination of witnesses procedures, the burden of persuasion and proof and the determination of the credibility and weight of the evidences must take into account the said nature of the proceeding, as administrative and quasi-judicial (as will be explained below, this position is also consistent with the Respondent's arguments as regards the source of the power to issue the assigned residence orders).

8. Throughout the hearings, the Prosecution voiced its objections as regards the Committee's power to give its opinion regarding the legality of the primary order (Amendment 84) and the like. In light of the Committee's request, these objections were examined and ultimately withdrawn, as the Committee was advised.

9. However, it should be mentioned that the role of the Committee is only to render its opinion, and it does not have the power to nullify the assigned residence orders or to require the Respondent to take or refrain from taking any action whatsoever. The final decision lies with the Respondent himself.

Testimony of GSS officials

10. Two representatives of the General Security Service testified before the Committee. The two gave their testimony *ex parte* – in the confidential part of their testimony. One of them, referred to as Yuri, was also cross-examined by the Appellants' counsel for more than six hours.

11. The GSS official referred to as Gid'on testified about the relations in Palestinian society between terrorists and their family members, and on the possible effect on terrorists that would result from measures taken against their relatives.

12. In light of the general nature of his testimony, and because it is grounded on confidential information and research techniques of the GSS, this official was not cross-examined by the Appellants' counsel. The Committee allowed questions to be posed in writing – through the Committee – to the official referred to as Gid'on. Because of the long and unjustifiable delay in submitting the questions on the part of the Appellants' counsel, questions were not forwarded to this official. The Respondent argues that, despite this, the Appellants' defense was not prejudiced in that the recommendation made by the GSS – resulting from the testimony of its representative and as expressed in the assigned residence order issued against the Appellants – was known to the Appellants and they attacked it during the hearings before the Committee.

13. The GSS official referred to as Yuri testified *ex parte* about *confidential* information indicating the responsibility of the Appellants' brothers for recent serious attacks. The Respondent argues that this testimony was clear, supported by other evidence, and credible. Despite the attempts of Appellants' counsel, his comments were not refuted, and no reason was presented to lessen the weight of the witness's testimony to the Committee.

14. Yuri's testimony unambiguously indicated that A. Ajuri – the brother of Appellant 1 – was indeed involved in hostile terrorist activity, and that he was responsible for sending suicide terrorists, including those involved in the attack in Nawe Shaanan in Tel Aviv. Yuri also indicated that Asida, the brother of Appellant 2, was responsible for the murder of two Israelis in Yizhar, and for numerous terrorist acts, the gravest being the two attacks at the entrance to Immanuel.

15. Therefore, the Committee is requested to hold that, based on the testimony given by the GSS officials, that clear, supported, and unequivocal evidence exists showing that two brothers of the Appellants – each of them separately – are responsible for serious attacks that harmed the security of the region and of Israel. The Committee should also hold, in light of the testimony, that the confidential material *did not contain* information indicating a decrease in the danger of the brothers of the Respondent [should read: Appellants] during the period that they are wanted.

16. Furthermore, during the Committee's hearings, the Committee was informed that the brother of Appellant 1 – A. Ajuri – had been killed. This being the case, testimonies of additional persons were presented to the Committee. Until that stage, these testimonies were confidential (because of the possibility that *concentration* of the information would assist Ali if he were arrested). These testimonies, too, clearly indicate that A. Ajuri was responsible for the shooting attack and for dispatching suicide terrorists.

17. Yuri also mentioned the importance of the logistical support that wanted persons receive from nearby persons and from their relatives, and mentioned that without supply of food, water, clothes, and other services (movement of objects, transportation) – the wanted person is unable to exist.

The Appellants' testimony

18. The Committee was provided the statements given by the Appellants to the police, and memoranda of the GSS interrogations. The Appellants' counsel tried to prove that these statements were not accurate because the Appellants confessed, out of fear, also to things that they had not done, or that things they said had been distorted by the person who took the statement.

19. The Committee mentioned to the Prosecution that *it does not* see any need to prove everything that was written in the statements, and that it knows the weight that should be given to the statements that the Appellants gave to the GSS and the police. For this reason, the Committee limited the Prosecution's cross-examination of the Appellants.

20. Although unnecessary, we shall mention that the Prosecution requests that the Appellants' contentions regarding the inaccuracy of the statements be rejected. First, the contention that they confessed out of fear is inconsistent with their comments that there was a good atmosphere when they were questioned by the interrogators, that they were given the opportunity to speak freely, and that they said everything they had to say.

21. Second, the contention that their words were distorted without their knowledge because they do not speak Hebrew is baseless. Furthermore, the substantive details, on which the proceedings against them were based, were written – separately and independently – by a GSS interrogator and by a policeman. The likelihood that both of them would misunderstand the same important details is zero.

22. Therefore, the Prosecution requests the Committee to accept the statements made by the Appellants to the GSS and the police regarding the assistance that they provided to their relatives as accurate, complete, and decisive. These statements paint the following picture:

Appellant 1 – K. Ajuri

A. His brother, *A. 'Ajuri*, is wanted by Israel, and the Appellant knows that the reason for this is his involvement in terrorist attacks and the laying of explosives.

B. The Appellant lives in a three-story building. His parents live on the first floor, his brother Ali on the second, and the third is his. The Appellant saw his brother and members of his brother's group carrying weapons when they came to his parents' house.

C. His father prohibited Ali from coming to the house with members of his group. Ali and his group came nevertheless, and the Appellant used to serve them tea.

D. The Appellant saw his brother immediately after he hid a Kalashnikov rifle in the floor of the apartment under the Appellant's apartment. The brother told the Appellant that he hid the rifle there. Others present at the time were family members, including the Appellant's sister, mother, and small children.

E. The Appellant was given a key to a secret apartment of his brother and his group, and was willing to transfer for them items from the apartment.

F. The Appellant visited the secret apartment of his brother's group and saw them remove from the apartment satchels containing explosives.

G. At his brother Ali's request, the Appellant assisted his brother in moving the explosives from the apartment to a car. In doing so, he served as a lookout-guard whose role was to warn his brother of the approach of any person who was liable to disturb him.

H. The Appellant saw his brother's group make a video film – in the apartment beneath his own – of a person who the Appellant himself thought was a potential suicide (the man was reading from a piece of paper and the Koran was on the table).

23. The above shows that Appellant 1 *chose* to assist his brother the wanted person. It was not contended that he was forced to act, or that he did so to save lives. The Appellant also did not take advantage of the fact that his father had prohibited the brother from coming to the house; he chose to disobey his father and to support his terrorist brother. As his testimony to the Committee shows, the Appellant never raised one word of objection to his brother on his being wanted in Israel because of his involvement in laying explosives, and also said nothing when he saw a person intending to commit a suicide attack being filmed in the house or when they hid weapons there. He did nothing to prevent that (not even telling his father so that he would do something about it).

Appellant 2 – A.A Asida

A. Knew from his brother, 'Asida, that he was responsible for the murder of two Israelis in Yizhar, in 1998.

B. After his brother was released from jail in the Palestinian Authority, his brother became a wanted person, and visited the family's home once a month or less frequently.

C. The Appellant saw his brother armed with a rifle.

D. When the brother came to the Appellant's house, the Appellant gave him food and clothing, and also assisted him by lending him his car, and even drove him in the car a number of times.

E. The Appellant was concerned that Israel might assassinate his brother while he was driving in the Appellant's car, so he ceased giving his car to his brother.

F. The Appellant was equivocating and gave evasive answers during his cross-examination when he was asked if he considered his brother to be a hero and a courageous person.

G. The appellant also assisted his wanted brother-in-law – Y. 'Asida – by providing food and drink, and also by giving him his car and by transporting him.

H. The information provided to the Committee in the secret part indicates that the parents' home – in which the Appellant also lives – served as a place for working with explosives, explosive charges, and weapons.

24. Appellant 2 testified that his statement was given in a pleasant atmosphere and that he was free to say what he chose. The contention that he was afraid of the other men in the cell – and therefore gave them wrong information about assistance he provided to his brother – is baseless. First, the Appellant himself testified that even when he was tortured while detained in the Palestinian

Authority, he did not give a false confession, and second, he mentioned that the atmosphere during his interrogation by the GSS and police interrogators was "good."

25. Appellant 2 explicitly mentioned that neither fear of his wanted brother, or the fact that he ceased giving him his car proves that he was not concerned that he would be seen as opposing his brother. Appellant 2 admitted that at no stage did he speak with his brother and that he never told him to cease his terrorist activity.

26. In light of all the aforesaid, it can be said that the Appellants *chose* to assist their wanted brothers, even when they were well aware of the serious terrorist activity attributed to them. They did not give the assistance out of fear, but out of *consent and support.* They did not admonish their brothers and made no objection whatsoever to the manner in which they were acting, and Appellant 1 even failed to exploit the fact that his father prohibited his wanted brother from coming to the house, and did not prevent the brother from conducting his activity in the building in which they resided.

The source for imposing assigned residence

27. Chapter 5 of the Order Regarding Defense Regulations (Judea and Samaria) (No. 378), 5730 – 1970 (hereafter – the Order Regarding Defense Regulations) deals with restriction, supervision, and assigned residence orders that the military commander may issue regarding a person, in the event that he believes that the action is necessary for definitive security reasons. Chapter 5 in practice adopts the comparable chapter in the defense regulations from the Mandatory period, together with the changes resulting from the relevant provisions of international law. Therefore, when there are comparable sources to exercise powers set forth in Chapter 5, the Respondent prefers to exercise his power enshrined in the Order Regarding Defense Regulations. Such action enables, inter alia, the Appeals Committee's examination of the issuance of the orders, a procedure that does not exist pursuant to the [Mandatory] Defense Regulations.

28. The arrangements set forth in Chapter 5 (and also the arrangements stated in Chapter 5/1) are consistent with the powers of the occupying power mentioned in Article 78 of the Fourth Geneva Convention. Support for the Respondent's position can be found in Section 84A of the Order Regarding Defense Regulations, which states that powers pursuant to Chapters 5 and 5/1 will not be exercised unless the military commander *believes that the action is necessary for definitive security reasons* – wording very similar to that used in Article 78 of the Fourth Geneva Convention.

29. The position held by the state of Israel regarding application of the Fourth Geneva Convention, as has been stated over the years and accepted by the Supreme Court (see, for example, HCJ 253/88, *Sajadiya et al. V. Minister of Defense, Piskei Din* 42 (3) 801), is that the convention is not part of international customary law, and thus cannot be used as support in Israeli courts. However, Israel

undertook to implement the humanitarian provisions of the convention in the areas of Judea and Samaria and the Gaza Strip.

30. Pictet, the Red Cross's official commentator of the Geneva Conventions, in his comments on Article 78 of the convention (while referring to Article 41, which deals with assigned residence and internment in occupied territory) states that assigned residence and internment are severe security measure that a state can take against protected persons, when less severe security measures do not achieve their objective – protection of the security of the area and of the public:

> **Earlier articles referred to "measures of control" without giving any further details; the present text picks out two of them – assigned residence and internment – as being the most severe to which the detaining State may resort when other measures have proved inadequate.**

31. The aforesaid shows that the orders assigning the residence of the Appellants readily reconcile with international law and the defense legislation, which enables the military commander to take security measures dictated by the *grave security situation prevailing in the regions* for some two years. As has been stated above, in the fight against terror – and against the infrastructure supporting it and enabling its existence – the commander of IDF forces in Judea and Samaria has for a long time taken numerous measures against the three spheres that comprise the suicide-bomber terror infrastructure. These actions of the Respondent include, inter alia, wide-scale detention of persons suspected of involvement in terror; the "specific" detention of "wanted persons"; the entry of soldiers into areas of the Palestinian Authority; imposing curfews, closures, and prohibiting Palestinians from entering or leaving cities in the Palestinian Authority; targeted killings; increasing enforcement and punishment for hostile-terrorist-activity offenses; administrative detention; and demolition of houses in which the attackers lived.

32. The Respondent concluded that definitive security needs – the protection of citizens and soldiers against the murderous terrorist attacks – to take another measure, that of assigned residence in the Gaza Strip of relatives of suicide terrorists or the persons who dispatch them and support or assist them. The security need that brought the military commander to exercise this power is expressed in the beginning of Amendment 84 to the Order Regarding Defense Regulations:

> **… In light of the extraordinary security circumstances currently prevailing in the region and whereas reasons of security of the region and public safety require this and because of the necessity to contend with the terrorist acts and those persons committing them…**

33. Not only do international law and the defense legislation empower the Respondent to use the measure of assigned residence, as stated, the Respondent deems such measure, following two

years of ongoing lethal terrorist attacks, an inherent part of his duty to protect public order and safety. He is required to do so in accordance with international law, 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. (Section 43 of the Regulations Attached to the Hague Convention on the Laws and Customs of War on Land, emphasis added)**

34. The Respondent's position is, as set forth above, that the orders relate to persons based on the assistance and support that they personally gave to terrorists' activity. Therefore, there is no basis for the contention that the orders are collective punishment of the Palestinian population in general. Rather than "punishment," we are dealing with deterrent, preventive, and administrative orders that are future oriented.

35. Furthermore, the orders assigning residence in the Gaza Strip that were issued against the Appellants are based on the conception that Judea and Samaria and the Gaza Strip constitute, for this purpose, two districts of one territorial unit – a conception that found expression in the peace agreements signed with the PLO that led to the establishment of he Palestinian Authority as a quasi-autonomous entity. Article XI of Chapter 2 of the Interim agreement with the Palestinians, for example, states that, "The two sides view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which will be preserved during the interim period." In this matter, the Appellants fail in their argument that the existence of two separate systems of law in Judea and Samaria and in the Gaza Strip teaches that the two areas are not connected. This argument is baseless. There are a number of states in which different and varied systems of law apply in various districts (such as in states with a federal system of government), and no argument would be accepted that we are involved with separate territorial units for the purpose of international law.

36. Thus, we see that the orders that are the subject of the appeal are assigned residence orders and not expulsion orders, as the Appellants contend. Expulsion was examined by the relevant entities and it was decided not to take that measure, for the time being. Thus, we are not involved with the question of the legality of an order to expel a person from the regions. It would suffice to say that not every transfer of a resident of the region to outside the region is prohibited under international law. On this point, see the High Court's judgment in HCJ 785/87, *Afo et al. v. Commander of IDF Forces in the West Bank, Piskei Din 42* (2) 4.

Nature of the measure taken

37. As was mentioned during the hearings and in the preamble to this brief, the assigned residence order is intended to serve as a preventive-deterrent means. It directs a resident of Judea and Samaria to live in the Gaza Strip. The person who is the subject of the order will be at liberty in the Gaza Strip and can act freely, like any resident in that region.

38. The objective of the order is to *prevent* the danger of a relative of a serious terrorist, who has already shown that he supports and aids his terrorist relative. The order is also intended to *deter* terrorists from committing severe security offenses, lest their relatives who provided assistance to them be harmed, and to deter relatives of terrorists, lest they assist their relatives in their serious acts.

39. As the circumstances of the Appellants and their brothers show, and contrary to the contention made by Appellants' counsel, the decision to take this measure is not restricted to relatives of suicide-attackers. The justification for an assigned residence order *does not* disappear with the death of the terrorist, the relative of the person who is the subject of the order.

40. For example, in HCJ 6026/94, *Nazal v. Commander of IDF Forces in Judea and Samaria, Piskei Din* 48 (5) 338*,* the Court approved demolition of the house of a terrorist after he died, based on the principle of deterrence:

> **The scope and reasonableness of the means that the authorities are empowered to take to maintain security can only be measured in the context of the changing circumstances… The question whether the demolition of the house of a terrorist deters potential terrorists has been raised before this court many times, and, as a rule, there was never grounds to dispute, in this matter, the professional assessment of the officials responsible for maintaining security. Even when an opposing opinion is presented, the Court believes that in a dispute between an expert and a person who is an expert but also is responsible for maintaining security, it is natural to give greater weight to the latter opinion… It is sufficient that we are dealing with the unknown, where a chance exists (even if only a slight likelihood), that taking the said measure may save lives, to prevent us from interfering with the assessment and decision of the respondent. (at pages 247-349 of the judgment)**

41. The Respondent believes that assigned residence of a relative of a terrorist is an effective measure in the war against terror and will reduce terrorist attacks. It should be mentioned that assessment of the justification and efficacy of assigned residence as a means in waging the war against terror,

to deter wanted persons, and to reduce the assistance provided to wanted persons, is within the authority and expertise of the commander of IDF forces in the region. The extensive case law in an analogous area – demolition of houses of terrorists – teaches that, even the High Court of Justice does not examine the discretion of the commander on this point (see, for example, HCJ 698/85, *Dajlas v. Commander of IDF Forces in Judea and Samaria, Piskei Din* 40 (2) 42). In HCJ 2/97, *Halawa v. Major General Shmuel Arad* (not yet published), the High Court stated:

> **As regards the effectiveness of implementation of Section 119 and of sealing houses, we were not persuaded that exercising the section does not deter, as the petitioners argued in this matter. It should be mentioned that an argument of this kind was raised in the past, and rejected… This argument was rejected because a sufficient factual basis was not provided. We have studied the material presented to us… We accept the respondents' position that the means set forth in Section 119 have a deterrent effect even if the scope of the deterrence cannot be scientifically proven…**

42. In the circumstances of the proceeding herein, it should be emphasized that the measure taken *combines* a preventive aspect with a deterrent aspect.

43. In the matter of A. 'Asida, the aid he provided to his brother was comprised mostly of giving food and drink and in transporting him, and he also aided his brother-in-law when the latter was wanted. In the case of K. Ajuri, the assistance he provided to his brother and his brother's group was much greater and more severe, but his brother was killed during the hearing of the appeal. The Appellants can argue that the danger they pose is not great.

44. To this, the Respondent has three responses**:**

First, the personal danger required for issuance of an assigned residence order is not high: it does not need to meet the level of danger required for administrative detention (or, to differentiate, for deportation abroad), and participation in a severe security offense by the person against whom the order is issued does not have to be proven in the criminal sense (assistance and giving shelter suffice). It should be mentioned that the infringement of the liberty and rights of the Appellants – upon their being moved to the Gaza Strip – is less than the harm entailed in imprisonment or administrative detention. Thus, it is justifiable to demand a lower degree of personal danger posed by the Appellants.

Second, as appears form the testimony of the GSS agent referred to as Gid'on, in light of the connection between a wanted person and his relatives, a relative who has assisted a wanted person in the past continues to pose a danger even after the wanted person dies.

Third, in the circumstances of the present case, as regards Appellant 1 ('Asida [should read: 'Ajuri]), it has already been proved that he assists not only his brother, but whoever requests his aid (his brother-in-law). The same is true of Appellant 2 ('Ajuri [should read: 'Asida]), who aided not only his dead brother, but all members of his brother's group, some of whom are still active.

45. Furthermore, the preventive component is joined by the deterrent component, which underlies assigned residence. The case law has recognized deterrence of the public as a legitimate consideration in imposing an administrative sanction. Regarding demolition of houses, the High Court of Justice has recognized that the main reason for the demolition of the house in which a terrorist lived deters the public, and therefore allowed also the demolition of the house of a terrorist who was killed (see HCJ 6026/94, *Nazal*, cited above). Recently, on 8 August 2002, the Supreme Court again held that its position that the demolition of terrorists' homes is justifiable as a deterrent.

46. Therefore, even if the Committee perceives that the preventive element in this case to be limited, it would be justified to issue the assigned residence orders because of their significant deterrent effect. This position is consistent with the provisions of Section 84A, for definitive security reasons justify taking deterrent measures at this time.

47. Appellants' counsel attempted to undermine the deterrent element of the measure under discussion, by trying to show that the wanted brothers of the Appellants did not listen to anyone, did not take any person into account, and did not assist their brothers even when they were under arrest. In response, the order is intended as one of the measures taken against the three spheres of persons that comprise the suicide-terror infrastructure, and that it is impossible to know what considerations the wanted persons will take into account the next time they consider committing attacks. As the Supreme Court mentioned, any chance whatsoever to save life – in one case out of many – justifies taking a deterrent measure (see *Nazal*, cited above).

48. Appellants' counsel sought to emphasize to the Committee the difficulties that the Appellants will encounter as a result of the harsh conditions presently prevailing in the Gaza Strip. In response: even if the situation in the Gaza Strip is slightly harsher, it is not *significantly* different from that prevailing in Judea and Samaria. In both places, life is difficult. An increase in the daily hardships of the person subject to the order and of his family which is dependent on him for support is one of the results of an assigned residence order, which gives its stringent deterrent character, just as the lack of a place for the family to reside is one of the hardships accompanying a house demolition, and which give this measure its deterrent element.

49. Furthermore, it should be emphasized that this order (as distinct from an order assigning a person to administrative detention) does not prevent the person who is the subject of the order from working to earn a livelihood in the place in which he is assigned, and thus constitutes a lesser violation of his rights (on this point, see the comments of the learned Pictet, who mentions that, as a rule, assigned residence is a "less serious" sanction in comparison with administrative detention (Pictet's commentary to Article 41 of the Fourth Geneva Convention). Furthermore, the orders that are the subject of this appeal were issued for a limited period of only two years, with a rehearing of the matter to be held every six months.

Summary

50. The many, severe acts terrorist acts that began in late September 2000 have caused the death of many hundreds of persons and injuries to thousands of individuals. This grave security situation led to the necessity to take various acts against the three spheres of persons who comprise the terrorist infrastructure.

51. The assigned residence orders that are the subject of this appeal are one way in which the Respondent combats the third sphere of the terrorist infrastructure, i.e., the sphere that provides assistance and support. The underlying basis of extensive terrorist activity exists, first and foremost, in an environment that supports and assists the potential terrorist. The Respondent believes that the measures taken against the supporting and assisting surroundings (most importantly against relatives of the terrorists, who are among the persons in this sphere), including assigned residence, are likely to contribute to reducing the number of attacks.

52. The assigned residence orders were issued against the Appellants following a great deal of thought and deliberation. The objective is to take a preventive-deterrent measure against a relative of a terrorist who himself assisted or supported the terrorist. The measure chosen constitutes a less severe violation of the relevant person's human rights, but the Respondent hopes to achieve, by means of this measure, an even greater effect than that obtained by administrative detention of an individual.

53. The Committee received evidence proving that the Appellants' brothers are responsible for lethal attacks, and that the Appellants assisted them and their group, and supported them in various ways, without objecting at all to their terrorist activity.

54. Issuance of the assigned residence orders continue to be justifiable also after it was found that Appellant 2 assisted his brother (and his brother-in-law) by providing him food, drink, and transportation, and after it was found that the wanted brother of Appellant 1 was killed. The justification remains because the measure serves both a preventive and a deterrent function.

[signed]

Ronen Atzmon, Major
Chief Prosecutor
On behalf of the Respondent