At the Supreme Court in Jerusalem **HCJ 7015/02**
Sitting as the High Court of Justice **HCJ 7019/02**

In the matter of :

1. **_____ Ajuri**
2. **_____ Asida**
3. **HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger (Reg. Assoc.)**

all represented by attorneys Lea Tsemel et al.,
HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger
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The Petitioners in HCJ 7015/02

1. **_____ Ajuri**
2. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**
3. **The Association for Civil Rights in Israel**

all three represented by attorneys Manal Hazzan et al.,
The Association for Civil Rights in Israel
Jerusalem

The Petitioners in HCJ 7019/02

v.

1. **The Commander of the IDF Forces in Judea and Samaria**
2. **The Commander of the IDF Forces in the Gaza Region**

both represented by the State Attorney's Office
Ministry of Justice
Jerusalem

The Respondents

Response on behalf of the Respondents

1. In accordance with the decision of the Honorable Justice Dorner, of 13 August 2002, the Respondents respectfully file their response to these two petitions.

2. The two petitions deal with "assigned residence" orders issued by Respondent 1 (hereinafter: the Respondent) pursuant to his authority under Section 86 of the Order Regarding Defence Regulations (Judea and Samaria) (No. 378), 5730 – 1970 (hereinafter: the Order Regarding Defence Regulations or the Order). The orders were issued against Petitioners 1-2 in the petition in HCJ 7015/02 (hereinafter: the Petitioners) and against Petitioner 1 in HCJ 7019/02 (hereinafter: the Petitioner).

According to these orders, the three said Petitioners, residents of Judea and Samaria, are required to live for the next two years within the area of the Palestinian Council in the Gaza Region (hereinafter the three orders will be referred to as the orders assigning residence). The Petitioners seek to nullify these orders.

The Petitioners also seek to nullify the amendment of 1 August 2002 of the Order Regarding Defence Regulations, which enables the assignment of residence in the Gaza Region also for residents of Judea and Samaria.

3. The Respondents will argue that the petitions should be rejected – all for the reasons set forth below.

The principal relevant facts

4. Since the end of September 2000, numerous hostilities have taken place in the territory of Judea and Samaria, and some 14,000 attacks have been perpetrated.

5. Since the events began, in September 2000, 609 citizens and residents of the State of Israel have been killed and approximately 4,500 have been wounded, some very seriously. Many Palestinians have also been killed in the events.

6. These incidents have grown much worse since March 2002, when, in that month alone, some 120 Israeli citizens were killed in Palestinian attacks, and hundreds more were wounded. It would not be superfluous to mention that, since the peak of the murderous terror, from last March to the present days, 318 Israeli citizens and residents have been killed, and more that 1,500 others have been wounded, some very seriously (**that is, more than one half of the persons killed since the outbreak of the events were killed in the last five months**).

7. The State of Israel is currently engaged in an armed conflict that was forced on it, a conflict of a kind unknown in modern times; the armed conflict reached its lethal peak in recent months; in the course of this conflict, the Palestinian side uses, *inter alia*, human

bombs who enter Israel and communities in Judea and Samaria and the Gaza Region, and sow killing and bloodshed in the streets of its cities and communities.

Furthermore, the conflict is not a customary conflict between two peoples and two regular armies, both of which conduct themselves in accordance with international customary law, but a conflict in which the Palestinian side breaches all the customary laws of war and commits war crimes and crimes against humanity.

In this context, the Palestinian side uses terrorists who are not in uniform; terrorists whose objective is *inter alia*, to attack deliberately innocent civilians and residents; terrorists who hide among the civilian population; who depart from civilian communities to commit atrocious acts; who hide in hospitals, ambulances, churches and mosques, and breach the immunity of these places; terrorists who receive support – active or passive – from a substantial portion of the population; and who also receive much assistance from some residents of the region, including their near relatives (on these matters, see HCJ 2936/02, *Physicians for Human Rights v. Commander of the IDF Forces in the West Bank, Piskei Din* 56 (3) 3; HCJ 2117/02, *Physicians for Human Rights v. Commander of the IDF Forces in the West Bank, Piskei Din* 56 (3) 28; HCJ 3451/02, *Almadani v. Minister of Defence, Piskei Din* 56 (3) 30, [33] p. 36).

8. In response to these acts of terror, the government of Israel decided, on 29 March 2002, to have the IDF initiate a wide-scale operation to destroy the Palestinian terrorist underground in its entirety, and to carry out extensive activity towards this end (Operation Defensive Shield).

9. In June 2002, when the wave of murderous attacks resumed, including suicide attacks, the political echelon ordered the IDF to perform another extensive military operation, which has not yet ended (Operation Determined Path).

10. In the course of Operation Defensive Shield and Operation Determined Path, IDF troops entered many areas that were under the control of the Palestinian Authority, entered Palestinian cities, such as Ramallah, Qalqiliya, Tulkarm, Nablus, Jenin, and Bethlehem, and also entered Palestinian villages. The objective of the IDF forces' entry into these areas was, *inter alia*, to apprehend wanted persons and members of the various terrorist organizations, and to gather their weapons and materiel.

The IDF's actions in the region entailed fighting against armed persons and groups, and the IDF needed to call-up many reserve troops, and to use heavy weaponry, such as tanks and armored personnel carriers, and fighter helicopters and aircraft.

11. It should be emphasized that, unlike the Palestinian side, and despite the murderous nature of the battle that has been forced on Israel, the IDF makes sure that it acts in a humane manner and in accordance with the laws of war in its war against the Palestinian terrorists, and tries to limit, to the extent possible under the harsh circumstances, the harm to the innocent civilian population (compare HCJ 2936/02, cited above, at page 4; HCJ 2117/98, cited above, at pages 28-29; HCJ 3451/02, cited above, at pages 34-36).

12. When the murderous terrorist attacks increased in frequency, it was found that the combat actions taken did not prove sufficient immediate response to cease the grave acts of terror, and after consulting with the Military Advocate General and the State's Attorney General, the Ministerial Committee on National Security decided, on 31 July 2002, to take a number of additional measures intended to prevent further acts of terror, and to deter potential terrorists from perpetrating acts of terror.

13. One of the measures decided by the Ministerial Committee on National Security (the Security Cabinet), as mentioned above, was the transfer – from the region of Judea and Samaria to the Gaza Region – of relatives of terrorists, in instances in which the relatives themselves were involved in acts of terror.

14. The political echelon – headed by the Prime Minister – decided to take this measure, based on the assessment of the army and the General Security Service, which was provided to the political echelon, that this measure could make a substantial contribution to the security forces in their battle against the wave of murderous attacks that affected and struck the state recently, and could save lives. Therefore, security officials and the political echelon believed that the said measure should be implemented, and that it should be done *as soon as possible.*

15. On 1 August 2002, after the said decision was made, the Respondent signed the Order Regarding Defence Regulations (Judea and Samaria) (Amendment No. 84), 5762 – 2002 (hereinafter: the Amending Order). Among other things, the Amending Order contained a provision that added to Section 86(b)(1) of the Order Regarding Defence Regulations the authority, with the consent of Respondent 2, to assign the residence of a resident of Judea and Samaria also in the Gaza Region.

Along with enacting the Amending Order, on 1 August 2002, Respondent 2 amended the Order Regarding Defence Regulations in the Gaza Region, which states, *inter alia*, that a resident of the Judea and Samaria region who is required by an assigned residency order pursuant to Section 86(b)(1) of the Order to live in a certain place in the Gaza Region will not be allowed to leave the said place as long as this Order is in effect, unless allowed to do so by the military commander in the Judea and Samaria region or in the Gaza Region (Order Regarding Defence Regulations (Amendment No. 82) (No. 1155), 5762 – 2002 (hereinafter: Order 1155)).

A photocopy of Chapter 5 of the Order Regarding Defence Regulations, in its wording that preceded the Amending Order, is attached, marked R/1.

A photocopy of the Amending Order is attached, marked R/2.

A photocopy of Order 1155 is attached, marked R/3.

16. On 1 August 2002, after the Amending Order and Order 1155 were signed, the Respondent issued orders assigning residence against the Petitioners, in accordance with his authority as set forth in Section 86(b)(1) of the Order Regarding Defence Regulations, in which he ordered them to live for two years in the Gaza Region, in the territory of the Palestinian Council, within their meaning in the Order Regarding Interpretation (Gaza Region) (No., 300), 5729 – 1969. In the order assigning residence, the Respondent informed the Petitioners of their right to appeal the orders, within 12 hours, before the Appeals Committee.

Photocopies of the orders assigning residence that were issued to the Petitioners in HCJ 7015/02 are attached as Appendixes P/2 and P/3 of the petition in HCJ 7015/02.

17. On 4 August 2002, the Respondent issued an order assigning residence to the Petitioner in HCJ 7019/02. In the order assigning residence, the Respondent also informed the said Petitioner of her right to appeal the order, within 12 hours, before the Appeals Committee.

A photocopy of the order assigning residence issued to the Petitioner is attached to the petition, marked P/3.

The Petitioners appealed against the orders assigning residence, and they were heard in the Appeals Committee framework. Below, we shall describe the proceedings that took place in the committees. However, we shall first present information regarding the

Petitioners that were the basis for the issuance of the orders. This information showed that they assist their brothers, who are terrorists of the first rank. We shall also provide a brief summary of the information about the terrorist acts that the brothers committed.

Involvement of the Petitioners and the Petitioner [in HCJ 7019/02] in the activity of their terrorist brothers

A. Ajuri – The brother of Petitioner 1 in HCJ 7015/02 and of the Petitioner [in HCJ 7019/02]

18. Petitioner 1 in HCJ 7015/02 and the Petitioner are siblings of the terrorist A. Ajuri. The said brother A. Ajuri was a senior military activist in the Tanzim terrorist organization, and was responsible for the Tanzim military infrastructure in the Samaria region. The said brother was involved, *inter alia*, with preparing explosive charges and explosive belts, and was also responsible for dispatching several suicide terrorists – some of whom were arrested before they carried out their plans and others managed to blow themselves up and cause many casualties.

The brother was responsible, inter alia, for the double suicide attack on the eve of the Ninth of Av [a day commemorating, *inter alia*, the destruction of the First and Second Temples] ***this year, in the area of the old Central Bus Station in Tel Aviv, which resulted in the death of five persons and the wounding of many others.***

The brother, A. Ajuri, was killed several days ago, on 5 August 2002, while security forces attempted to apprehend him.

N. Asida – The brother of Petitioner 2 in HCJ 7015/02

19. Petitioner 2 in HCJ 7015/02 is the brother of the wanted person, the senior militant N. Asida, from Tal, a village west of Nablus, who has been involved in attacks against Israeli targets since 1998.

The brother, N. Asida, was responsible, inter alia, for the attack in Ytzhar in August 1998, in which two Israelis were killed, and for tow attacks near Immanuel, the first in December 2001, in which ten civilians were killed and dozens others were wounded; and the second, in July 2002, in which nine civilians were killed and 16 others were wounded.

Involvement of the Petitioner in HCJ 7019/02 in the activity of her brother, A. Ajuri

20. The Petitioner, born in 1968, is single, was not working prior to her detention, and resides in New 'Askar Refugee Camp, near Nablus

21. Confidential information in the hands of the Respondent, which can be presented only *ex parte*, if the Petitioners' consent, indicates that the Petitioner assisted her brother in his terrorist activity, *inter alia*, ***by sewing explosive belts for his purposes***.

22. Because of her actions, the Petitioner was arrested on 3 June 2002, and, on 6 June 2002, the military commander ordered that she be administratively detained for six months, on the grounds that she "endangered the security of the region." On 24 June 2002, upon judicial review, the administrative detention order was reduced to four months. The appeal that she filed against the decision of the legally-trained judge was denied on 23 July 2002 by the Military Appeals Court (Mil. App. 1269/02).

A photocopy of the decision of the legally-trained judge is attached, marked R/4.

A photocopy of the decision of the Military Appeals Court in Mil. App. 1269/02 is attached, marked R/5.

Involvement of Petitioner 1 in HCJ 7015/02 in the activity of his brother, A.-Ajuri

23. Petitioner 1 in HCJ 7015/02, born in 1974, is a resident of New 'Askar Refugee Camp near Nablus, is married with three children, and works as a painter. He was arrested, together with other members of his family, on the night between 18-19 July.

24. Contrary to the picture that the Petitioners seek to paint regarding the said Petitioner 1, his involvement in the acts of his brother greatly exceeded the provision of "humanitarian assistance" to the brother, and he actively assisted his brother, as follows:

During questioning, Petitioner 1 admitted that he served as a lookout when his brother and his brother's group moved explosive charges, his task being to warn of danger.

During the same interrogation, Petitioner admitted that he was aware of the materiel that his brother A. concealed in the family's house, of meetings the group held in the family's house, of an apartment used by his brother and his group as a hideout, that explosives and materiel were stored in the said apartment, that the group used a metalwork shop to make parts for the explosive devices, and that he was present when a person was filmed, the filming taking place, he believed, in anticipation of the commission of a suicide attack.

Petitioner 21 also admitted that he assisted in transporting foodstuffs to his brother and his brother's group, and that he aided them in transporting equipment from their hideout.

Involvement of Petitioner 2 in HCJ 7015/02 in the activity of his brother, N. Asida

25. Petitioner 2 in HCJ 7015/02, born in 1968, is a resident of Tel, a village west of Nablus, is married with five children, and works at a gas station. He was arrested, together with other members of his family, on the night between 18-19 July.

26. Contrary to the picture that the Petitioners seek to paint regarding the said Petitioner 2, his involvement in the acts of his brother greatly exceeded the provision of "humanitarian assistance" to the brother, and he actively assisted his brother, N. Asida, as follows:

According to the Petitioner's confession that he made when questioned by the police, he gave his car to his brother several times, and also drove him to and from Nablus, knowing that his brother was wanted by Israel. Petitioner 2 also admitted that his brother N. used to come to his house when he needed his assistance. The assistance took the form of supplying food and clothes, and laundering.

Petitioner 2 also assisted his wanted brother-in-law, ___ Asida, a Hamas militant activist, who went to commit a suicide attack (the attack was luckily thwarted by the security forces). This assistance to ___ Asida took the form of supplying food and clothes, and allowing him to use Petitioner 2's car.

It should be mentioned that experience shows that the provision of this kind of assistance is vital to wanted persons.

27. This, then, is the information relating to the Petitioners and their acts. As mentioned, the orders assigning residence were based on these acts. The Petitioners appealed the issuance of the orders assigning residence, and the appeals were heard by appeals committees that were established to hear the appeals. Below, we shall describe the proceedings that took place in these committees.

Proceedings in the Appeals Committees

28. In accordance with the provisions of Section 86(e) of the Order Regarding Defence Regulations, the Respondent's decision to issue an order assigning residence may be appealed to an Appeals Committee established pursuant to Section 85(c) of the Order. The committee advises the Respondent in the matter of control supervision and orders assigning residence that are issued pursuant to Section 86. The quasi-judicial committee is appointed by the Respondent, and a legally-trained judge generally heads the committee.

The Appeals Committee in the matter of the Petitioners (hereinafter: the First Committee)

29. On 2 August 2002, the Respondent appointed an Appeals Committee pursuant to Section 85(c) of the Order, headed by the Honorable Judge Col. (res.) Daniel Friedman.

On 2 August 2002, the two Petitioners filed their appeal to the Appeals Committee against the orders assigning residence issued to them.

A photocopy of the appeal is attached as Appendix P/4 of the petition in HCJ 7015/02.

The same day, the Appeals Committee convened in Ofer camp and began its hearings on the appeal. Some of the hearings were open, and some closed, at the discretion of the Committee.

Two GSS agents, referred to as "Yuri" and "Gid'on", gave testimony to the Committee, *ex parte,* and presented relevant confidential information.

Counsel for the Petitioner cross-examined "Yuri" at great length (more than six hours). The Committee also heard the lengthy testimonies of the Petitioners themselves, the father of Petitioner 1, and the testimony of a UN official in the Gaza Strip.

30. The Appeals Committee conducted an extensive hearing, over long days, in the Petitioners' matter. At the end of the oral hearing, on 8 August, the Committee allowed the Petitioners and counsel for the Respondent to submit, no later than 12 August, briefs on the entire matter.

The Respondent emphasized to the Committee the need to expedite the hearing, and the Committee did its best to do so, without, or course, violating the rights of the Petitioners to state all their arguments.

31. It should be noted that the Petitioners, who raise many contentions against the proceeding conducted by the Appeals Committee, do not bother to mention in their petition that their attorneys felt free not to appear for the hearing on the afternoon of 6 August. In addition, at the hearing set for 7 August, counsel for the Petitioners, Attorney Labib, appeared, but he contended that he did not agree to appear on behalf of the Petitioners, despite the Committee's ruling at the end of 6 August to reconvene on 7 August. As a result, the Committee was compelled to postpone the proceeding until 8 August.

On this point, we should mention that, at first, the Committee decided not to hold sessions on 6-7 August so as to enable Petitioner 1 to mourn the death of his brother, the terrorist A. Ajuri, who was killed on 5 August. However, following an urgent request to continue

with the hearing, filed by the legal advisor for Judea and Samaria on behalf of the Respondent (the application was heard *ex parte* after the other side was invited but did not appear for the hearing), it was decided to reconvene on 7 August, and notification was delivered to Petitioners' counsel. ***Note well: as mentioned, Petitioners' counsels made a decision on their own, and did not appear for the scheduled hearing.***

Ultimately, following these delays that were caused by Petitioners' counsel, the hearing recommenced and reached its conclusion, and the sides submitted briefs to the Committee.

A photocopy of the unclassified material that was provided to the Petitioners is attached as Appendixes P/5 and P/6 to the petition in HCJ 7015/02.

A photocopy of the minutes of the hearings and the Committee's decisions are attached as Appendix P/7 to the petition in HCJ 7015/02.

A photocopy of the Petitioners' brief to the Committee is attached as Appendix P/8 to the petition in HCJ 7015/02.

If the Honorable Court deems it proper, it is possible to provide for its study, *ex parte,* the minutes of the sessions that were held *ex parte.*

32. It should also be noted that the Petitioners did not attach for the Honorable Court's study the brief submitted to the Committee by the Respondent's counsel, although they attached their own brief. Nor did they attach the decision of the Committee, of 6 August 2002, regarding the hearing to be held on 7 August 2002.

It goes without saying that the above failure ostensibly indicates the Petitioners' lack of good faith.

The brief of Respondent's counsel that was submitted to the Committee in the matter of the Petitioners is attached, marked R/6.

The Committee's decision of 6 August 2002 is attached, marked R/7.

33. On 12 August 2002, after receiving the briefs of the sides, the Appeals Committee recommended to the Respondent to deny the Petitioners' appeal.

A photocopy of the decision of the Appeals Committee is attached as Appendix P/9 to the petition in HCJ 7015/02, and is attached again here for the Honorable Court's convenience, marked R/8.

34. After the decision of the Appeals Committee was delivered to the Respondent, and the matter relating to the Petitioners was reconsidered by the new Commander of the IDF Forces in the region, the commander decided to leave the orders assigning residence as drafted. Notification thereof was delivered to the Petitioners.

A photocopy of the notification delivered to the Petitioners is attached as Appendix P/10 to the petition in HCJ 7015/02.

The Appeals Committee in the matter of the Petitioner [in HCJ 7019/02] (hereinafter: the Second Committee)

35. On 5 August 2002, the Petitioner filed an appeal to the Appeals Committee against the order assigning residence.

36. On 7 August, after the First Committee denied the request of Respondent's counsel to join the hearing in the Petitioner's matter with the hearing in the matter of the Petitioners, the commander appointed another panel to the Appeals Committee, headed by the president of the military court in Judea and Samaria and the Gaza Region, the Honorable Judge Col. Shaul Gordon.

37. The Appeals Committee held hearings on the Petitioner's case on 8 August and 11 August 2002, and also allowed the sides to submit briefs no later than 12 August, at 11:00 A.M.

Inter alia, the Committee heard, *ex parte,* on 8 August the testimony of the GSS agent referred to as "Gid'on", and also allowed Petitioner's counsel to cross-examine the GSS agent referred to as "Yuri." The Committee also allowed Petitioner's counsel to ask questions in writing to the said GSS agents for response, but they decided to forego this opportunity. The Committee also heard the testimony of a UN official in Gaza.

On 11 August 2002, the Petitioner testified before the Committee. The GSS head in Samaria, nicknamed "Haim", also testified. He gave testimony *ex parte* and was then questioned by Petitioner's counsel in open court.

Photocopies of the minutes of the hearings before the Second Committee are attached as Appendixes P/4 and P/5 of the petition in HCJ 7019/02.

A photocopy of the brief that the Petitioner submitted to the Appeals Committee is attached, marked R/9.

A photocopy of the brief that the Respondent submitted to the Appeals Committee is attached, marked R/10.

If the Honorable Court deems it proper, it is possible to provide for its study, *ex parte,* the minutes of the sessions that were held *ex parte.*

38. On 12 August 2002, the Appeals Committee gave its decision in the matter of the Petitioner. The Committee recommended to the Respondent to deny the Petitioner's appeal, and leave the order assigning residence as drafted. Notification thereof was delivered to the Petitioners.

A photocopy of the Committee's decision in the Petitioner's matter is attached as Appendix P/6 to the petition in HCJ 7019/02, and is attached again here for the Honorable Court's convenience, marked R/11.

39. After the decision of the Appeals Committee was delivered to the Respondent, and the matter relating to the Petitioner was reconsidered by the new Commander of the IDF Forces in the region, the commander decided to leave the orders assigning residence as drafted. Notification thereof was delivered to the Petitioner.

A photocopy of the notification delivered to the Petitioner is attached as Appendix P/7 to the petition in HCJ 7019/02.

40. This is the relevant factual background. On the basis of this background, we shall respond below to the Petitioners' contentions raised on the legal plane. However, we shall raise one preliminary argument, which is a sufficient ground to dismiss the petitions.

Preliminary argument – the petitions should be dismissed because of the lack of a proper supporting affidavit

41. Before relating to the substance of the Petitioners' contentions, we wish to argue that the petitions should be dismissed summarily, because of the lack of proper supporting affidavits. This argument is particularly correct regarding the petition filed in HCJ 7015/02.

On this point, we should mention that the petition filed in HCJ 7015/02 is supported by the affidavit of Ms. Dalia Kerstein, executive director of HaMoked: Center for the Defence of the Individual, who states that, "all the particulars in the petition regarding the actions of HaMoked: Center for the Defence of the Individual are true. The other facts are true to the best of my understanding."

The Petitioners themselves did not bother to attach their affidavits to the petition, and clearly did not take the trouble to confirm by affidavit the contentions that they are "innocent of any wrongdoing." Affidavits by the Petitioners were not submitted, even though nothing prevented them from doing so, because they were in detention and their attorneys could have met with them to take their affidavits.

With all due respect to Ms. Kerstein, she has no meaningful contact with the actions of the Petitioners, and certainly cannot know if the Petitioners' contentions are true or false.

A petition whose supporting affidavit is so useless, as in the present case, should be dismissed summarily.

42. As regards the petition in HCJ 7019/02, only the Petitioner's affidavit is attached. However, the Petitioner does not deny the forbidden activity attributed to her by the Respondent and by the Committee, nor does she state that all the facts set forth in the petition are true.

A petition supported by such an affidavit should also be dismissed summarily.

43. In our opinion, the said argument itself is sufficient to dismiss the petitions. Nevertheless, and though it is unnecessary to say more, we shall now respond to the substance of the contentions.

The legal argument

The contention regarding lack of authority

44. As explained in the factual chapter, on 1 August 2002, OC Central Command amended Section 86 of the Order Regarding Defence Regulations, whereby a military commander who orders that a person be kept under special supervision may demand that the said person live within the confines of a certain place in the Gaza Region. Prior to the amendment, the commander was permitted to demand that a person reside within the confines of a certain place within Judea and Samaria. The supplement provided that henceforth it was permissible to demand that a person live in a certain place in the Gaza Region. This amendment was made by Respondent 1, after he received the consent thereto of Respondent 2, who is the Commander of the IDF Forces in the Gaza Region. Following the signing of the amendment, three specific orders relating to the Petitioners were issued demanding that they reside in the Gaza Region for the next two years.

45. The Petitioners' first contention is that the Respondent did not have the authority to amend the Order Regarding Defence Regulations in this way, whereby a military commander can demand that a person reside in a certain area in the Gaza Region. According to the Petitioners, the Respondent is not allowed to issue any directive relating to a place that lies outside Judea and Samaria, which is the territorial area over which the Respondent has authority.

This contention is baseless.

46. Indeed, as a rule, the principle of territoriality does apply in our legal system, and where no explicit legislative provision exists, every piece of legislation is construed as applying only to the territory to which it relates. Therefore, Israeli legislation is construed, as a rule, as applying only to the territory of the state, and legislation that is enacted in Judea and Samaria is construed, as a rule, as applying only in the territory of Judea and Samaria.

However, this rule is only a rule of interpretation, and the legislator can determine, explicitly or by implication, the extra-territorial application of a particular statute. Where the legislator so acts, the domestic court must comply with the legislator's command, and is not allowed to challenge the extra-territorial application of the said statute.

47. This rule was expressly stated in CrimA 123/83, *Qiryat Arba' K.S.A. Steel Works Inc. v. The State of Israel*, *Piskei Din* 38 (1) 813, 821, in which the Honorable Justice S. Levine held:

> **There is no dispute that ostensibly, and lacking a provision or reason to act otherwise, judicial or administrative authority as regards a legislative act is of a territorial nature. But the said rule is only one of interpretation, and the legislator may determine, explicitly or by implication, the extra-territorial application of a particular statute, and then the domestic court must comply with the command of its legislator.**

This rule applies precisely to our matter, for the commander of the Judea and Samaria region explicitly determined, in primary legislation, to expand his authority and apply it to residents of the region also when they are outside the territory of Judea and Samaria. Such action is not improper, and the court respects such explicit determination.

48. In this context, it should be mentioned that there are numerous examples of extra-territorial enactments, both in legislation of the State of Israel and in legislation of the region. For example, the State of Israel provided in its penal law offenses the commission of which constitutes an offense also when committed abroad. Similarly, the tax laws contain provisions that require citizens of the state to pay taxes on profits made during their stay abroad. Comparable provisions exist also in legislation in the Territories. In this regard, the Second Committee referred, by way of illustration, to the "Order Regarding the Prohibition on Training and Contact with a Hostile Organization outside the Region (Judea and Samaria) (No. 284), 5729 – 1969," in which the Respondent imposed various prohibitions on residents of the region also when they were located outside the region. Furthermore, this provision was applied not only to residents of Judea and Samaria, but to residents of "another region held by the IDF," as appears from the definition of "resident of the region" in the said order.

By way of further example, reference is made to Section 5 of the Order Regarding Manner of Punishment (Judea and Samaria) (No. 322), 5729 – 1969, which states that a resident of Gaza who is tried in Judea and Samaria may be transferred to Gaza to serve his prison sentence. The order further states that every person as to whom an order of imprisonment or detention in Gaza may be arrested pursuant thereto in Judea and Samaria, so that he can be transferred to Gaza to serve his prison or detention sentence. Similar provisions are set forth in the comparable order applying in the Gaza Strip.

The enactments are not defective, for the legislator is allowed to spread his net over residents of his state (or region) also when the residents are abroad – provided that it is done by means of explicit legislation – as was done in the present case.

49. It should be added that, the extra-territorial application in our case was not made over territory that is unconnected to the territory over which the Respondent is responsible, but to the Gaza Region, which is territory that is closely tied to Judea and Samaria. In these circumstances, there is clearly and undoubtedly no defect in this legislation.

50. As regards the close connection between the two areas, from a legal perspective, it should first be noted that, as the Second Committee mentioned in its decision:

> **In practice, the legislation enacted in the two regions is generally identical, the judicial actions in the two regions**

come under one roof, and the administration, even if separate, is coordinated in the two regions – both as regards civilian affairs and security affairs.

The legislation applying in the regions has also stipulated a close reciprocity between the regions, as is illustrated for example by study of the legislation presented in Section 48 above.

It should be added that, in Article 11 of the Israeli-Palestinian Interim Agreement Concerning the West Bank and the Gaza Strip, which was signed in Washington on 28 September 1995 (Treaty Documents, 1071, 33), the sides state that they view the West Bank and the Gaza Strip as "*a single territorial unit.*" In the language of the article:

The two sides view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which shall be preserved during the interim period.

This provision is repeated in Article 31(8) of the agreement, based on which a mechanism was established for the "safe passage" between Judea and Samaria and the Gaza Region.

Furthermore, not only the Israeli side coordinates activity in the two regions, the Palestinian side also relates to the two regions as one entity, with one, unified leadership being responsible for the two regions. Israel's decision to administer the two regions by means of different commanding officers was an organizational determination, and in the present case is not very significant.

As regards the Petitioners' claim that the existence of two separate systems of laws in Judea and Samaria indicates that the two regions are not connected to each other, such an argument is baseless. In many states, districts have different and separate legal systems (such as in states with a federal system, or as in the case of China and Hong Kong). Clearly, it cannot be successfully argued that we are involved with separate territorial units as regards the relevant international law.

In these circumstances, the legislation presently under review is not defective in any way.

51. It must further be mentioned that, as we see from the preamble to the amendment to Section 86 of the Order, the Commander of the IDF Forces in the Gaza Region consented to the amendment. In addition, the latter also issued a similar amendment to Section 86 of the comparable order regarding the defence regulations in the Gaza Region, as follows:

A person as to whom an order is given by the military commander in the Judea and Samaria region pursuant to Section 86(b)(1) of the Order Regarding Defence Regulations (Judea and Samaria) (No. 378), 5730 – 1970, pursuant to which he is required to reside in a specific place in the Gaza Region, will not be permitted to leave the said place as long as this order is in effect, unless the military commander in the Judea and Samaria region, or the military commander in the Gaza Region, permits him to do so.

This amendment is included, as stated, in Order 1155 (Appendix R/3 above).

In these circumstances, there is certainly no defect in the Respondent's amendment to Section 86 of the Order that applies in Judea and Samaria, and the arguments made by the Petitioners on this issue should be rejected.

The contention that the orders harm the Palestinian Authority

52. The next contention raised by the Petitioners is that the orders assigning residence are improper because the Palestinian Authority did not consent to their substance, and because these orders purportedly contain an order given to the Palestinian Authority.

This contention is vexatious and baseless.

53. As the Second Committee held, the orders assigning residence do not give any directive to the Palestinian Authority. The provisions of the orders are directed to the Petitioners, who are residents of the region, and directs them where to live for the next two years. The orders are applicable on a personal basis, and being applicable in this way, as stated, there is no defect.

54. Furthermore, even if the Palestinian Authority has objections that it can make to the Respondent regarding issuance of the orders (and I assume that this is the case), clearly the objections that the Palestinian Authority has against the State of Israel cannot form a basis for the Petitioners to attack the orders, in that the objections must be handled on the political plane by the Palestinian Authority and the State of Israel only, and not on the internal legal plane of the State of Israel. On this point, see HCJ 1361/91, *Masalem et al. v. Commander of the IDF Forces, Piskei Din* 45 (3) 444, 453.

Therefore, this contention, too, should be rejected.

Prevention and deterrence – the underlying principle

55. The next argument, which is the fundamental argument of the Petitioners in the two petitions, is that the assigned residents orders are improper because they are given *only* to deter, and are not issued for any preventive purpose. According to the argument, orders assigning residence that are given only to deter must be nullified; therefore, it is argued that the specific orders issued herein are forbidden.

56. On this point, we wish to explain, as was repeatedly shown and pointed out in the two committees, that the orders were given in each of the cases for a joint reason – preventive and deterrent. The Respondent believes that an order given for such a dual purpose is not improper. This position was accepted by the two committees, and they therefore recommended to the Respondent not to rescind the orders. These decisions are not defective in any way.

Below we shall describe the Respondent's position on this issue, and the reasons for his decision, and, using that as a background, respond to the Petitioners' arguments.

57. The State of Israel is currently engaged in combat activity. This combat activity is directed against terrorist organizations that do not spurn the use of abhorrent means, such as suicide attacks, which strike at, murder and injure innocent civilians – the elderly and children, men and women. The army takes numerous combat actions whose objective is to restore security in the region and in the state, and to prevent further severe attacks. Among these combat actions are **actions intended to prevent a specific person from committing a terrorist act, and actions intended to prevent the public from committing terrorist acts**. Some of these preventive actions are deterrent in nature. Deterrence of this kind is not forbidden. Deterrence is intended to prevent the individual and the public from continuing the grave terrorist actions. Thus, the [army's] actions have a legitimate purpose, provided they are allowed by law.

58. In taking these preventive actions, the army imposed closures and sieges on various areas, made administrative detentions and detentions for interrogation purposes, prevented residents from leaving the territories to go abroad, and the like.

59. The law allows all these measures and many other measures as well. The permission to take some of these measures, which are relevant in our matter, is found in Part 10 of the Emergency Defence Regulations, 1945 (Sections 108-112), which deals with

"Restriction, Police Supervision, Detention, and Banishment Orders." Permission to take some of these measures is found also in the Order Regarding Defence Regulations, in Chapters 5 – 5.1 (Sections 84A – 87I), which deal with **"Restriction Orders, Supervision Orders, and Administrative Detention."**

60. International law, too, allows these measures, and the Honorable Court is referred to Article 78 of the Fourth Geneva Convention, which allows "*assigned residence or internment*," if necessary in the occupied territory for imperative reasons of security (see also Articles 41-42 of the said convention).

International law also states that the military commander has the duty to maintain public order and safety in the region. On this point, see Article 43 of the Hague Regulations.

61. The measure that the Respondent chose to take in the present matter, that is, "assigned residence," notwithstanding the grave harm that it causes to the person against whom the measure is taken, is a relatively light measure, in comparison with measures that these provisions allow.

For example, deportation, which is arranged in Section 112 of the Defence Regulations, 1945, which enables the military commander to remove a person permanently from the occupied territory to the territory of another sovereign state, is deemed a much more severe measure. This measure is completely different from the "assigned residence" means that is used in our case, and the Petitioners' mingling of the two measures is intended only to provide a distorted picture that is unfounded.

As stated, assigned residence is a much lighter measure than banishment. The reason: in "assigned residence," the individual is not removed to another sovereign state, and is not severed from his people and homeland, as is the case with banishment, but his residence is moved from a certain place within some state or political entity to another place within the territory of the said state or political entity.

Furthermore, the "assigned residence" ordered in our cases extends for a limited period, unlike banishment, which is generally imposed for an unlimited period.

It should also be mentioned that the "assigned residence" must be reviewed every six months by the competent body established for this purpose by the state taking the said measure, which is not true in the case of banishment. Such periodic review is set forth in Article 78 of the Fourth Geneva Convention. Indeed, Section 86(f) of the Order

Regarding Defence Regulations states that, if assigned residence is ordered, the measure is to be reviewed every six months by an appeals committee that is especially established for this purpose, and that the review is to be made "whether or not the said person requested further appeal."

These differences between the two sanctions clearly show that the measure is completely different, and is significantly lighter, than "banishment."

62. In similar manner, detention is significantly harsher than assigned residence, in that in assigned residence, the person is not incarcerated, but is restricted to living in a place or is transferred to another place of residence.

The learned Pictet, in his commentary on the Fourth Geneva Convention, made this same point, when he stated that, *as a rule, assigned residence is less severe than internment*.

See, J. S. Pictet, *Commentary: Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War,* 1958.

63. As mentioned above, the Respondent made the decision to order the assigned residence of the Petitioners because of the deterioration in the security situation.

The sections of law that enable the taking of the said measure (Section 110 of the Defence Regulations of 1945 and Section 86 of the Order Regarding Defence Regulations) do not state anywhere that this measure may be taken only for a specific preventive purpose.

64. With all that has happened in recent months, with the deterioration in the security situation, the increasing number of attacks, and particularly the growing use of suicide terrorists as "human bombs," it was decided take new measures, ones that had not been taken in the past, in fighting the war against terror, in order to try to eliminate the terrorism. In this context, it was decided to use "assigned residence" also in cases in which the need for this measure is a ***joint preventive-deterrent need***, or, in other words, ***a joint need of " preventing the individual and of preventing large numbers of persons."***

65. What is new in the decision is that, in taking the said measure, it was decided to take into account *also* the many deterrent considerations. As will be shown below, this consideration is not foreign to our legal system, and, in a matter very near to the present matter, a parallel step is taken, one intended to aid in the war against terror, for solely deterrent reasons, and the action was approved by the Honorable Court.

We are referring to the demolition of terrorists' houses, which is taken from time to time for purely deterrent reasons. This measure has been approved by the Court many times; on this point, we shall expand below.

Notwithstanding the above, in our matter, it was decided not to impose the said sanction for deterrent reasons only. However, when the person involved is not innocent, is not blameless, and is involved in terrorist activities, and is engaged in assisting terrorists by means of providing aid, solicitation, giving active support, and the like, the Respondent believes that it is not improper to take the said measure against him, taking into account deterrent considerations as well.

This kind of deterrence-related considerations led the Respondent to conclude that there is good reason to take the said steps against a relative of a person who committed severe attacks or dispatched others to commit them. The Respondent's professional opinion, which is based on the opinion of experts, is that transfer of a relative of a terrorist who commits a severe attack, from the relative's residence in Judea and Samaria to the Gaza Region, will send the message to everyone who considers committing similar attacks that not only he is liable to be harmed as a result of his acts, but that his near relatives are liable to be harmed as well.

66. Therefore, when the Respondent considered taking the said measure against the Petitioners and others, he took into account, on the one hand, the question of whether they were involved in terrorist activity, and, on the other hand, the deterrent effect of taking the said measure against them.

When he found that it was not proven that the person was involved in terrorist activity, the Respondent decided that he should not take the said measure against the individual, even if such action might have a real deterrent effect.

For example, no evidence was found indicating that the father was involved in his son's terrorist activity, and the Respondent, therefore, decided not to take the said measure against him, even though transferring A. Ajuri's father to Gaza would serve – according to the professional evaluation of security officials –as a great deterrent.

As regards the Petitioners, however, substantial evidence was found that they were involved in the severe terrorist activity of their brothers. For this reason, the Respondent decided that, in their cases, it was proper to transfer them to Gaza, having taken into account also the potential deterrent effect on other terrorists, who

will worry that if they commit terrorist acts, their relative s will be harmed as a result.

67. In doing so, the Respondent acted properly. In doing so, the Respondent balanced the critical need to take the actions that he deems necessary to battle terrorism, between the need not to harm – to the degree possible – innocent persons, and not to act "at the expense" of innocent persons in the battle against terror. In the Respondent's opinion, his decision properly balances these important considerations. He believes that his decision is reasonable and balanced. Thus, the Court is requested not to interfere with his decision.

68. It is not superfluous to mention that, on this issue, the Respondent was guided by the instructions of the Military Advocate General and of the State's Attorney General. In these instructions, the Attorney General directed the Respondent that it is improper to take the measure of assigned residence to Gaza against residents of Judea and Samaria against whom there is no evidence proving that they were involved in some manner in assisting terrorists or those who dispatched them. However, as regards a person against whom there is evidence proving that he was involved in providing assistance to terrorists, or in encouraging them, the Attorney General held that the said measure could be taken against them, because the transfer of such person to Gaza could be considered a preventive-deterrent act.

The Respondent acted in accordance with these instructions, and we shall argue that this action was not defective in any way.

The Second Committee made this point when it discussed the said subject in its decision, and held as follows:

> **It is not easy for us to state that the statutory law permits, for purely deterrent considerations, harm to a person who has not sinned – unless the statute expressly allows it… And indeed, we are cautious in stating that Section 86(b) of the Order enables the use of means intended solely for purposes of deterrence.**
>
> **Notwithstanding the above, we did not find that these latter comments negate the use of the said sanction, where it is intended to achieve both prevention of the anticipated**

danger of the person against whom the order was issued and to deter the masses.

The problem and, if you will, the illegality in using a "deterrent" sanction, unlike a "preventive" sanction, does not result from the broad target group it is aimed at, but from the use of an innocent person, and possibly even a person who acted in good faith and honestly, who becomes, to his disadvantage, a tool to transmit the deterrent message. From now on, I say: if it is possible to transmit a deterrent message by means of a person who did not take actual part in forbidden activity, and more so, if there is also need to exercise the sanction to prevent the continuation of the forbidden activity, not only is the sanction not prohibited, it is even justified and proper.

We wish to explain our comments: everyone agrees that exercising a sanction intended to prevent an individual threat is legitimate and proper. The deterrent sanction, notwithstanding the flaws and malfunctions one seeks to attach to it, is proper tenfold. Deterrence is nothing other than prevention, but unlike the preventive sanction, which is capable of preventing, at the most, the threat anticipated from another person, the deterrent sanction is capable of preventing the anticipated threat from the masses.

Therefore, and to the extent that it is possible to cleanse the deterrent sanction of the flaw that customarily accompanies it, that is, harm to the innocent, it becomes a preventive sanction of the first degree; it prevents the individual and it prevents the masses…

Thus, it being found that the appellant assisted in preparing suicide attacks, when there is substantial need in constricting her deeds with the intention of preventing her activity in the future, we do not find that it is forbidden "to burden her" also with the burden of general deterrence.

With all due respect, the Court will be requested to adopt this position, which lies at the foundation of the Respondent's decision not to rescind his decisions.

69. Using the above as a foundation, we shall now respond to the various contentions made by the Petitioners on this subject.

The preventive aspect – response to the Petitioners' contentions

70. The first contention made by the Petitioners is that all their acts were legal and that no evidence was provided that they were involved, in one way or another, in terrorist activity. Therefore, the Petitioners argue, the measure was taken against them solely for deterrent reasons, and, in this sense they argue that the measure was taken against them despite their "innocence."

71. To this argument, we respond that the Petitioner's contentions are without substance: they are not innocent, did not act in good faith, and certainly do not have clean hands, and they did not even take the trouble to attach an affidavit testifying to their purported innocence.

As was described in the factual chapter, each of the Petitioners took part in the terror, and assisted their brother and his terrorist group in their dangerous and prohibited activity.

72. Such is the case regarding the Petitioner [in HCJ 7019/02], who, according to reliable information that has been checked, assisted her brother by sewing explosive belts, and in doing so, took an actual and active part in the terrorist activity that her brother, A. Ajuri, directed and coordinated. She indeed denies the aforesaid, however the confidential information in the hands of the Respondent refutes her denials. To prove our contention, we would like to present the confidential information *ex parte* to the Honorable Court.

73. The same is true about Petitioner 1 in HCJ 7015/02, who was well aware of the forbidden, terrorist activity of his brother, and, despite this awareness, assisted his brother in various ways, as described above. On this point, it is sufficient to mention that Petitioner 1 served as a lookout whose task was to warn the terrorist group of danger, while his brother and his brother's group moved explosive charges from the brother's house to their car. In doing this, Petitioner 1 took an active part in the terrorist activity of his brother and his brother's group. For reasons they keep to themselves, counsel for Petitioner 1 ignores this activity of the said Petitioner (see Section 92 of their petition), and they prefer to relate to his other acts (which are themselves serious). However, the Petitioner's counsel's disregard of the above fact cannot "conceal" the said Petitioner's

confession to his said acts, which formed a central basis for the decision of the First Committee, which heard the matter (see Section 10 of its decision).

74. The same is true as regards Petitioner 2 in HCJ 7015/02, who also was aware of his brother's terrorist activity, and of his being wanted by Israeli security bodies. Despite this, he assisted his brother in various ways. In this context, we should mention that this Petitioner made his car available from time to time to his wanted brother, without asking why he needed the vehicle, even though the said Petitioner was well aware at that time that his brother was a terrorist and was wanted, so much so that there was a danger that Israel would strike at him. Similarly, Petitioner 2 also transported his brother a number of times to places where his brother wanted to go, despite his said awareness. In addition, Petitioner 2 assisted his brother-in-law, who too was involved in terrorist activity (and even started on a suicide attack), and made his car available to him as well when requested to do so.

As we know, and as the witnesses who testified on behalf of the GSS explained to the committees, without assistance and support of this kind, the terrorist networks would not be able to continue regular operation, and the population is well aware of this fact. Therefore, in providing these services to two terrorists of the first rank, the Petitioners linked themselves to terrorism.

75. Contrary to the contentions set forth in HCJ 7015/02, the actions did not only involve "humanitarian" services – supplying food, sleeping accommodations, laundering, and the like (even though the provision of such services to a wanted person is also prohibited) – that the siblings provided to their dangerous wanted brothers. The actions entailed assistance far more extensive than purely "humanitarian" aid.

The Petitioners contend that these are "trivial actions that one cannot expect a person not to provide to his brother." This contention is upsetting, being raised in the context herein, and should be rejected outright.

These individuals, who showed their readiness to assist terrorists, and actually assisted them in the ways mentioned above, also constitute a future threat to security; thus, there is surely a preventive aspect that supports the decision taken regarding them.

76. It is appropriate now to respond to other contentions raised by the two Petitioners in HCJ 7015/02 against the acceptance of their statements to the police, according to which they had assisted their brothers in their terrorist activity.

77. For example, the Petitioners argue, there are hundreds and thousands of other persons in the territories who endanger security in a similar manner, and it is thus improper to take the said action against the Petitioners for the acts that they have committed. Our response to that is that there are indeed, unfortunately, many other residents in the territories who provide assistance to terrorists similar to that which the Petitioners provided to their terrorist brothers. However, it is clear that this fact does not help the Petitioners' case and certainly is not sufficient to support a finding that the Respondent is not allowed to take any measure against the Petitioners, as the petitions demand.

78. Similarly, the argument is raised that, with the death of the brother of the Petitioner and of Petitioner 1, they no longer constituted a threat. By acting as they did, these Petitioners showed their readiness to assist in the commission of terrorist acts of their brother and his group, and to act to achieve terrorist objectives; in practice, they assisted not only the brother, but the entire terrorist group that the brother headed. Therefore, the brother's death does not remove the threat they entail, because the group did not die along with the brother, and the terrorist activity the brother advanced has not been eliminated. In addition, there is no evidence that the Petitioners' willingness to assist in terrorism has passed.

79. Regarding the contention that the notes recorded by the GSS agents who interrogated the Petitioners are of insufficient weight **to convict the Petitioners**, and that their statements to Police and GSS interrogators were made, purportedly, under duress, we respond as follows: First, the Petitioners forget that we are not dealing with a criminal proceeding, but with an administrative decision that is based on administrative evidence. The Committee related to this subject in this way, and in this matter held that the evidence presented to it was sufficiently persuasive to prove that the Petitioners had indeed provided substantial assistance to their wanted brothers.

Furthermore, the principal findings regarding the Petitioners were based on open confessions given to the police, so there is no need to delve into the question of the weight of the notes recorded by the GSS agents who interrogated them.

In addition, and this is the central point, the Petitioners testified to the Committee that the GSS agents and police officers who interrogated them *"treated them well,"* and gave them the opportunity to say whatever they wanted. In any event, it is clear that these contentions of the Petitioners are baseless. See the testimonies of the Petitioners in Appendix P/7-I, at page 10 (line 12) and at page 14 (line 3).

We also should mention that, in their testimony before the Committee, the Petitioners in general repeated the things that they said in their statements to the police, with various differences, and, in any event, the minutes of their testimony before the Committee indicate their involvement in assisting their terrorist brothers, and other terrorists, as described above at length.

80. The Petitioners further contend that they are not to be blamed for failing to prevent their brother's wrongdoing, arguing that, according to the legal norms in Israel, Jordan, and the territories, a person is not guilty of wrongdoing for failing to prevent his relatives' wrongful act, which norms have a "humanitarian" basis. Our response is that we are not required to respond in detail to this contention because it is irrelevant: the evidence in the hands of the Respondent, which was presented to the committees, indicates that the Petitioners provided **actual assistance** to their terrorist brother. The case here, therefore, is not, as contended, the failure to prevent wrongdoing. Also, the person does not have a "vested right" that the legislator will forgive him for failing to prevent wrongdoing that resulted in many victims.

We should further note that, in Section 1A of the Order Regarding the Rules of Criminal Responsibility (Judea and Samaria) (No. 225), 5728 – 1968, which exempts relatives from the offense of receiving and concealing an offender and assisting him in fleeing punishment, on which the Petitioners rely in Section 112 of their petition, *no exemption is given to the siblings of offenders,* and, in any event, is not at all relevant in the present case.

81. Another contention made by the Petitioners is that the Respondent needs to grant "favors and benefits to the father of Petitioner 1" because he tried to prevent his son's activity. To this we respond that the Petitioners apparently have forgotten that the said measure is taken against Petitioner 1 and not against his father. Without relating to the contentions relating to the father's acts, it is clear that Petitioner 1 assisted his brother in his actions, and this provides sufficient reason to reject the said contention.

82. Another contention is that the First Committee itself, which heard the matter regarding the Petitioners, purportedly did not believe that there was something substantially wrong in the Petitioners' acts, but related only to the deterrent aspect. This contention, too, is without substance. Several times, the Committee mentioned that the Petitioners provided substantial assistance to their brother, and that the Petitioners' acts were serious, while

refusing to accept the argument that these acts were only a "stain" of security offenses. See, for example, Sections 10-11 and Sections 49-52 of the decision.

83. The last contention made in this context is that, in the past, "simple danger" was insufficient to justify expulsion; rather, proof of an extremely great danger was necessary to justify such a measure. To prove their contention, the Petitioners bring a number of judgments that related to deportation, from which one learns that this measure was used only against "the most dangerous persons," in the Petitioners' words.

84. Our response to this contention is, first, that the cases cited do not support the Petitioners' contention. The case law that the Petitioners mention dealt with cases of deportation, i.e., removal to a foreign country, forever. Our case is completely different. As explained above, deportation, an act that is permanent, is much harsher than the act herein, whereby the Petitioners are sent only to Gaza and only for a period of two years. Therefore, an analogy is inappropriate.

Furthermore, the measures taken in fighting the war against terror are taken in the context of changing circumstances, and in the current situation, it is clearly insufficient to take the same measures that were used in the past.

85. Furthermore, as we have explained, in the present case, prevention was not weighed on its own, but along with deterrence, on which we shall expand below. Therefore, even if, as a preventive measure, the threat embodied by the Petitioners is relatively small (and we believe that this is not the case), the deterrent aspect must also be taken into account. Deterrence, as we explained, is the main element, which, as was explained, is completely legitimate, and certainly this is true when "the burden is placed" on a person who is not innocent. These two aspects together certainly justify the taking of the said measure against all three Petitioners.

Therefore, this contention of the Petitioners should also be rejected.

86. As for the Petitioner, she denies any involvement in the commission of prohibited activity, and even denied that she knew her brother was involved in such activity. She made these denials both to the Police and to the Committee.

On this point, we can only respond that the confidential information gathered in her matter is unequivocal and convincing, and, as stated, we would like to present this material to the Honorable Court *ex parte.* Furthermore, the Second Committee, which

heard her testimony, concluded that her testimony was not credible and was completely unreasonable. We refer to Pages 9-10 of the decision, which speak for themselves.

87. In sum, we can state that the measure under discussion is taken against the Petitioners, in part, because of their serious actions that harmed state security. This is not a case where the measure is taken against innocent persons.

Indeed, it is readily understood why Petitioners' counsel agreed, at the end of the hearing on 5 August 2002 before the Second Committee that the Petitioners would remain in administrative detention, as stated in Section 21 of the decision of the First Committee.

88. Having reached this stage, we shall now discuss the deterrent aspect. We repeat that, in the present matter, the deterrent aspect is considered only insofar as it adds to the personal involvement of the Petitioners through their acts in the service of terror organizations.

The deterrent aspect

89. As was explained above, deterrent acts are necessary during war, and are not forbidden as long as they are permitted by law.

For example, as part of these deterrent actions, the army has demolished houses in which terrorists who committed serious attacks lived. These demolitions are completely deterrent acts and this Honorable Court has held in a long line of decisions that this action, taken for deterrent purposes, is absolutely legitimate, and is consistent with international law and with domestic law, including the Basic Law: Human Dignity and Liberty.

The various arguments raised against this measure – primarily, that the action is collective punishment, violates international law, and is contrary to domestic law – were rejected by this Honorable Court, and the Supreme Court approved the fundamental legality of the said act. It was so decided in the past and the same is true now at this very time.

Because this extensive case law on this subject is directly relevant to the matter presently before the Court, we shall provide a brief survey of some of the principles established in this context.

90. As we shall immediately illustrate, there has been a consistent thread throughout the Honorable Court's decisions whereby the Court has held that nothing prevents the taking

of such actions, which have a deterrent nature, even if they harm a terrorist's relatives who were not proven to have acted against state security, the argument being that these are not acts intended to punish but to deter the masses. The case law has held that such actions, taken for this purpose, are at times necessary, and thus are not defective when taken.

91. On this point, we refer first to HCJ 126/83, *Balal Muhammad Zalah Abu Al'an v. Minister of Defence, Piskei Din* 37 (2) 169, 173, where the Honorable Justice Barak (as his title was at the time) held, as follows:

> **Indeed, the sanction set forth in Section 119 is not intended to punish; rather, its purpose is to deter those persons who breach public order, whose conduct causes the grave and lethal harm to other persons, who also are innocent.**

92. In similar spirit, the Court held, in HCJ 698/85, *Mazen Abdallah Sa'id Dagilas v. Commander of the IDF Forces, Piskei Din* 40 (2) 42, 44-45, as follows:

> **There is no basis for the Petitioners' complaint that demolition of the houses is collective punishment… The purpose of the regulation is "to achieve a deterrent effect," and such effect naturally must fall not only on the terrorist himself, but on those around him, certainly his relatives who live with him. He must know that his abhorrent acts will harm not only him, but are liable to cause great suffering also to his family. In this regard, the said sanction of demolition is not different from imprisonment of the head of the household, a father of small children, who are left without s supporter and without a person to support them and provide a livelihood. Here, too, relatives are harmed. Moreover, the courts have held more than once in their decisions that the Petitioner is obliged to take this into account before committing his wrongdoing, and he must know that his relatives, too, will be forced to bear and suffer the consequences of his acts. This is the law, as stated, regarding the demolition sanction. It is unnecessary to add that the concept "collective punishment" is completely**

> **unrelated to the sanction of house demolition: in the case before us, it is clear that the terrorists departed from certain houses, and these houses – and not other houses – are to be demolished. In any event, no "punishment" is imposed on the houses of persons who are unconnected to the matter, and it is hard to see where the argument developed that this case involves collective punishment.**

93. In HCJ 6026/94, *Abd al Rahim Hassan Nazal v. Commander of the IDF Forces, Piskei Din* 48 95) 338, 346, the Honorable Justice Matza states, as regards the deterrent nature of demolition, as follows:

> **We should, then, explain the reason for what has been said more than once: the purpose of the use of the means subject to the authority of the military commander, in accordance with Section 119(1), in the part relevant to our matter, is to deter potential terrorists from performing their murderous acts, as a necessary means to maintain security… To exercise the said sanction also has a severe punitive consequence, which harms not only the terrorist but others as well, mostly the relatives who live with him, but this is not its purpose, and it was not designed to harm them.**

Later in the same decision, the Court explains that the deterrent effect also applies in the case of a suicide terrorist. On this point, the Court described the considerations taken into account by the military commander in that matter, which were presented to the Court, in which the following considerations guided the commander in making his decision:

> **Two considerations swung the balance in this direction (deciding to demolish the house). One, and the primary reason, is that the person involved is a terrorist who is a member of an extreme Islamic terrorist organization, whose members "view death in an attack against Israeli targets as a positive consequence that ensures their place, as holy persons, in the next world." The second consideration is the severity of the attack. With the increase in severe attacks in recent months by extreme terrorist groups, and in light of**

> **their public declarations that they intend to commit more murderous attacks in the future, the respondent saw a vital need in deterring potential suicide-attack candidates. The message given to such a terrorist – that his death in committing a suicide attack will result also in serious harm to his relatives who live with him – will have, in the opinion of security officials, a deterrent effect.**

Regarding these considerations, the Court held:

> **I find no reason to dispute this approach. The magnitude and reasonableness of the means available to the competent authorities in maintaining security can only be measured on the background of the changing circumstances… Everyone knows and senses how great the willingness of terrorist organizations to commit terrorist attacks against Israelis, civilians and soldiers alike, has recently become, with the attackers committing suicide in the process. This is clearly a new dimension of crazed fanaticism, as to which the authorities responsible for security, in coping with this phenomenon, are allowed to use, *inter alia*, the means of confiscation and demolition of the home of the suicide terrorist.**

Further on in the judgment, the Court states, as follows:

> **The act of mass murder that the suicide terrorist committed on the passenger bus in Tel Aviv was committed on behalf of a terrorist organization, in whose announcements following the attack, not only praised the horrible murderous act, but also declared its intention to dispatch suicide bombers to commit additional acts of murder. In such circumstances, the need for deterrence is clear and obvious. This need is what dictated the change in policy by the defence establishment, and in these circumstances, I cannot say that the change was not required as a result of the new circumstances…**

> **Undoubtedly, the implementation of the demolition order will harm the Petitioners. The main brunt of the harm will be felt by the parents and five siblings of the terrorist… But this harm to the family of the terrorist is nothing more than the effect of exercising the sanction whose purpose – as noted – is not to punish the relatives, but to deter potential terrorists from committing murderous attacks. In the circumstances of the case before us, there is no reason to doubt that, as regarding its magnitude, the order meets the tests of reasonableness and relativity (or proportionality) as required by the Ottoman law.**

The said comments, made by the Honorable Justice Matza, with the concurrence of President Shamgar, Vice-President (as his title was then) Barak, and Justice Goldberg, apply to our case even more so.

94. **If, in 1994, when suicide bombings were in their infancy, and did not constitute an "epidemic," the Court held that it was necessary to take deterrent measures as stated, even more so today – following a period of less than two years in which there have been some 130 suicide attacks, in which hundreds of persons have been killed and thousands wounded – is it absolutely necessary to take deterrent measures to stop this deadly phenomenon which has far-reaching effects on the security of the State of Israel.**

95. And again, in HCJ 1730/96, *Adal Sallem Arbu Sabih v. Major General Ilan Biran, Piskei Din* 50 (1) 353, 364, in which the Honorable Justice Bach held that:

> **In their arguments, Petitioners' learned counsel repeated, *inter alia*, arguments that were raised at times in the past, attempting to show that demolition orders issued by the respondent are improper because they constitute collective punishment, in breach of fundamental concepts of justice and principles of international law.**
>
> **This court held in a line of decisions that the purpose of the orders under discussion is not to punish the families of terrorists who committed the attacks, but to deter potential**

> **offenders, at least some of whom are liable to be deterred from following through on their intentions if they know that doing so endangers not only their lives but also the homes of their relatives. This consideration is also likely to affect terrorists who intend to sacrifice their lives in suicide attacks.**

In her concurring opinion, the Honorable Justice Dorner agreed, stating that the purpose of the power to demolish houses is deterrent. She wrote as follows:

> **Indeed, the objective of the authority to demolish pursuant to Section 119 of the Emergency Defence Regulations, 1945, is deterrence, and we have no grounds to deny the respondent's contention that demolition of the houses of suicide bombers is liable to deter future terrorists.**

96. In Reh, HCJ 2161/96, *Rabhi Sa'id Sharif v. OC Home Front, Piskei Din* 50 (4) 485, in which the Court rejected an application for a rehearing on the judgment given in the case mentioned in the prior section, the Honorable President Barak states that the said matter presents nothing new, in that this judgment and its holdings are a link in a chain of decisions of the Supreme Court, which recognized the authority to implement this deterrent measure. The Honorable President emphasized that "the purpose of the means is not punishment by deterrence," and also held that this measure is not contrary to the requirements of the Basic Law: Human Dignity and Liberty. In his words:

> **The Basic Law: Human Dignity and Liberty touches on our matter… The power given in the Emergency Defence Regulations must be construed in the spirit of the provisions of the said Basic Law… Therefore, before the official holding the authority exercises the power given him in Section 119 of the Defence Regulations, he must be acting with a proper purpose in mind. In taking the deterrent measure, the official must act "to an extent no greater than necessary." This is the test of proportionality… This is the inspiration in interpretation resulting from the Basic Law.**

> **Its requirements are met in the case before us.** ***The purpose that the respondent had in mind is proper… The purpose is not punishment, but deterrence.*** **The measure taken is a logical way to accomplish the objective. The experts on whom the Court relied so stated. In the circumstances herein,** ***the measure is proportional. Being an accomplice to the cold-blooded murder of innocent persons is an extremely grave act. It justifies an extremely severe measure, after less severe means – such as sealing only – were found to be insufficient.*** **In this matter, too, a factual foundation has been laid before the Court. In this context, it should be mentioned that the Petitioner before me (the father of the applicant) and his family assisted the wanted person and maintained relations with him.** (Emphases added)

These comments, too, apply, with all due respect, to our matter, by way of the same analogy that was presented above.

97. We also refer to the comments of the Honorable President Barak in HCJ 2006/97, *Misun Muhammad Abu Fara Janeimat et al. v. OC Central Command – Uzi Dayan, Piskei Din* 51 (2) 651, 652, where he held:

> **We are aware that demolition of the structure harms the housing of Petitioner 1 and her children. This is not the purpose of the demolition order. It is not intended as punishment. Its purpose is to deter. However, it has a harsh effect on the family. The respondent thinks that this action is necessary to prevent further loss of innocent lives. He believes that pressure on the family is liable to deter the terrorists. There is no guarantee that this measure is effective, but among the few means remaining to the state to defend against "human bombs," this measure should not be underestimated.**

98. We also refer to HCJ 2/97, *Najah Arafat Abu Halawa et al. v. Major General Shmuel Arad OC Home Front Command, Takdin Elyon* 97 (3) 111, in which the Honorable President Barak rejected the argument that the respondent must refrain from demolishing

the house in that the family, according to the Petitioners, did not know about the acts of those living in the house with them and did not assist them in committing the attacks. In rejecting this argument, the Honorable President held, as follows:

> **I can only repeat the holding that the purpose in implementing Section 119 is deterrent and not punitive. By its nature, the section does not only harm those who actively collaborated in committing the terrorist act or those who knew of it and did not prevent it. Therefore, the Petitioners' contentions – even if correct (which was not proven) – do not indicate a defect in the discretion exercised by the respondents. The fact that in other cases, in which family members actively participated yet the authority set forth in Section 119 was not exercised, does not render improper its exercise in the present case, in which a foundation was laid as to the deterrent purpose and benefit inherent in its exercise.**

99. We also refer to the judgment given a few days ago (on 6 August 2002), in HCJ 6696/02, *Nahil Adal Sado A'mer et al. v. Commander of the IDF Forces in the West Bank, and Nine other Petitions Joined with It* (not yet published), where the Honorable President Barak held:

> **The State of Israel is engaged in hostilities. The army takes numerous combat actions whose purpose is to return security to the region and the state. In the framework of these actions – and because of their deterrent nature – the army wants to demolish houses in which terrorists who killed and shed blood lived. We have not been requested and shall not take any position on the necessity and effectiveness of the demolitions. That is a military matter, *and is part of the overall warfare.***

The judgment is attached hereto as Appendix R/12.

A few days later, in HCJ 6868/02, *Mahmud Zalah a-Din et al. v. Commander of the IDF Forces in Judea and Samaria and Eight Petitions Joined with It,* in which the Petitioners

attacked the respondent's decision to demolish, for deterrent purposes, houses in which terrorists lived, and argued that the action was forbidden because it was "collective punishment," and thus violated international law, and so on. On 8 August 2002, the Court denied all the petitions, holding:

> **As regards the matter in principle, this was examined in a long list of decisions, and we do not believe that there is reason to discuss them anew at this time.**

The judgment is attached hereto as Appendix R/12-A.

These are a few of the comments written regarding a measure taken for a deterrent purpose. For the sake of brevity, we did not bring the entire common law on the matter. We request that all the said principles be applied in the case herein.

100. As the common law presented above clearly shows, the deterrent objective of a certain action taken in the context of the war on terror does not make the action improper. Quite the opposite. This purpose is deemed legitimate and lawful.

Indeed, the many decisions presented above related to demolition of houses of terrorists (living or dead) as a deterrent means, but *the entire rationale set forth in the decisions applies and is correct also in the matter presently before the Court.*

101. As stated in the decision in *Nazal*, cited above:

> **The magnitude and reasonableness of the means available to the competent authorities in maintaining security can only be measured on the background of the changing circumstances.**

As was explained in the factual chapter, the security situation prevailing in our places has dramatically changed over the past two years, and, therefore, the government decided to use new means that were not previously used, and as to which the Attorney General gave his consent. In this context, the decision was reached to take also the measure of transferring terrorists' relatives who were involved in the commission of attacks, from their homes in Judea and Samaria to the Gaza Strip, the objective being to have families put pressure on their members who are considering committing attacks, and on those who are themselves considering committing attacks. The decision was based on professionals' evaluation

that this measure will help deter potential attackers from following through on their intentions.

102. As stated, since the beginning of the events, in September 2000, there have been some 133 suicide attacks (either by explosives or by other means) in which about 320 Israelis have been killed and 2,300 others wounded. Many dozens of other suicide attacks were thwarted "at the last moment." Suicide attacks are widely and unprecedentedly supported in the Palestinian street, and receive moral and economic support from terrorist organizations, charitable organizations in the "territories," states that support terror, and other institutions abroad.

103. Against the motives for the commission of these attacks (nationalist, social, religious, and personal motives), and the accompanying support system, there are few persons and entities acting to stop the phenomenon. Relatives of the terrorists have a conspicuous effect on the scope of the phenomenon of terrorist attacks. This effect results from the centrality of the "family" in Palestinian society, and among terrorists in particular.

Wills written by suicide bombers, their comments, and findings from interrogations of terrorists arrested by Israel all demonstrate, in the opinion of experts, the commitment that terrorists have to their families and their welfare, and make it clear that family support is among the factors that encourage the attacker to commit the attack wholeheartedly.

104. Information, part of which is confidential, that has recently been obtained, since Israel began to use deterrent means, including a relatively large number of demolitions of the houses of families of terrorists and the signing of orders assigning residence, clearly indicates that *these measures indeed had a deterrent effect on terror activity*.

For example, security officials received information indicating that terrorists, fearing that their families would subsequently be harmed, abandoned their intention to commit attacks. At the same time, this information shows that in certain cases, the families of terrorists averted (including by the use of physical force, as well as by persuasion) their relatives from committing attacks.

It goes without saying that the resultant saving of lives is invaluable.

105. It should also be mentioned that the heads of the military infrastructure of the terrorist organizations are aware of the terrorists' concern for their families, and some of the heads

state the difficulty they are having in recruiting suicide bombers at this time. They seek, therefore, to overcome these Israeli measures by employing patterns of activity that they did not use in the past, such as non-suicide attacks or not publishing the name of the suicide attacker.

For obvious reasons, we are unable to provide all the details that security officials have obtained in these subjects. However, we request to provide the details, *ex parte,* during the course of the hearing on the petition.

106. Again, in principle, as the Honorable Justice Bach said in *Sabih,* cited above, taking into account **"the deterrence of potential offenders, at least some of whom are liable to be deterred from following through on their intentions if they know that doing so endangers not only their lives but also the home of their relatives"** is absolutely legitimate.

Justice Bach believed that, as he put it, **"This consideration is also likely to affect terrorists who intend to sacrifice their lives in suicide attacks,"** and thus accomplish an objective of supreme import. As stated above, experience shows that this consideration indeed affects terrorists who considered committing attacks, including suicide attacks, and prevented the commission of several attacks.

107. It would not be superfluous to refer again to the comments made by the Court in *Nazal*:

> **The act of mass murder that the suicide terrorist committed on the passenger bus in Tel Aviv was committed on behalf of a terrorist organization, in whose announcements following the attack, not only praised the horrible murderous act, but also declared its intention to dispatch suicide bombers to commit additional acts of murder. In such circumstances, the need for deterrence is clear and obvious. This need is what dictated the change in policy by the defence establishment, and in these circumstances, I cannot say that the change was not required as a result of the new circumstances…**

These comments were stated following one of the first suicide acts, and are even more applicable today, when the news regularly reports the commission of mass murder on buses, in cafes, hotels, and elsewhere. As the Court stated, **"In such circumstances, the**

need for deterrence is clear and obvious." This need dictated the new turn in the defence establishment's policy, which decided that they had no option but to deter also by means of transferring the relatives of terrorists who assisted the latter from their homes in Judea and Samaria to the Gaza Strip. This change in policy was required by the new circumstances, and the decision to make that change was not defective in any way.

108. To this, we wish to add that all the judgments presented above emphasized that, even if the deterrent action harms innocent persons, such harm is not reason to prevent implementation of the deterrent action.

Even more so, it is clear that it would be improper to prevent the transfer to Gaza, on which the Respondent decided, as regards the Petitioners, because in this instance the persons harmed by the action are not "persons innocent of wrongdoing," but ones who, by their actions, assisted and supported the abhorrent activity of murderous terrorists who dispatch suicide attackers.

109. Regarding the deterrent benefit from implementing the said measure, the Petitioners argue that such benefit has not been proven. They also contend that, based on their evaluation, this measure will not generate any benefit.

This argument should be rejected. Defence officials, who are charged with safeguarding security, clearly stated that, according to their professional evaluation, this measure can surely assist in the war on terror if and when it is taken in conjunction with comparable measures (such as the demolition of terrorists' houses). The Petitioners have not proved that this professional evaluation is flawed in any way, and the contention they make on this issue is baseless.

The two Appeals Committees were given the confidential opinions of experts in the matter, and these experts also testified before the committees *in camera. T*he committees accepted the professional evaluations presented to them and held that they were reasonable and credible. There was no defect in making this holding.

Naturally, during the hearing on the petitions, we shall request to submit to the Court confidential opinions on this point and request that the experts be allowed to give testimony thereon *ex parte.*

110. In this context, we should mention that, in the petitions dealing with the demolition of houses as a deterrent measure, arguments similar to the above were raised, and the Court repeatedly rejected them, holding that the military commander has the authority to decide

on the effectiveness of demolitions, and that the Court will not interfere except in extreme situations.

111. On this point, we refer, for example, to HCJ 6026/94, *Abd Alrahim Nazal v. Commander of the IDF Forces, Piskei Din* 48 (5) 338, 348, in which the Honorable Justice Matza holds that:

> **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, we have never found reason to dispute, in this matter, the professional opinion of the officials charged with maintaining security.* Even when a contradictory opinion was submitted, the Court believed that, in a dispute between a person who is an expert and a person who is an expert but is also responsible for maintaining security, it is natural that preference will be given to the latter's opinion (HCJ 390/79, *Dweiqat v. Government of Israel, Piskei Din* 34 (1) 1). In most instances the argument was decided without delving into the expert opinions in one direction or the other…**
>
> **Even if we assume that in appropriate circumstances the Court is liable to interfere in the decision of a military commander, in the matter of the effectiveness of this or another measure, giving preference to the opinion of the opposing expert, the circumstances in which the dispute is presented to us herein do not provide a basis for such interference. Regardless of the personal impression of the judge based on his understanding and experience, he is unable to state positively that refraining from demolishing the houses of suicide terrorists will not make potential candidates hesitate even more than before as regards taking part in such attacks. In my opinion, it is sufficient that we are dealing in the unknown, where there is a likelihood (if only a small one) that taking the said measure may possibly**

save lives, to make us refrain from interfering in the assessment and decision of the Respondent.

These comments are appropriate literally to the matter presently before the Court.

112. Again, in HCJ 2006/97, *Meysun Muhammad Abu Fara Janeimat et al. v. OC Central Command – Uzi Dayan, Piskei Din* 51 (2) 651, 655, the Honorable Justice Goldberg held:

> **We shall not, and cannot, conduct scientific research to prove how many attacks will be prevented, and how many lives will be saved, as a result of the deterrent act of sealing and demolishing houses. However, as far as I am concerned, it is sufficient that it is not possible to negate the opinion that a certain degree of deterrence is accomplished, to keep me from interfering in the discretion of the military commander.**

113. And in HCJ 2/97, *Najah Arafat Abu Halawa v. Major General Shmuel Arad – OC Home Front, Takdin Elyon* 1997 (3) 111, the Honorable President Barak stated, as follows:

> **Regarding the effectiveness of the use of Section 119 and the measure of sealing houses – we were not convinced that implementation of the regulation does not deter, as the Petitioners contend herein. It should be mentioned that a contention of this kind was raised in the past, and rejected (see HCJ 242/90, *Alqatzaf v. Commander of the IDF Forces, Piskei Din* 44 (1) 614, 616, and HCJ *295/90, Abida v. Commander of the IDF Forces* (not yet published)). This contention was rejected in the past because of the lack of a sufficient factual basis. We studied the material presented to us. It did not convince us that the sealing or demolition of houses of a terrorist does not have a deterrent effect. The affidavits of the terrorists themselves are not proof on this point, in that the objective of the sealing is to deter persons around the terrorist, and not only the terrorist himself. It is also difficult to estimate how many potential attacks will be prevented by this deterrent means. We accept the**

respondents' position that the means set forth in Section 119 has a deterrent effect, even if the magnitude of the deterrence cannot be scientifically proven.

114. For all the aforesaid reasons, this argument made by the Petitioners, too, should be rejected.

115. In sum, taking deterrence into account is recognized as a legitimate consideration in the matter closest in nature to the matter under discussion. However, as was explained, it was decided not to issue assigned residence only on the basis of the deterrent effect, and not to exercise it against "innocent" persons. It was decided to issue such orders based on a combined "preventive – deterrent" grounds. This decision is reasonable and proportional, and properly balances the various considerations. As such, the decision is without defect.

116. In their petition, the Petitioners refer to the case law regarding the *deportation orders* to places outside of Israel, issued pursuant to Section 112 of the Defence Regulations, arguing that such deportation orders were only made in circumstances in which the specific candidates for deportation were security risks.

Our response to this contention is that, as we explained at length above, the sanction presently under discussion is much less harsh than the sanction of deportation, as the committee also held, and, therefore, no analogy can be made between the two.

Furthermore, the case law presented on the matter of deportation related to cases that were presented to it, and in these cases, the candidates for deportation indeed constituted a specific threat to security. The question of whether it is allowed to deport a person based on a combined preventive-deterrent grounds has never been heard, in that the Court was never presented with such a case. In the present case, too, it is not necessary to address the said question in the context of deportation, because we are dealing with a completely different matter.

117. The Petitioners also refer to a judgment whereby the authorities may not administratively detain a person if the individual does not constitute a threat to state security (Reh. Crim. 7048/97). According to the Petitioners, this judgment teaches that the measure taken against the Petitioners herein is forbidden.

This contention, too, must be rejected.

First, the Respondent contends that it was proved by the evidence described above that the Petitioners themselves endanger state security, in that they have shown by their acts that they are ready to take part in the terrorism, and the Petitioner also was administratively detained because of her activity. In any event, the rule set in that matter is not at all relevant to our case. Quite the opposite. The Court clearly held that a person may be held in administrative detention, even for years, if the defence officials continue to believe that the person would still constitute a threat to state security if he were released.

Second, the said judgment dealt with the sanction of administrative detention, which is a harsher sanction than that of the sanction under review, as the learned Pictet points out; thus, no analogy can be made between the two cases.

Third, the judgment on which the Petitioners rely did not relate to deterrence, or, in other words, the consideration of "preventing the masses." Nor did the judgment deal with the necessity to battle against the wave of suicide attackers, but with another matter altogether. In our matter, which involves the consideration of preventing the masses, and in a situation in which such prevention is extremely vital, the balance of interests completely changes, and nothing prevents this consideration from being combined with the consideration of preventing the specific person involved from continuing his activity.

Therefore, we request that the Petitioners' contentions raised along the said line be rejected.

Contentions based on international law

118. The Petitioners raise a number of contentions in the sphere of international law, to which we now respond one after the other.

The first contention is that the order issued against the Petitioners, regardless of the name given it and its title, is nothing other than a deportation order, and deportation is prohibited by international law. The Petitioners refer to Article 49 of the Fourth Geneva Convention, which states:

> **Individual or mass forcible transfers, as well as deportations of protected persons, from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of the motive.**

The Petitioners contend that this article prohibits the action taken by the Respondent against the Petitioners.

The Second Committee discussed this matter at length, and rejected the contention for each of the reasons set forth below.

119. First, the Committee pointed out, the case law has consistently stated that Article 49 is intended to prohibit only mass, arbitrary deportation of a population, such as that intended for the extermination of the population or for its transfer to forced labor.

The principal judgment in this matter is HCJ 785/87, *Affo v. Commander of the IDF Forces, Piskei Din* 42 (2) 4, and we refer to everything stated therein at length on this subject, from page 20 to the end. In any event, Article 49 does not prohibit removal of a specific person from the territory for security reasons, when the measure taken is allowed by the domestic law of the state ordering the removal, and when the person is given the opportunity to object to the decision. Therefore, even if the action were one of deportation, the said article is irrelevant herein.

The Petitioners seek to rely on the minority opinion of the Honorable Justice Bach, given in the said judgment; however, for all the reasons mentioned by the Honorable President Shamgar, with which Vice-President Ben Porat, and Justices Levine and Goldberg concurred, we reject the Petitioners' attempt to overrule the principle established by the majority in *Affo,* which was also held other cases (see, for example, HCJ 97/79, *Abu Awad v. Commander of the IDF Forces, Piskei Din* 33 (3) 309, and the sources that the First Committee referred to in Sections 30-35 of its decision).

120. Second, transferring the Petitioners to Gaza is not deportation within the meaning of this term in Article 49, even if we ignore the principle established in *Affo* and hold that even the deportation of individuals, for purposes of security, is forbidden. As the language of the article shows, deportation, according to its meaning in the article, is a situation in which a person in occupied territory is transferred to the territory of the occupying state or the territory of any other state. The present case clearly does not come within these prohibitions, because the Respondent did not direct that the Petitioners be transferred either to the territory of the State of Israel or to the territory of any other state. The Respondent directed that they be transferred from Judea and Samaria to the Gaza Region, and the Gaza Region is not, in any sense, the State of Israel.

Furthermore, as was explained, the two regions are viewed – according to the provisions of the Interim Agreement, quoted above – by the Palestinian side and the Israeli side, **as one territorial unit**. The world community also views these areas as such. In this situation, Article 49 is clearly inapplicable.

121. Third, Article 49 of the Fourth Geneva Convention must be read in conjunction with Article 78 of the same convention. Article 78 states:

> **If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures, concerning protected persons, it may, at the most, subject them to assigned residence or to internment.**

This article is clear: international law, as a rule, and the Fourth Geneva Convention, in particular, recognize that the residence of a person may be assigned for reasons of security. The end of Article 78 explicitly relates to protected persons who are assigned residence, and were required therefore to leave their homes. Thus, we see that the article explicitly recognizes the permission given by the Convention, in certain circumstances, to order a person to leave his home and go to live elsewhere. The Petitioners' arguments improperly ignore the need to construe Article 49 on the background of Article 78. Study of the two articles together clearly indicates that the Convention allows the transfer of a person from the place in which his home is located to another place, for reasons of security, provided that the transfer is not made to another state. Thus, the Respondent's action does not violate the Convention, but is consistent with it.

The Petitioners' proposed interpretation of Article 49, whereby the article prohibits, purportedly, any transfer of a person from the place of his residence to another place of residence, within the territory of one state or one political entity, expressly contradicts the wording of the Convention and its intent, and renders Article 78 of the Convention meaningless.

122. In this context, we should emphasize that the Respondents' position mentioned above, is consistent with the prohibition on the deportation and forced transfer of civilians, as stated in Article 49, as expressed in various sources dealing with this subject. For example, reference to this matter can be found in various sections of the Statute of the Hague International Criminal Court (see, for example, Section 7(1)(d) of the elements

constituting crimes against humanity), that forced transfer is prohibited where it is done "*without grounds permitted under international law,"* as mentioned in Section 147 of the petition in HCJ 7015/02.

123. A similar statement appears in Section 18 of the ILC Draft Code (compilation of proposed laws in the area of human rights that deals with crimes against peace and security, which were prepared by the UN's International Law Committee) and from the interpretation given to this section, which states that the prohibition on the forced transfer of persons *applies to arbitrary transfer used in a manner that is inconsistent with international law.* In the language of the ILC's interpretation of this section:

> **The term "arbitrary" is used to exclude the acts when committed for legitimate reasons… in a manner consistent with international law.**

124. In the spirit of these words, the statute of the international tribunal established to investigate the crimes committed in the former Yugoslavia states that the offense under discussion relates only to the *unlawful* forced transfer of civilians, and that there may be instances of forced transfer that are permitted by the rules of international law: "*unlawful* deportation or transfer or *unlawful* confinement of a civilian."

125. The judgment in *Krstic,* a case mentioned in the petition, notes that, in using the term "deportation," the prosecutor was referring to the forced displacement of civilians from the area in which they were lawfully present, to another area, *without grounds permitted by international law:*

> **… forced displacement of civilians from the area in which they are lawfully present *without grounds permitted by international law.***

126. We see from the above that forced transfer is prohibited only when no lawful grounds for it are found in international law. Clearly, then, when the transfer is made pursuant to Article 78 of the Convention, which is lawful transfer under international law, the transfer is permitted and not defective in any way.

127. We should also note that the judgment in *Krstic,* cited above, relates to the forced transfer of Bosnian Muslim civilians, based on their ethnic/religious origin, from their homes and towns, with the objective of clearing the territory in which people of this origin lived. It goes without saying that these forbidden acts differ completely from the order assigning

residence issued in the Petitioners' matter, which were given for purely security reasons. In the language of the tribunal, the evacuation itself was the objective, *and there was no military need or necessity to protect the civilians in carrying out the evacuation*:

> **527. In this case no military threat was present following the taking of Srebrenica. The atmosphere of terror in which the evacuation was conducted proves, conversely, that the transfer was carried out in furtherance of a well organized policy whose purpose was to expel the Bosnian Muslim population from the enclave. The evacuation was itself the goal and neither the protection of the civilians nor imperative military necessity justified the action.**

In these circumstances, it was improper to raise the said judgment in the present context, and such an analogy is offensive and groundless.

128. Furthermore, the Petitioners ignore Article 43 of the Hague Regulations, which states that the military commander has the authority to take any measure necessary to ensure public order and safety. It was in the spirit of this article that the Respondent acted in the present case.

The Petitioners also ignore the right to self-defence, which is a fundamental right in international law. On this point, see, for example, Article 51 of the UN Charter.

129. In sum, the measure of assigning the residence of a protected person is permissible under international law, and may be taken in accordance with the provisions of Article 78, and the provisions of Article 49 do not derogate therefrom.

130. In addition to the above, it should be mentioned that an extremely large number of court decisions have stated that the Fourth Geneva Convention is international treaty-based law, and it has not been proven that it is part of customary law. This determination was made both in general and specifically as regards the said Article 49 (see, for example, *Affo*, at page 39, and the references mentioned there). Therefore, the Convention not having been incorporated into domestic law, it cannot form a basis of support in a legal proceeding being conducted between the individual and the sovereign.

The Petitioners argue that, based on a few recent statements made by international tribunals, the entire Fourth Geneva Convention, from first page to last, has become part of binding international customary law. However, as explained in more than one of these

judgments, the burden of proof faced by those who contend that a provision of international law has become customary, is extremely heavy. See, in this matter, *Affo*, at page 48, and the references mentioned there.

This extremely heavy burden applies even more so on those who argue that the entire Convention has become part of binding international customary law.

Clearly, the Petitioners have failed to meet this burden, and surely have not lifted the burden of proof that they face in arguing that the firmly rooted and consistently applied rule of this Honorable Court, whereby the Fourth Geneva Convention as a whole, and Article 49 of the Convention in particular, are not part of international customary law, is mistaken.

131. Therefore, it is possible to summarize and say that, for each of the reasons set forth above, the Petitioners' contention that the orders signed by the Respondent violate international law should be rejected. In the alternative, and in the event there is substance in this contention (and, as stated, it is without substance), it is improper to rely on this provision of international law as a basis for requiring that the orders be voided, in that no proof has been presented to show that the provision is part of customary law.

Indeed, as has been explained many times in the past, the State of Israel has taken upon itself to comply with the humanitarian provisions of the Fourth Geneva Convention. However, the rule is that, despite this commitment, it is not permissible to rely on a provision that is not part of international customary law to impose a requirement on the state by means of court action.

132. Another argument raised by the Petitioners in this sphere is that, even if Article 78 is indeed relevant herein, it may be used only against persons who themselves endanger state security. In support of this argument, the Petitioners refer to the learned Pictet in his commentary on the Fourth Geneva Convention.

However, review of Pictet's comments indicates that, in deciding against whom to employ the said measure, the occupying power has extremely broad discretion. In his words:

> **It is thus left very largely to Governments, to decide the measure of activity prejudicial to the internal or external security of the State which justifies internment or assigned residence.**

See, Pictet's commentary on the Fourth Geneva Convention, cited above, at page 257.

On the following page, Pictet mentions that the fact that a person reaches conscription age, **in and of itself**, does not necessarily justify use of assigned residence or internment against the individual, unless there is concern that he will indeed be recruited into the combat forces. That is, where there is a fear – and a fear is sufficient – that a person reaching draft age will join the combat forces, the occupying power may intern him. Even more so, it is permissible to assign the residence of such a person.

If we apply these rules to our case, it is clear that it is permissible to assign the residence of a person who assisted terrorists in their activity, as the Petitioners herein did. Therefore, the Petitioners' argument should be rejected, even if it is assumed that it is proper to rely in an Israeli court on the said provision of the Fourth Geneva Convention as binding law, and that Pictet's interpretation on this subject ought to be adopted.

133. Another of the Petitioners' contentions is that the measure taken by the Respondent is "collective punishment."

This contention, too, is baseless. It is sufficient to mention that the Respondent did not take this measure in a sweeping manner against all the members of the families of the terrorists, but only against those against whom it was proven were involved in the terrorist activity.

In this context, we refer to the common law presented above regarding demolition of houses, in which the argument was rejected again and again that the demolition of the house of a terrorist, which harms his family, constitutes collective punishment.

134. These are the Petitioners' contentions and arguments in the international sphere and our responses to them.

Regarding the Petitioners' contentions relating to the personal circumstances, we wish to point out that the Respondent was aware of the Petitioners' personal condition, including the fact that the two male Petitioners are married with children, and that the Petitioner [in HCJ 7019/02] is unmarried, as well as the other personal considerations delineated in the committees' decisions. The Respondent, and the two committees, took these personal data into consideration and they were reflected in the decisions. So, too, was the situation prevailing in the Gaza Strip, which will create difficulties for the Petitioners, taken into account, even though the situation is not substantially different from that in Judea and Samaria. In any event, the considerations that led to the taking of the measure decided on

by the Respondent prevailed over the considerations relating to the personal situation of the Petitioners. Naturally, the need to take necessary measures against the grave and murderous wave or terror taking place in the state and region, by the unconventional means of "human bombs," prevails over the said personal considerations, and for this reason, the Respondent decided to leave his decisions as they were. There is nothing wrong in his doing so.

In any event, it should be recalled that the orders were issued for a period of only two years. It should also be recalled that, according to Section 86(f) of the Order Regarding Defence Regulations, the Appeals Committee will reconsider the orders every six months, even if the Petitioners make no such request.

Response to the other contentions raised in the petition

135. The Petitioners in HCJ 7015/02 raise various additional contentions against the procedure employed in their matter. We shall now respond to these contentions in the order they were raised.

Contentions regarding the procedure used by the Respondent

136. The Petitioners contend that, at the time the Respondent signed the orders assigning residence, on 1 August 2002, he was not in possession of all the relevant information that was later presented to the Appeals Committee.

137. Our response to this point is that the Respondent had been given the essential relevant information at the time that he signed the orders. This fact is sufficient to reject the contention.

138. Though unnecessary, we wish to add that issuance of the order assigning residence is only the first stage in the procedure pursuant to Section 86 of the Order. When an appeal was filed in the Petitioners' matter, the Appeals Committee delved into all the material in their cases, and then made its recommendation. Then the regional commander reconsidered the matter.

It goes without saying that the appeals procedure before the Committee is intended to bring about the submission of result all the relevant information, including information on behalf of the appellant (which clearly is not in the commander's possession when he signs the order), before a final decision is reached in the matter.

139. In these circumstances, no argument can be raised against the Respondent's final decision to let the orders assigning residence stand, and even if there were a flaw at the beginning – which we do not contend is the case – the flaw "was rectified" in the hearing before the Appeals Committee. Indeed this is its very function – to recommend to the regional commander whether to let stand the orders assigning residence that he signed.

It is important to note that the Appeals Committee hears all the information on behalf of the Respondent, which appointed it for that purpose, and the Respondent does not need to hear all the information. Rather, the commander can suffice with the Committee's recommendation, which delineate for him all the facts needed to make his decision.

The contentions against the Committee's independence in the Petitioners' matter

140. The Petitioners' contention that the Committee failed to maintain its independence and succumbed to pressure is unfounded and has not been proven whatsoever. Quite the opposite. The Committee leaned over backwards for the Petitioners. The Committee conducted long and thorough proceedings, in which it enabled counsel for the Petitioners to conduct extremely prolonged examination, at times by a number of attorneys. This is apparent from the minutes of the lengthy hearings that were appended to the petition.

Furthermore, despite the Respondent's request of 6 August 2002 to continue the hearings immediately, the Committee did not reconvene the hearings until 8 August, following a delay of two days, as the Petitioners wished.

In addition, at the request of Petitioners' counsel, the Committee did not hold hearings after dusk, although counsel for Respondent requested that the hearings continue, even though Petitioners' counsel were offered safe travel arrangements from the place where the Committee's hearings were being held.

We see, therefore, that these contentions are baseless and unfounded.

Contentions regarding the Respondent's purported "disregard" for the Committee's recommendation in the matter of Petitioner 2 in HCJ 7015/02

141. The Petitioners contend that the Respondent ignored the recommendation of the Appeals Committee to distinguish between the two Petitioners regarding the period that the order will remain in effect.

142. Contrary to the Petitioners' contention, the Committee did not recommend reduction of the period of the order assigning residence of Petitioner 2, but recommended that the

commander carry out the two orders assigning residence, including the one issued to Petitioner 2, which was for two years.

143. Indeed, the Committee pointed out to the Respondent that the acts committed by Petitioner 2 were more serious, at least in its eyes, than those of Petitioner 1, regarding measure of the period.

However, the Committee did not think it appropriate to recommend reduction of the period of the order assigning the residence in the matter of Petitioner 2, which was limited from the start to two years.

Second, we are involved with an advisory committee of the Respondent, to which due consideration must be given to its recommendations. However, the Respondent is not required to accept the recommendations in all their details, if he believes that there is good reason not to do so.

In these circumstances, the Respondent was entitled to adopt the Committee's recommendation as is, and to let the order stand, for the period stated, because the Respondent thought that the degree of involvement of Petitioner 2 in his brother's acts justified the period that had been set.

144. In any event, Section 86 of the Order provides for a review before the Appeals Committee every six months, so the length of the order will be considered during the review, giving account to the relevant circumstances, including those of time and place.

Contentions relating to violation of the principles of natural justice

145. The Petitioners contend that the Committee held a hearing session on 6 August 2002 at which Petitioners' counsel was not present.

Our response is this: Petitioners' counsel indeed was not present at one session. In this instance, Respondent's counsel requested that the Committee reconvene rapidly, after it decided to postpone the hearing for two days. But the Petitioners fail to mention that Petitioners' counsel, Attorney Wolfson, who was summoned to this session, which was held on the afternoon of 6 August, decided on his own not to appear. The Committee waited an hour for Attorney Wolfson, and when he did not appear, decided to hold the hearing in the absence of Petitioners' counsel. The decision of the Committee clearly mentions this fact.

In these circumstances, there is more than a bit of audacity in raising any contention of this kind.

A photocopy of the Committee's decision of 6 August 2002 is attached hereto as Appendix R/7.

We should also mention that the Petitioners did not attach this decision to their petition, although it did attach the other Committee decision, a clear case of the lack of good faith on their part.

146. Furthermore, requests of this kind may also be heard *ex parte.* It goes without saying that, at the session held on 6 August, the Committee did not hear any arguments substantively relating to the orders. The only argument raised related to the clear security need to reconvene immediately.

147. It would not be superfluous to point out again that, despite the Committee's decision to resume its hearings on 7 August in the presence of the parties, Petitioners' counsel again made a decision on their own, and only one of their attorneys appeared. He stated that he was not prepared to continue, which compelled the Committee to set the hearing for 8 August.

148. In these circumstances, the contentions regarding violation of principles of natural justice are baseless and should be rejected.

Contentions relating to infringement of the right to be heard

149. The Petitioners contend that their right to be heard before the Appeals Committee was infringed. As we see from the minutes of the Committee's hearings, contrary to the Petitioners' contention, the Committee in fact showed great patience in the Petitioners' matter, and conducted a long and orderly proceeding over a period of days. It would not be superfluous to mention that the Committee even allowed more than one attorney [on behalf of the Petitioners] to examine the witnesses, and even allowed the examination to extend beyond the time set for questioning.

150. Furthermore, during the proceedings, the parties were allowed to submit a brief covering the entire issue, giving them four days to do so. As we know, the right to be heard can be satisfied, in appropriate circumstances, in writing only, and, as noted, the Committee also held long oral hearings, in which witnesses were examined.

151. Therefore, there is more than a little audacity in the Petitioners' contention that they were not given the full right to be heard before the Appeals Committee.

152. The Petitioners contend that they were not allowed to interrogate the [GSS agent] nicknamed "Gid'on". It should be particularly noted that the testimony of "Gidon" is classified, and the Committee determined that it was not possible to allow the Petitioners to interrogate him without breaching confidentiality, and that, under the circumstances, it was not justifiable to permit cross-examination.

It should be pointed out that the other GSS agent, nicknamed "Yuri," was cross-examined at great length by the Petitioners, so a contention that the Petitioners' substantive right to be heard in this matter was infringed is extremely weak.

153. The Petitioners raise contentions regarding the failure to respond to interrogatories that they submitted.

As even the Petitioners pointed out in their petition, the interrogatories were submitted very late. The Committee found that the Petitioners' reasons for the delay were patently unfounded, and that the Petitioners had shown disdain for the Committee's decision, and thus found it proper not to extend its hearings to enable responses to be given to the interrogatories, after it took into account the lengthy hearings, which resulted in large part from the actions of Petitioners' counsel. On this point, see the Committee's decision of 7 August 2002, attached hereto and marked R/14.

This decision is not defective in any way.

Contentions on causing the "disappearance" of the testimony of the GSS agent nicknamed "Haim"

154. The Petitioners contend that the GSS agent nicknamed "Haim", who testified and was cross-examined during the hearing before the Second Committee, as regards the Petitioner [in HCJ 7019/02], was not raised for discussion before the Committee that heard their matter, and that they were not given the opportunity to cross-examine him.

155. Each party is responsible for bringing the witnesses that it wishes to testify before the Appeals Committee, giving regard to the relevance of the said witness to the matter at hand. The Petitioners have no right to require the Respondent to present further witnesses on his behalf, where he believes that the testimony given on his behalf provides a sufficient basis to prove his case.

156. As an aside, if we consider the decision of the Appeals Committee regarding the Petitioner [in HCJ 7019/02], not only would the testimony of "Haim" not aid the Petitioners, the opposite is true. Thus, they were surely caused no harm by the failure of the latter to testify before the Committee that heard their case.

Contention relating to the failure to provide evidence and witnesses pursuant to the Petitioners' request

157. The Petitioners contend that they were not permitted to cross-examine the representative of the regional commander as regards the considerations that led him to issue the orders assigning residence.

It should be noted that the Respondent's position and the considerations he took into account were explained very well by his counsel during the Committee's hearings and in the brief submitted to the Committee on his behalf. Under these circumstances, it was unnecessary to permit the interrogation of the Respondent or a person on his behalf. On this point, we refer to the opinion of the Honorable Court in HCJ 1361/91, *Masalem v. Commander of the IDF Forces in the Gaza Strip, Piskei Din* 45 (3) 444.

158. The Petitioners contend that neither they nor the Committee were provided a protocol of the meeting held in the Attorney General's office, or a summary of his final recommendation.

As the first Committee held, the said documents are irrelevant. The protocol itself is a summary of an internal discussion, and there is no legal basis for disclosing it. Regarding the recommendations of the Attorney General, we note that the legal position taken by the Respondent's counsel before the Appeals Committee was in accord with the Attorney General's instructions, and that the Attorney General was consulted in the matter of the particular Petitioners herein, ***and this consultation took place before the orders assigning residence were signed.***

159. The Petitioners further contend that they were not provided further evidentiary material collected from the family members (statements, memoranda, and the like).

First, we should mention that all the unclassified material was provided to the Petitioners.

However, some of the investigation material regarding the family members who were questioned is currently classified, as no decision has yet been made whether to file an indictment against one or another of them. Furthermore, in accordance with its decision

of 4 August 2002, the Committee studied the investigation material relating to the family members, and found that it would not aid the Petitioners.

160. The Petitioners contend that they were not allowed to interrogate the GSS agents who questioned the Petitioners, or the police officers who took their statements.

On this point, we have a dual response. First, we are involved in an advisory body, and not a criminal proceeding in which a "mini-trial" is held, so the Committee was permitted to rely on the administrative evidence before it, and it was not required to allow the investigators and police officers to testify.

Second, and this is the main point, as clearly appears from the protocol of the hearing of 8 August 2002, attached as Appendix P/7 of the petition, when the Petitioners gave their testimony, the Petitioners themselves admitted on cross-examination that they were *well treated* during their interrogation. Thus, there was no substantive reason to order that the interrogators and police officers testify as to the manner in which the Petitioners' statements were given.

161. We may summarize, therefore, and say that these additional contentions are baseless and should be rejected.

Summary

162. The State of Israel finds itself currently in an armed conflict forced on it, a conflict like no other in modern times. The armed conflict reached its lethal peak in recent months. In this conflict, the Palestinian side has used, *inter alia*, human bombs who enter Israel and communities in Judea and Samaria and the Gaza Region, bringing killing and bloodshed to the streets of its towns and settlements.

The government of Israel and the cabinet decided on a list of measures intended to combat this deadly phenomenon. One of these measures is transfer, from Judea and Samaria to the region of the Gaza Region, of relatives of terrorists, in cases in which the relatives were involved in the terrorist acts.

163. This measure was decided by the political echelon – the Prime Minister at its head – based on the assessment of the military and the General Security Service, which was provided to the political echelon, that this measure can contribute significantly to the security forces in the struggle against the wave of murderous attacks that have affected the state recently, and would save lives. Therefore, security officials and the

political echelon believed that it was very important to implement this measure, and to do so *as quickly as possible.*

The said decision was not reached lightly or with pleasure. It was taken following much indecision.

However, as was explained at length in this response, the security considerations prevailing in our places have changed dramatically in the past two years, which led the government to take measures that had not been previously used, measures that have been approved by the Attorney General. In this context, it was decided also to take the measure of transferring relatives of terrorists, who were involved in the execution of terrorist attacks, from their homes in Judea and Samaria to the Gaza Strip. The purpose is to cause families to put pressure on their relatives considering committing attacks, and pressure on those considering committing attacks themselves. The measure is based on the assessment of the relevant professionals that it will deter potential terrorists from carrying out their intentions. This assessment has substantial support, and as we explained in this response, recently received information, some of which is confidential, clearly indicates that deterrent measures taken by Israel, including the demolition of the houses of families of terrorists in relatively large numbers and the issuance of orders assigning residence, *have indeed had a deterrent effect on terrorist activity.*

Among other things, security officials received information whereby terrorists changed their intention to commit an attack because of the fear that their families would be harmed as a result. Simultaneously, this information indicates that in certain cases, relatives of terrorists dissuaded (at times by physical means, and at times by persuasion) their relatives from carrying out attacks. These facts are extremely important in the war against the scourge of terror.

In addition, deterrence is recognized as a legitimate consideration in the most comparable case to that presently under review, and the Honorable Court recognized that it was permissible to demolish the houses in which terrorists lived, and that demolition was allowed for purely deterrent reasons. However, as we explained, in the present case, it was decided not to issue orders assigning residence solely for the sake of deterrence, and not to exercise this sanction against persons who had not acted wrongly. The decision was made to issue these orders based on a

combined *"preventive-deterrent"* basis, only against persons who were involved in terror.

This decision *is not defective.*

This decision is *reasonable and proportional.*

This decision *properly balances* the various considerations.

This decision *is consistent with both domestic law and international law*.

164. Therefore, in light of the aforesaid, the Honorable Court is requested to deny these petitions and revoke the temporary injunction that was issued upon the filing of the petitions.

165. This response is supported by the affidavit of the Respondent, the Commander of the IDF Forces in Judea and Samaria, which is attached hereto.

Today: 7 Elul 5762
15 August 2002

[signed]	*[signed]*
Aner Helman	Shai Nitzan
Senior deputy for the State's Attorney	In Charge of Security Affairs in the State's Attorney's Office