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**At the Supreme Court**  
**Sitting as the High Court of Justice**

**HCJ 584/13**

In the matter of:

1. \_\_\_\_\_ Yusef, ID No. \_\_\_\_\_
2. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger – Registered Association**

All represented by counsel, Adv. Tal Steiner (Lic. No. 62448) and/or Hava Matras-Irron (Lic. No. 35174) and/or Sigi Ben Ari (Lic. No. 37566) and/or Anat Gonen (Lic. No. 28359) Daniel Shenhar (Lic. No. 41065) and/or and Noa Diamond (Lic. No. 54665) and/or Nimrod Avigal (Lic. No. 51583) and/or Benjamin Agsteribbe (Lic. No. 58088) and/or Bilal Sbihat (Lic. No. 49838)

Of HaMoked Center for the Defence of the Individual,  
founded by Dr. Lotte Salzberger  
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Tel: 02-6283555; Fax: 02-6276317

**The Petitioners**

v.

1. **Military Commander of the West Bank**
2. **Coordinator of Government Activities in the Territories**
3. **Supervisor of Population Registry in the Civil Administration**

**The Respondents**

### **Petition for Order Nisi**

A petition for an *order nisi* is hereby filed which is directed at the respondents ordering them to appear and show cause:

1. Why they should not respond to petitioners' applications as required under the law and in view of the nature of the applications submitted to them;
2. Why they should not update petitioner 1's address in the copy of the Palestinian population registry in their possession, in accordance with the update notice transferred to them by the Palestinian

Authority according to the interim agreement, so that the copy of the registry would comply with the original registry and the facts as they are.

### **Petition for an Interim Order**

A petition for an interim order is also filed which is directed at the respondents ordering them not to forcibly transfer petitioner 1 to the Gaza Strip, based on her erroneous address as registered in the copy of the Palestinian population registry in their possession.

Petitioner 1, who has been living in Qalqiliya, which is located in the West Bank, since 1994, submitted three notices concerning a change of the address registered in her identification card to the Palestinian Authority civil affairs office. The office of civil affairs relayed the notices to the respondents, for their handling, but for many months, and until the filing date of this petition, said notices and petitioners' letters to the respondents remained unanswered.

The petitioner, a young woman, has been residing in the West Bank since 1994. The petitioner and her family relocated to the West Bank in 1994, when she was only one year old. She lives in the house of her aunt in the West Bank and has no connection whatsoever with the Gaza Strip. It is only evident that her forcible transfer to the Gaza Strip will cause her severe damage. This is particularly so in view of respondents' position concerning the heavy limitations on the movement to and from the Gaza Strip.

Recently the respondent notified in HCJ 4019/10 **HaMoked: Center for the Defence of the Individual v. Military Commander of the West Bank**, that Palestinians who moved from the Gaza Strip to the West Bank until September 12, 2005 would not be forcibly transferred to Gaza "unless there is a specific security justification for their forcible transfer."

However, since she has no document in her possession which attests to the fact that she should not be forcibly transferred, and due to the fact that her registered address is in Gaza – the petitioner is concerned that she will be suddenly forcibly transferred to the Gaza Strip. As will be further elaborated in this petition below, her concern is based on years of living in fear and on past experiences of individuals in petitioner's condition, despite similar general undertakings made by the respondents in the past.

### **The factual infrastructure**

#### **The parties**

1. Petitioner 1 (hereinafter: the **petitioner**) is a young Palestinian woman. She is eighteen years old and lives in Qalqiliya which is located in the Occupied Palestinian Territories (OPT). The petitioner, who was born in the Gaza Strip, moved with her parents to the West Bank in 1994, when she was a baby under one year of age. In that year her parents divorced. A few years later petitioner's parents established new families, whereas the petitioner continued to live in the house of her aunt, Mrs. Intesab Yusef, who was even appointed as her official guardian. It should be emphasized, that since she was a baby, the petitioner's entire life and world were spent in the West Bank: she resided with her aunt's family over there, she went to school over there and she made her friends over there.

A copy of the order issued by the Sharia court in Qalqiliya, which transferred the guardianship over petitioner 1 to her aunt, Mrs. Yusef, is attached and marked **P/1**.

A copy of a certificate issued by the Al-Israa girls school in Qalqiliya certifying that the petitioner has attended school in the school year 2008-2009, is attached and marked **P/2**.

A copy of petitioner's health insurance certificate issued in Qalqiliya is attached and marked **P/3**.

2. As will be further described in detail below, the petitioner applied twice to the Palestinian Authority civil affairs office in order to change the address registered in her identification card, which notices were relayed by it to the respondents. Nevertheless, the respondents failed to provide any pertinent response to petitioner's notices, despite the repeated letters of petitioners 1 and 2 in that regard.
3. Respondents' lengthy disregard of the letters which were forwarded to them leaves the petitioner in a very difficult situation: for as long as her address is registered in the Gaza strip she is under the risk of being transferred to the strip, where she knows no one, without warning; each passage in the many checkpoints spread over the OPT involves detention and questioning regarding her place of residence and stay, ostensibly without permit, in the West Bank; if she wants to go abroad, she must submit a special application for this purpose and prove that there is a "humanitarian need" which justifies her departure; and if indeed her departure abroad is approved, she will have to submit an additional application requesting the respondents to enable her to return to the West Bank – an application which may be rejected. Consequently, the petitioner will be, *de facto*, distanced for ever from her home and family.
4. Due to these limitations, which result from respondent's rules, the petitioner is afraid to pass through the checkpoints spread all over the West Bank and refrains from leaving the boundaries of her city. Thus, she was forced to give up seminars and school trips which were organized by her high school, while her school mates were free to move around the West Bank as they pleased; when her family members went to visit their relatives in Jordan, the petitioner had to stay behind; she could not attend both the wedding celebration of her niece, to whom she is tagged like a sister, which took place in Hebron, as well as her grandfather's funeral which took place in the Gaza Strip; and she can not realize her plans and move to Ramallah to study coiffure and cosmetics, together with another niece who enrolled in school. Her entire life is confined to Qalqiliya and to her aunt's house; She is disconnected from her extended family and all her aspirations and plans for the future are frozen.
5. It is easy to imagine the constant anxiety caused to the petitioner by these circumstances, when each departure of the town boundaries may end up with her permanent distancing from her home and family, or at least, by long detentions the outcome of which is unknown; the feelings of frustration and suffocation she experiences, due to the fact that she can not visit her relatives in Gaza or abroad and take part in events of her extended family and she is always forced to stay behind; and the hopelessness that she feels when all her dreams and aspirations are hanging by a thread and may vanish in a minute – all at respondent's decision.
6. Petitioner 2 (hereinafter: **HaMoked for the Defence of the Individual** or **HaMoked**) is a not-for-profit association which acts to promote human rights in the OPT.
7. Respondent 1 is the military commander of the West Bank area on behalf of the State of Israel which holds the West Bank under belligerent occupation for forty five years.
8. Respondent 2 is in charge of the implementation of the Israeli policy in the West Bank, concerning, *inter alia*, the population registry in the OPT.

9. Respondent 3 is in charge, on behalf of respondent 2, of maintaining a copy of the Palestinian population registry which is held by the Israeli side, in accordance with the interim agreement between Israel and the PLO and the military legislation which entrenches it in the OPT.

### **Exhaustion of remedies**

10. In October 2011, when the petitioner was 17 years old, her aunt and guardian, Mrs. Yusef, applied to the Palestinian Authority civil affairs office, for the purpose of receiving for her a first identification card. The address which was registered in the address rubric of the identification card which was issued to the petitioner was – "Gaza". When petitioner's aunt asked why such registration was made, in view of the fact that the petitioner was living with her in Qalqiliya, she was told that due to the fact that petitioner's birth certificate indicated that she was born in Gaza, the same registration was made in her identification card.
11. In that same month the petitioner wrote to the Palestinian Authority civil affairs office and requested that her notice of change of registered address to the correct address in the West Bank be relayed to the military commander.
12. Three months later, as no response has been obtained, the petitioner applied again to the office of civil affairs – where she was told that her application was still "in process".
13. On March 20, 2012 HaMoked wrote to the public liaison officer of the coordinator of government activities in the OPT, and requested to make sure that petitioner's application was received by them and that it was being handled.

A copy of HaMoked's letter dated March 20, 2012 is attached and marked **P/4**.

14. Since no response has been obtained, HaMoked wrote again to the coordinator of government activities.

A copy of HaMoked's letter dated April 16, 2012 is attached and marked **P/5**.

15. On April 17, 2012, the public liaison officer replied to HaMoked's letters. In his letter the officer stated that petitioner's application has not been transferred to them, and that she should apply again to the Palestinian Authority civil affairs office and resubmit her notice.

A copy of the letter of the public liaison officer dated April 17, 2012 is attached and marked **P/6**.

16. Having no other choice, the petitioner applied again to the office of civil affairs on July 29, 2012 and resubmitted her change of address notice.
17. On August 2, 2012, HaMoked wrote again to the coordinator of government activities, notified that the petitioner has resubmitted her notice and requested to verify that the application was received and that it was indeed being handled.

A copy of HaMoked's letter dated August 2, 2012 is attached and marked **P/7**.

18. On August 26, 2012 HaMoked received another letter from the public liaison officer of the coordinator of government activities, concerning the application of the petitioner and others in her condition, whose cases were handled by HaMoked at that time. In his letter the officer stated, for the first time that "we intend to transfer final answers concerning a change of address solely to the Palestinian Authority, through which updated information may be obtained

concerning individual decisions which were made within the framework of the political gesture."

A copy of the letter of the public liaison officer dated August 22, 2012 is attached and marked **P/8**.

19. On September 4, 2012 HaMoked wrote to the coordinator of government activities in the territories and protested against the above notice of the public liaison officer. In its letter HaMoked emphasized that as an Israeli human rights organization and a not-for-profit association duly registered in Israel, it acted *vis-à-vis* Israeli parties, including military officials and that it expected that a response to its applications would be received from them. HaMoked protested against the severe injury which would be inflicted upon its work and the welfare of the individuals who used its services as a result of the sudden decision of the coordinator of government activities, and pointed at the absurdity of referring it to the Palestinian Authority for the purpose of receiving information concerning decisions made by military officials.

A copy of HaMoked's letter dated September 4, 2012 is attached and marked **P/9**.

20. Two weeks later and as no response has been obtained, HaMoked sent a reminder to the public liaison officer.

A copy of HaMoked's letter dated September 23, 2012 is attached and marked **P/10**.

21. After the elapse of two additional weeks, with no response yet, HaMoked sent a second reminder to the public liaison officer.

A copy of HaMoked's letter dated October 10, 2012 is attached and marked **P/11**.

22. On October 21, 2012 the public liaison officer replied to HaMoked's letter. In his letter the public liaison officer advised that "we re-examine the issue in general [...] we will advise you as soon as a decision concerning this issue is made."

A copy of the letter of the public liaison officer dated October 21, 2012 is attached and marked **P/12**.

23. Since then and until the filing date of this petition, for three months, HaMoked has not received the response of the public liaison officer and the results of the "examination" conducted by the coordinator of government activities. HaMoked's handling of the petitioner and other applicants like her has come to a complete halt, and her condition has in fact been "frozen" – with her registered address unchanged and the risk of being expelled to the Gaza Strip constantly hovering over her.

24. At the same time, the petitioner continued to follow up on the status of her change of address notice which was submitted by her to the civil administration office in October 2011 and again in July 2012. To her surprise, in December 2012 she was told that there was no application under her name in the data bases of the office, and that she should submit her notice for the third time. Having no other choice and with great frustration, the petitioner submitted her notice to the civil administration office in December 2012, so that it will transfer it to the respondent. On December 16, 2012 a representative of the office confirmed to the petitioner, over the telephone, that her application was indeed recorded in the data bases of the office, upon its submission.

25. Forty five days elapsed since petitioner's third notice has been submitted. Yet, neither the application nor Hamoked's letters concerning her case and cases of other applicants like her have been answered by the respondent. In view of the fact that the respondent disregards the applications submitted to him, the long exhaustion of remedies and the injury suffered by the petitioner, the petitioners have no alternative but to turn to the court.

**Background: The Palestinian Population Registry, its effect on the lives of the residents of the West Bank and HCJ 4019/10**

**A. The Palestinian Population Authority and the registration of the addresses of the residents of the OPT**

26. The legal situation which prevailed from the occupation of the OPT and until the entering into effect of the Oslo Accords concerning the update of an address registered in the Palestinian population registry, was entrenched in section 13 of the Order on Identity Cards and Population Registry (Judea and Samaria) (No. 297), 5729-1969 (hereinafter: the **Order on Identification Cards and Population Registry**) according to which a resident of the OPT is obligated to notify the competent authority of a change in his address within 30 days from the actual change:

If any of the items specified in section 11 was changed or amended, a resident who received an identification card must notify of the change within 30 days to the population registry office in the jurisdiction in which he resides, as will be determined by the competent authority.

A copy of the Order on Identification Cards and Population Registry as updated is attached and marked **P/13**.

27. It should be emphasized that this is a retroactive reporting obligation only regarding a change of address of a Palestinian residing in the OPT, similar to the obligation imposed upon Israelis within Israel, and that it was not conditioned upon a prior or later approval of the military commander or any other party. This is clearly indicated by the military order.
28. It should be further noted, that the provisions of the order and the provisions of the Population Registry Law, 5725-1965, which applies in Israel, are almost identical. This is the place to note that this court has stressed in many judgments that the status of the population registry was that of a prima facie evidence, and that the registration officer's discretion was limited to technical matters concerning the authenticity of the certificate submitted for registration. We shall further elaborate on this issue herein below.
29. The interim agreement which was signed between Israel and the PLO (the **Oslo Accords**) transferred the powers in this area to the Palestinian Authority, and it was provided that the Palestinian Authority would maintain the population registry of the OPT residents. And as stated in Article 28 of Annex III to the Oslo Accords:
1. Powers and responsibilities in the sphere of population registry and documentation in the West Bank and the Gaza Strip will be transferred from the military government and its Civil Administration to the Palestinian side.

Article 28 of Annex III to the Oslo Accords is attached and marked **P/14**.

30. At the same time, updating procedures were established by Article 28 the purpose of which is:

10...to avoid discrepancies and with a view to enabling Israel to maintain an updated and current registry.

These procedures imposed upon the Palestinian Authority an obligation to transfer to the Israeli side update notices concerning amendments of the data in the Palestinian population registry.

Immediately thereafter it was explicitly stated, that with respect to addresses:

The Palestinian side shall inform Israel of every change in population registry, including, *inter alia*, any change in the place of residence of any resident.

31. It should be noted that the Oslo Accords and Article 28 of Annex III, constantly speak of "the residents of the Gaza Strip and the West Bank" in one breath, and refer to one registry rather than to two population registries. There is no specific reference to an address update between the two parts of the OPT, in accordance with the fundamental principle set forth in the Accords, under which the Gaza Strip and the West Bank constitute one territorial unit.

32. The Manifest on the Implementation of the Interim Agreement (Judea and Samaria) (No. 7), 5756-1995 (hereinafter: **manifest No. 7**) imported the Oslo Accords, including Annex III, into the military legislation. Article 5 of the manifest provides as follows:

The transfer of the powers and areas of responsibility in accordance with Annex III of the interim agreement consists of the transfer of all rights, obligations and undertakings pertaining thereto, and the provisions of the interim agreement will apply in this regard.

A copy of manifest No. 7 is attached and marked **P/15**.

33. The provisions are explicit and clear: the power to update the registered address of a resident of the Palestinian Authority was transferred to the Palestinian side. To ensure that Israel has an accurate copy of the Palestinian population registry, it was determined that the Palestinian side should update in retrospect the Israeli side of any change made by it in the registry – while especially emphasizing the obligation to notify of changes made by the Palestinian side in the residential address.

34. Notwithstanding the above, since 2000 the respondents have implemented a sweeping policy, under which they have refused to update the copy of the registry in their possession in accordance with the notices transferred to them by the Authority. Worse than that. Over the years the respondents started to rely only on the dated copy in their possession, and instructed the soldiers on site to rely solely on such copy – and on the dated addresses contained therein.

35. This policy causes, *inter alia*, repeated detentions of the resident; difficulties in obtaining services by the DCO at the place of residence of the resident; difficulties when the resident travels abroad and when he returns to his country; and above all – life in the shadow of a constant fear of expulsion.

36. As is known, and as has been often held, the population registry is a statistical tool, and the registration officer has no discretion whatsoever while recording the information. This rule applies even more forcefully to a copy of the registry, and to update notices which are transferred to the officer by the Palestinian Authority in accordance with the interim agreement.
37. In 2011 Israel decided to make a "**political gesture**" *vis-à-vis* the Quartet representative to the middle east, Mr. Tony Blair, and *vis-à-vis* the Palestinian Authority. Within this gesture the military commander undertook to confirm the changes of address of residents of the West Bank who were registered as residents of the Gaza Strip, provided they have been continuously residing in the West Bank since July 31, 2007, and there was no security preclusion which concerned them. This gesture was limited to a quota of 3,000 individuals and was later on extended to 5,000; In addition, initially the gesture applied only to Palestinians who moved to the West Bank until the eruption of the security incidents in 2001, and was later on extended to all Palestinians who moved to the West Bank until July 31, 2007.

A copy of the letter of Major Nir Keidar, head of the economic humanitarian division in the international law branch at the headquarters of the chief military advocate general, specifying the criteria for a change of address within the framework of the political gesture, dated July 23, 2012, is attached and marked **P/16**.

38. In HCJ 4019/11 **HaMoked: Center for the Defence of the Individual v. the Military Commander of the West Bank Area** which will be discussed below, respondent's counsel advised that the political gesture was intended to include 5,000 individuals, whereas as of January 2012 the Authority has transferred to the respondent the names of 3,800 residents out of whom the respondent agreed to update the addresses of 2,450 residents and 1,440 minors accompanying them. Hence, the quota of the residents entitled to have their address changed within the gesture has not yet been exhausted.

A copy of a "Notice on behalf of the Respondents" in HCJ 4019/10 dated January 31, 2012 is attached and marked **P/17**.

39. We would like to note that the petitioner complies with the conditions of the political gesture: she moved to the West Bank many years before the due date, as early as 1994, and it has never been argued that there was any security preclusion which concerned her. However, and although the quota of the residents within the political gesture has not yet been exhausted, the respondent has not yet updated the addresses of the petitioner and other residents like her, and has even completely ceased answering HaMoked's letters in this regard – all as specified in detail above, in the exhaustion of remedies chapter.

#### **B. The practical importance of keeping an updated copy of the population registry in Israel**

40. The update of the copy of the registry held by Israel has a practical importance, since it has far reaching implications on the lives of the residents of the OPT. HaMoked was forced to handle many cases of Palestinians, who, due to respondents' policy, encountered different problems and difficulties – up to their expulsion from their homes by the respondents – only because their registered address in the copy of the population registry held by Israel was "frozen" by the respondents in a dated and incorrect state.

41. In accordance with respondent's data, as specified in HCJ 4019/10, in 2010 eighteen residents were expelled from the West Bank to the Gaza Strip due to their registered address, and in 2011, seven residents were expelled (the above referenced Exhibit P/17).
42. HaMoked handled several cases of forcible transfer of West Bank residents whose registered address was Gaza, and has even managed to cause the expulsion to be canceled and to enable them to return to their families in the West Bank:
43. HCJ 5504/03 **Kahlot v. Commander of IDF Forces in the West Bank** (not published), concerned the case of a 30 year old Palestinian, born in Gaza, who after 11 years of residency in the West Bank, was arrested at Allenby Bridge and expelled to the Gaza Strip. Following the petition, the respondent chose not to put its position under legal scrutiny and enabled the return of the petitioner to his home in the West Bank. Following an additional petition (HCJ 4417/10 **Kahlot v. Commander of IDF Forces in the West Bank** (not published)), the respondents notified that they did not object to update petitioner's address within the framework of the political gesture.
44. HCJ 3555/05 **Navahin v. Commander of IDF Forces in the West Bank**, and HCJ 4465/05 **Gdili v. Commander of IDF Forces in the West Bank**, concerned the cases of Palestinian residents who were expelled from their homes in the West Bank to the Gaza Strip, solely because of the fact that their registered address was "Gaza". In both of the aforesaid cases, after the filing of the petition, the respondent preferred to enable the return of the petitioners to the West Bank, rather than to put his legal thesis under legal scrutiny. However, the addresses of the two petitioners has not yet been updated in the registry held by the respondent.
45. HCJ 9951/06 **Abu Batihan v. Commander of IDF Forces in the West Bank**, concerned the case of a Palestinian, who after eight years of residency in the West Bank travelled to the Gaza Strip in order to attend his brother's funeral – and when he wanted to return to his home in the West Bank the respondent prevented him from doing so. Only following the petition the respondents agreed to issue an entry permit to Israel, as requested, and the man returned to his home and family in the West Bank. In this case as well, following an additional petition (HCJ 4675/10 **Abu Batihan v. Commander of IDF Forces in the West Bank**), the respondents changed the petitioner's registered address to the West Bank, in accordance with the facts as they really are.
46. HCJ 810/07 **Abu Sha'aban v. Commander of IDF Forces in the West Bank**, concerned the case of a young Palestinian who lived most of his life in Hebron in the West Bank, and due to an argument with his father fled to Gaza and since then has not been able to receive an entry permit to Israel in order to return to his father's home. Only after the filing of the petition, the respondents agreed to let the petitioner return to his parents' home.
47. In HCJ 9386/07 **Pirani v. Commander of IDF Forces in the West Bank**, HaMoked petitioned to the High Court of Justice on behalf of a Palestinian who lived in the West Bank since he was a child. After the petitioner has travelled with his pregnant wife and daughter to visit his ill brother in the Gaza Strip, the respondents refused to enable him to return to his home. For ten months the petitioner was trapped in the Gaza Strip, far from his home. Only following the petition the respondents agreed to enable him to return to his home.

48. A certain change in respondent's position was noted in HCJ 6685/09 **Kahouji v. Military Commander for the West Bank**. In this petition, which also concerned the case of a Palestinian resident of the West Bank, the forcible transfer of whom was prevented in the last minute, the respondent notified that his current policy was not to expel to Gaza Palestinians who were residing in the West Bank and whose registered address was in Gaza, provided that they have moved to the West Bank before the outbreak of the second intifada, in 2000, and that there was no negative security information against them.

A copy of respondent's notice in HCJ 6685/09 dated November 18, 2009 is attached and marked **P/18**.

49. Notwithstanding the above undertaking, the respondent continued to forcibly transfer to Gaza West Bank residents whose registered address was in Gaza, for arbitrary reasons. Thus, for instance, in HCJ 391/10 **Abu Jazar v. Military Commander for the West Bank**, a petition was filed by HaMoked concerning the case of a Palestinian who was 29 years old at that time, and who was forcibly transferred to the Gaza Strip after having resided in the West Bank since 1998. The grounds for his forcible transfer, as recorded in the interrogation form of the petitioner within the framework of the proceeding for his expulsion, were that:

The above entered the Judea and Samaria Area in 2000. In accordance with the relevant procedure, Gaza residents who entered the Judea and Samaria Area within the framework of the safe passage are not expelled. **Nevertheless, the above is single and has no family ties in the Judea and Samaria Area** (emphases added).

A copy of the "Deportee Interrogation Form" of the petitioner in HCJ 391/10 is attached and marked **P/19**.

50. In addition, the respondent persists in his refusal to update the addresses of West Bank residents having a registered address in Gaza, including those who moved to the West Bank before 2000 and therefore, do not fall within the category of deportees. As will be further elaborated below, the "freezing" of the update of the addresses has far reaching consequences and it severely injures the lives of Palestinians, who encounter huge difficulties in all areas of life on a daily basis, only because Israel is not willing to amend the erroneous registration of their addresses.

**C. HCJ 4019/10 HaMoked: Center for the Defence of the Individual v. Military Commander for the West Bank and the current state of affairs**

51. In 2010 a general petition was filed by 16 human rights organizations including petitioner 2, concerning respondents' refusal to update the addresses of residents of the OPT in the registries held by them, in accordance with the actual state of affairs and the update notices transferred to them by the Palestinian Authority and in accordance with the interim agreement (HCJ 4019/10 **HaMoked: Center for the Defence of the Individual v. Military Commander for the West Bank**).

52. On May 24, 2012 the court issued an order nisi in the petition.

53. On October 23, 2012 the respondents submitted a response in which they notified that a resolution was made to revise the policy concerning the forcible transfer of West Bank residents who were registered as Gaza residents, so that "Gaza Strip residents who entered the Judea and Samaria Area before the end of the military administration in the Gaza Strip (the **disengagement from the Gaza Strip**) on September 12, 2005 will not be forcibly transferred, unless there is a specific security justification for their forcible transfer." Thus, the non-expulsion policy of which the respondent has declared in HCJ 6685/09 was somewhat broadened.
54. Following this response, the petitioners submitted to the respondents a request for disclosure of additional information, which has not yet been answered.
55. It should be emphasized, that notwithstanding this undertaking not to expel West Bank residents who are registered as Gaza residents and who moved to the West Bank until 2005, the respondents continue to refrain from updating their registered address accordingly. Respondents' above insistence entails many difficulties, assuming even that these residents will not be expelled to the Gaza Strip:
56. First and foremost, these residents are exposed to long and repeated detentions in the liminary check points where each time a-new the respondents consider whether to expel the detainee or not. In HCJ 4019/12 respondents counsel advised that during 2010, 55 residents whose registered address was the Gaza Strip were detained in the check points, out of whom 37 were "released" and sent back to the West Bank and the others were expelled to the Gaza Strip; and in 2011, 37 residents were detained, out of whom 30 were "released" and sent back to the West Bank and seven were expelled to the Gaza Strip (Section 12 of the above referenced response, P/17).
57. The above data indicate that in fact, most of the individuals who were detained in the check points were detained in vain, with no intention to expel them – but without changing their registered address either, so that they are exposed to repeated detentions whenever they pass through any check point in the West Bank. In addition, the above data do not include the large number of individuals who, like the petitioner, are reluctant to pass through military check points precisely because of such detentions, and consequently, refrain for years from leaving their area of residence.
58. As to the nature of such detention, respondents' counsel advised in a hearing held in HCJ 4019/10 on December 13, 2011:

There is no policy to go and take people out of their homes. Obviously when we meet the people in the check point, an individual examination is conducted... **each illegal resident is detained in the check point and the examination is conducted through the check point and then the address is checked. We check whether he complies with the expulsion policy or not** (emphases added).

In said hearing, Major Rani 'Amer, head of the population registry division at the office of the legal advisor for the West Bank, the Civil Administration, elaborated further on the nature of the examination conducted in the check point:

They check whether or not he is really married and details about him... [this is an examination of] three hours. This also concerns basic questions regarding the person... [the data are verified against a] computerized system. If there is no intention to expel the person he is released.

A copy of the protocol of the hearing in HCJ 4019/10 of December 13, 2011 is attached and marked **P/20**.

59. **Ostensibly, the petitioner is protected from expulsion, since she has moved to the West Bank as early as 1994. But it is important to remember that according to respondents' notices, her said "entitlement" to stay in the West Bank will be re-examined again and again, anew, whenever she passes through any one of the dozens check points spread over the West Bank.** In addition, she has no document in her possession attesting to the fact that she is not to be expelled, and due to the fact that her registered address is in the Gaza Strip and since she is a single young woman, who has no children, who does not own an apartment and who does not pay her own electricity and water bills – there are only scarce data which she can provide to satisfy respondent's representatives in the check points that she "really" resides in the West Bank; and can anyone give her any assurances that one day, someone, in this check point or another, will not decide that her presence in the West Bank is illegal, and expel her forthwith to the Gaza Strip, where she has no one?
60. This concern is even intensified in view of respondent's position, as presented in HCJ 391/10 referred to above. This approach, according to which young un-wedded people have a weaker connection to the West Bank, strengthens and substantiates petitioner's concern, that her young age and the fact that she has not yet established a family of her own, and the fact that she lives in her aunt's house rather than with her nuclear family – increase the risk that a coincidental passage in a military check point will lead to her expulsion to the Gaza Strip.
61. As the various cases specified in sections 43-49 above indicate, once a person is deported to the Gaza Strip – as invalid as such deportation may be - extensive efforts are required to bring him back to his home in the West Bank, and in most cases only a petition to this honorable court will help to achieve same. Meanwhile, these deportees spend weeks and even months in the Gaza Strip, away from their homes and families, deeply concerned and fearful of what may lie ahead. This is the heavy risk undertaken by the petitioner whenever she leaves the boundaries of her city of residence.
62. In addition, even without this risk of deportation, a foreseen detention of about three hours in each one of the dozens military check points spread over the West Bank, constitutes a material limitation on the freedom of movement and the daily routine of the petitioner and many others like her.
63. Another issue with which West Bank residents whose address is registered in Gaza deal with, and which has not yet been solved under the various petitions, is the issue of going abroad: according to respondent's procedures, a resident whose registered address is in Gaza does not have an inherent right to leave his country and go abroad, and he must endure many

bureaucratic hardships until the respondent agrees to allow his passage: the resident must submit an application to the humanitarian committee of the Palestinian Authority, together with documents substantiating the humanitarian need (!) justifying his departure. This application is transferred to the respondent, who decides whether or not to approve the resident's request to go abroad "in accordance with the current policy".

A copy of the notice of the legal advisor for the West Bank area of July 6, 2011, as given within the aforementioned HCJ 4417/10, is attached and marked **P/21**.

64. Hence, the difficulties imposed on a resident, whose address is registered in Gaza, and who goes abroad, do not end here: due to the fact that according to respondent's procedures, when the resident wishes to return to his home in the West Bank, he has to submit a new application for this purpose to the respondent, who will examine whether to allow his return – or disallow it, and by so doing to *de-facto* expel him from the West Bank. The respondent even emphasized that he was not obligated to approve such applications, and therefore, any West Bank resident whose registered address is in Gaza and who goes abroad, undertakes the risk of not being able to return to his home upon the end of the visit.

A copy of the notice of the legal advisor for the West Bank area of December 28, 2010, as given within the aforementioned HCJ 4417/10, is attached and marked **P/22**.

65. It is easy to understand how the combination of these risk factors – the fear from being expelled in any coincidental passage in a check point; the definite prospect of being detained for hours in each and every check point; the bureaucracy involved in any application to go abroad, and the need to prove a "humanitarian need" which justifies the departure; and the additional risk that the entry into the West Bank, to the family home, will not be approved later on - all cause the petitioner and other like her, to refrain, to the maximum extent possible, from leaving their places of residence, and their daily routine is entirely controlled by these severe limitations.
66. It should be noted that within HCJ 4019/10 the petitioners have presented the opinion of **Dr. Yutaka Arai**, a senior lecturer in international law at the University of Kent, and a world renowned expert in international humanitarian law and belligerent occupation laws, in particular. The opinion points, *inter alia*, at the obligation to update the copy of the Palestinian population registry, since the respondents' refusal to have it updated, along with their decision to rely thereon and impose limitations on any person whose address has not been updated, creates "social and economic conditions intolerable to such civilians". According to the opinion, Palestinians who are forced to leave the West Bank due to such living conditions, are residents who are expelled from their homes "indirectly" (Indirect Forcible Displacement).

The opinion of Dr. Yutaka Arai is attached and marked **P/23**.

### **The Legal Argument**

#### **A. Respondents' obligation to promptly respond to applications submitted to them**

67. The respondents, like any administrative authority, are obligated by law to promptly respond to an application. It is a well known rule that the "obligation to act promptly is one of the basic principles of good governance." (I. Zamir, **The Administrative Authority** (Volume B, Nevo, 5756), 717).

And on this issue see:

HCI 6300/93 **Institute for the Training of Women Rabbinical Advocates v. Minister of Religious Affairs-**, IsrSC 48(4) 441, 451 (1994);

HCI 7198/93 **Mitrel Ltd. v. Minister of Industry and Commerce**, IsrSc 48(2) 844, 853 (1994);

HCI 5931/04 **Mazurski v. The State of Israel – Ministry of Education**, IsrSc 59(3) 769, 782 (2004);

HCI 4212/06 **Avocats Sans Frontiers v. GOC Southern Commend**, TakSC 2006(2) 4751 (2006).

68. It has already been ruled that when human rights were concerned, the concept of a "reasonable time frame" obtained a special meaning (HCI 1999/07 **Galon v. The Governmental Commission for the Enquiry of the Events of the Lebanon Campaign 2006**, TaSC 2007(2) 551, 569 (2007));

And that in matters concerning human rights –

A more expeditious regularization of the matter is expected [...] a continued violation of human rights quite often aggravates the scope of the injury and may result in the exhaustion of the right as well as in a severe and continued injury to the individual.

(HCI 8060/03 **Q'adan v. Israel Land Administration**, TakSC 2006(2) 775, 780 (2006)).

And see also: HCI 10428/05 **'Aliwa v. Commander of IDF Forces in the West Bank**, TakSC 2006(3) 1743, 1744 (2006); HCI 4634/04 **Physicians for Human Rights v. Minister of Public Security**, TakSC 2007(1) 1999, 2009 (2007).

69. In our case, a particularly expeditious answer is required: the petitioner wishes to change the address registered in her identification card, in a manner which will comply with the facts as they are. For as long as her address remains dated, she is exposed to the risk of being expelled to the Gaza Strip and to repeated detentions in the many military check points spread over the OPT. The petitioners applied to the respondents again and again for over a year – but their applications have not received a pertinent response.
70. For comparison purposes, it should be noted that an address update of Israeli citizens in the computers of the Ministry of Interior takes only a few minutes and requires, at the most, the presentation of a lease agreement or a purchase agreement concerning a residential real estate property in the new area of residence. As opposed to the citizens of the state of Israel, the petitioner has been waiting for over a year now for respondent's agreement to update the registration of her address, an address in which she has been living almost her entire life.
71. The court stressed in the past, unequivocally, how gravely it regarded a conduct of procrastinations and failure to give a pertinent response by the authority:

The respondent is not entitled to treat the petitioners - similar to any other applicant - the way it does; the respondent is not entitled to leave their case pending without a pertinent response ... the respondent is not entitled to exhaust the petitioners to no avail, to cause them unnecessary costs and expenses and by so doing, to postpone the examination of their matter to its merits. And if the respondent forgot the nature of the duties entrusted upon it, then it is the court's obligation to remind it of same.

HCJ 10399/04 **Ben Abedkol v. The Ministry of the Interior**, Tak SC 2005(3) 1608, 1609 (2005)).

**B. The population registry – a prima facie evidence**

72. This court has held, time and again, that the basic premise concerning the population registry was that it was a statistical-documentary registry, which constituted, at the most, a *prima facie* evidence of the correctness of its contents. It was so held forty five years ago, in the **Funk-Schlezing** case:

It is clear beyond a shadow of a doubt that the duty of the registration officer... is nothing but the duty to gather statistical information for the purpose of maintaining the population registry.

(HCJ 143/62 **Funk Schlezing v. Minister of Interior**, IsrSC 17(1), 225, 243 (1963)).

73. And if things were not clear enough, they were specifically entrenched in section 11B of the Order on Identification Cards and Population Registry (originally 11A):

**11B. The registry is a prima facie evidence**

The registration in the registry, in any copy or summary thereof, and any certificate issued pursuant to this order will constitute *prima facie* evidence of the correctness of the registration details specified in sub-sections ... (13)... of this section.

Hence, the address registered in the registry (sub-section (13) of section 11) and in any copy thereof, is an item which constitutes nothing more than a *prima facie* evidence.

74. This also means that the respondent must act to revise the data recorded in the registry and the copies thereof in accordance with the actual state of affairs, rather than to change the actual state of affairs in accordance with the data in the registry. This, especially when he knows that this information is incorrect.
75. Parenthetically, the position according to which the registry is merely a statistical tool, which should be updated in accordance with the actual state of affairs, so that the most accurate statistical information may be drawn there from, is acceptable worldwide.

See for instance:

Philip Redfern, "Population Registers: Some Administrative and Statistical Pros and Cons" *Journal of the Royal Statistical Society. Series A (Statistics in Society)*, Vol. 152, N. 1 (1989), pp. 1-41;

Principles and Recommendations for a **vital statistics system**, Revision 2; United Nations, New York, 2001.

### **C. The limited authority of the registration officer**

76. Since the Funk Schlezinger case, the Supreme Court has repeatedly held that the duty of the registration officer was only to collect statistical information, and that no discretionary powers were vested in him. Therefore, the officer is obligated to record what the citizen tells him, unless it is a matter of a "clearly incorrect registration with respect of which there is no reasonable doubt".
77. The above statements were repeated clearly and explicitly, over and over again, in many judgments rendered over the years. In all of these cases, the court ordered the administrative authority to perform its duties and record in the registry whatever was conveyed to it by the citizen.

See for instance:

HCJ 58/68 **Shalit v. Minister of Interior**, IsrSC 23(2) 477 (1970);  
HCJ 264/87 **Sepharadi Torah Guardians – Shas Movement v. Director of Population Registration at the Ministry of Interior**, IsrSC 43(2) 723 (1989);  
HCJ 2888/92 **Goldstein v. Minister of the Interior**, IsrSC 50(5) 89, 93-94 (1994);  
HCJ 1779/99 **A. v. Minister of Interior**, IsrSC 54(2) 368, 375-376 (2000);  
HCJ 5070/95 **Na'amat – Movement of Working Women & Volunteers v. Minister of Interior**, IsrSC 56(2) 721 (2002);  
HCJ 2901/97 **Na'amat v. Minister of the Interior**, TakSC 2002(1) 634, 640 (2002);  
HCJ 3045/05 **Ben Ari v. Director of the Population Registry**, TakSC 2006(4) 1725, 1731 (2006).

78. The case law emphasized that the discretion conferred upon the registration officer while recording the details of a person in the population registry was technical and limited:

The latitude of the registration officer and even that of the chief registration officer, concerning a first registration and changes in the registration is not unlimited, since the legislator has specified the items to be registered, the scope of the registration officer's discretion, the obligation to notify of the changes and so forth. The registration officer or the chief registration officer or the Minister of the Interior have no powers beyond the classifications and registration methods prescribed by law, or in the regulations promulgated pursuant to an explicit authorization in the law.

(HCJ 230/86 **Miller v. Minister of the Interior**, IsrSC 40(4), 436, 444-445 (1986)).

And in the Funk Schlezinger matter, Justice Sussman emphasized that:

It is inappropriate from the administrative perspective that a citizen who comes to provide details for statistical purposes...will stand before a suspicious officer who will dig into his past.

(the above **Funk Schlezinger** matter, page 252).

79. It is clear that for the purpose of updating a person's address in the population registry, he is not required to present any "clarifications", "explanations", or detailed "grounds". It is enough that he has given notice of his address.
80. It should be emphasized that in our case there can be no dispute whatsoever regarding petitioner's address: she lives in the West Bank almost from birth, and her applications for a change of address were submitted by her in the West Bank.
81. This applies even more forcefully when a copy of the registry, rather than the original one, is concerned. As the interim agreement explicitly provides, the only thing which the respondent is required to do is to update the data which were recorded in the Palestinian population registry. It is obvious that if for the purpose of making the registration in the population registry no discretion is vested with the officer, this is all the more so when a copy of the registry is concerned.

**D. Transfer of updating power to the Palestinian Authority**

82. Respondent's responses to said petitions indicate, that according to him, a person who wishes to update or amend his registered address in the copy of the population registry is required to submit to the Israeli side, through the Palestinian side a "reasoned application", whereas the Israeli side has broad discretion – to decide whether to allow the Palestinian side to update or amend the registered address or rather to instruct it to keep the incorrect address in the registry. The above position and demand were presented, as will be specified below, in a retroactive manner.
83. However, the respondent's above thesis is doubly flawed:

Firstly, in so doing, the Israeli side actually seeks to re-assume the power which was explicitly transferred to the Palestinian side, in accordance with the interim agreement and manifest No. 7, which constitute part of the legislation in the Area. In fact, the respondent wishes to assume upon himself a power contrary to the law which applies in the Area, without explicit legislation, without an order to that effect and obviously, without publicizing it.

Secondly, by its nature, the power to update the registry or amend it, is a power which consists of a very limited discretion, mostly technical, and it does not confer broad discretion which involves different material considerations.

84. Thus, the respondent has not only assumed upon himself, with no legal basis, a technical power which has been explicitly taken away from him – but has even "broadened" this power, *ex nihilo*, above and beyond, and turned it into a material and significant power involving broad and material discretion.

85. The respondent claimed in the past that his authority to act in this manner stemmed from section 6(b) of manifest No. 7, which provides that:

The determination of the Commander of IDF Forces in the Area, that powers and scopes of responsibility remain with him shall be conclusive in this regard.

86. Firstly, it is clear that this provision does not enable the respondent to create a power, by the commander's mere words, when such power contradicts explicit legislation in the Area, and without ever having such power entrenched in any order. It is clear that this provision concerns a determination as to the identity of the party which holds a certain power that has already been entrenched in the law, rather than the creation of new powers.

Secondly, the concept that this provision enables the respondent to transfer, at his will, at any time, back and forth, powers between the parties, is an absurd concept which renders manifest No. 7 and the interim agreement in its entirety meaningless.

87. It should be emphasized that in the past the respondent has explicitly acknowledged the fact that the power to update addresses – including between the Gaza Strip and the West Bank – has been transferred in its entirety to the Palestinian Authority.

Thus, for instance, on December 4, 1995 MK Naomi Hazan wrote to Major General Oren Shahor, the then Coordinator of Government Activities in the Territories, and raised a few questions concerning the passage between Gaza and the West Bank, including, *inter alia*:

A change of address from the West Bank to the Gaza Strip or *vice versa*; can an address be changed? To which authority is the application submitted and how long does the process of making a decision take?

On January 9, 1996 (after the issuance of manifest No. 7, which entrenched, as aforesaid, Annex III of the agreement in the internal military legislation of the Occupied Palestinian Territories (OPT)), a response was received from the assistant to the Coordinator of Government Activities in the Territories, Lieutenant Colonel Shmulik Ozenboy according to which:

With respect to your question concerning a change of address from the West Bank to the Gaza Strip, please be advised that the handling of the matter has been transferred to the Palestinian Authority and therefore they should be contacted on this matter.

A copy of MK Hazan's letter dated December 4, 1995 is attached and marked P/24.

A copy of the letter of the assistant to the Coordinator of Government Activities in the Territories of January 9, 1996 is attached and marked **P/25**.

88. Furthermore, presently the respondent also acknowledges the fact that the Palestinian Authority is vested with the sole and exclusive authority to maintain the population registry. The respondent himself even emphasized the importance of the credibility and intactness of the copy of the registry which was held by Israel, in accordance with the original registry held by

the Palestinian side. Thus, for instance, on May 14, 2007, petitioner 2 received a letter from the office of the legal advisor for the respondent dated May 7, 2007, which explicitly stated that:

The Palestinian registry is under the direct authority of the Palestinian Authority and is maintained by it. A copy of the registry is also held by the Israeli side, in accordance with article 28 of the civil annex to the interim agreement. The Israeli side, being an orderly administrative authority, is obligated to ensure that its registrations are credible, proper and comply with the requirements of the security legislation, case law and good governance.

[...]

A unilateral update of the registry by the Israeli side is not possible since the entire registry is kept and maintained by the Palestinian side in accordance with the provisions of the agreement.

A copy of the letter sent by the office of the legal advisor for the respondent dated May 7, 2007 is attached and marked **P/26**.

89. Hence, the claim as if there was no intention, in the interim agreement, to transfer this power to the Palestinian side, is especially absurd, in view of the ample and specific emphasis given in the interim agreement to the obligation of the Palestinian side to notify the Israeli side of changes which were made in **the registered addresses of residents**.

**E. The court's comments on this issue in previous petitions**

90. The honorable court has referred to this issue in a case identical to the case at hand. In HCJ 2387/08 **Zabach v. The Military Commander** a petition was filed which concerned the matter of four children from the West Bank, whose address in the copy of the Palestinian population registry held by Israel was registered in the Gaza Strip. The Palestinian Authority transferred an update notice of their correct address in the West Bank, in accordance with the interim agreement, but Israel **refused to update the copy of the registry in its possession according to the notice**.

In his response to the petition, the respondent persisted in his refusal to update the address of the children in the copy of the registry in his possession, based on the argument that the update of the Israeli copy was conditioned upon the transfer of a pertinent, reasoned and detailed application by the Authority, and the grant of an Israeli approval.

The petitioners emphasized that this position had no legal basis, and that in accordance with the interim agreement, as specified above, the power to update the address was not subordinate to any Israeli approval and did not require the submission of any application whatsoever to Israel, for its approval – even if a change of address from the Gaza Strip to the West Bank was concerned.

91. During the hearing the court rejected respondent's argument, that a "reasoned application" should be submitted to him and clarified that even if a change of address from the Gaza Strip to the West Bank was concerned, **the transfer of an update notice was sufficient and that the**

**respondent was obligated to update petitioners' address in accordance with said notice.** Following the Justices' clear position, the respondent had to retract his position and notify that he would indeed update the copy of the registry in accordance with **the notice of the Authority** (although it was agreed that the notice would be transferred to him again). And as decided by the court (emphasis added):

Following a discussion and based on our recommendation, the respondents notified that should **the notice of the Palestinian Authority** which was attached to the petition 18/80 [should be P/18; T.S.] be transferred to the respondents directly by the Palestinian Authority rather than indirectly by the petitioners, the respondents would amend the registered address of petitioners 1-4 in the copy of the Palestinian population registry held by Israel according to their correct address in the Ramallah region.

And indeed, the notice was transferred again to the respondent, and petitioners' addresses were updated in the copy of the Palestinian registry held by Israel.

A copy of the notice which was transferred by the Palestinian side to the respondent following HCJ 2387/08, and according to which petitioners' addresses were updated, is attached and marked **P/27**.

92. As aforesaid, in a number of individual petitions the respondents notified that they did not object to update the address of a certain petitioner in accordance with the actual state of affairs (for instance HCJ 4417/05 and HCJ 4675/10, mentioned above). In addition, the issue of addresses update was also discussed in the general petition, the above mentioned HCJ 4019/10, which is still pending.

**F. The duties of the military commander**

93. As is known, on November 29, 2012 the general assembly of the United Nations decided to grant Palestine a non member observer state status in the United Nations (resolution No. A/RES/67/19). It is clear that also after the resolution of the general assembly, the military commander continues to bear all responsibilities imposed upon him under international law, as the occupying force which controls the area.
94. The duties of the respondent and his powers derive directly from international law (HCJ 2150/07 **Abu Safiyeh v. Minister of Defence**, December 29, 2009). Accordingly, the power of the military commander originates in international law, which defines the limits of the power and the considerations which the commander may take into account.
95. The military commander is obligated to maintain the public order and safety in the occupied territories. This was explicitly stated in regulation 43 of the Regulations Respecting the Laws and Customs of War on Land, annexed to the fourth Hague Convention of 1907:

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety...

96. In so doing, the discretion of the military commander is limited by two poles – military needs on the one hand and the welfare of the protected population on the other:

The Hague Convention authorizes the Area Commander to operate in two main spheres: one – ensuring the legitimate security interest of the occupier, and the other - ensuring the needs of the local population in an area under belligerent occupation... The first is a military need and the other is a civilian humanitarian need. The first focuses on the concern for the security of the military force occupying the area, and the other – on the responsibility for maintaining the inhabitants' welfare. In the latter sphere the Area Commander is responsible not only for maintaining the inhabitants' order and security but also for protecting their rights, particularly their constitutional human rights. The concern for human rights lies at the heart of the humanitarian considerations which the commander must consider. According to Article 43 of the Hague Convention, the force in control of an occupied area is responsible for taking all measures available to it in order to rehabilitate and to ensure, to the extent possible, public order and security in the area, while respecting the law which applies in the area insofar as possible. In carrying out his duty of maintaining order and security, the Area Commander must, therefore, ensure the legitimate security interests on the one hand, and protect the interests of the civilian population in the area on the other.

(HCJ 10356/02 **Haas v. GOC Central Command**, IsrSC 58(3) 443, 455-456 (2004)).

97. The military administration must be attentive to the changing needs of the residents of the areas under its responsibility, and serve the population in view of such changing needs and vicissitudes of life of both the individual and the public:

The life of a population, as the life of an individual, does not stand still but is rather in constant motion which includes development, growth and change. A military administration cannot ignore all these. **It may not freeze life.**

(HCJ 393/82 **Jam'iat Iscan Al-Ma'almoun v. Commander of IDF Forces**, IsrSC 37(4) 785, 804 (1983), emphasis added).

98. This indicates that a positive obligation is imposed on the military commander to maintain an updated population registry which reflects the individual's life at its current state and which will enable the individual to lead a normal life. The failure to fulfill this obligation disrupts the lives of the residents – in matters concerning passage in check points, going abroad etc., as in simple daily matters such as the receipt of registered mail or correspondence with the municipality.
99. In this context it makes no difference that the power to maintain the population registry is no longer entrusted with the military commander, due to the fact that when the military commander acts according to the copy of the registry in his possession, completely ignoring the

**decisive** Palestinian population registry, he severely violates many rights of residents whose address has not been updated in the books of the military commander by his own omission.

100. It should be remembered that the military commander is not entitled to consider political, national and such other considerations, and is confined to security considerations in their narrow sense. Any other consideration considered by the military commander will constitute an extraneous consideration:

The considerations of the military commander are aimed at ensuring his security interests in the Area on the one hand and safeguarding the interests of the civilian population in the Area on the other. Both are directed toward the Area. The military commander may not take into consideration the national, economic and social interests of his own country, insofar as they do not affect his security interest in the Area or the interest of the local population. Even military necessities are his military needs and not the needs of national security in the broader sense.

(**Jam'iat Iscan Al-Ma'almoun**, pp. 793-794).

101. It should be remembered that the duties of the military commander are directed at any protected resident in the occupied territory. The status of a "protected resident" is granted to a person pursuant to international law and the military commander has no authority to define who is and who is not entitled, in his opinion, to the protection of the international law.
102. The status of a "protected person" does not depend on the issuance of this certificate or another, on the grant of a permit or license or on the registration of the individual in any registry. The term "protected person" was defined in the fourth Geneva Convention and it refers to any person who is present in the occupied territory and who does not constitute part of the occupying power. And as provided in article 4 of the convention:

Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

The interpretation of the Red Cross points at the broad scope of the definition:

The definition has been put in a negative form; as it is intended to cover anyone who is 'not' a national of the Party to the conflict or Occupying power in whose hands he is...

The words "at a given moment and in any manner whatsoever", were intended to ensure that all situations and cases were covered. The Article refers both to people who were in the territory before the outbreak of war (or the beginning of the occupation) and to those who go or are taken there as a result of circumstances: travelers, tourists, people who have been shipwrecked and even, it may be, spies or saboteurs...

The expression "in the hands of" is used in an extremely general sense. It is not merely a question of being in enemy hands directly, as a prisoner is. The mere fact of being in the territory of a Party to the conflict or in occupied territory implies that one is in the power or "hands" of the Occupying Power. It is possible that this power will never actually be exercised over the protected person: very likely an inhabitant of an occupied territory will never have anything to do with the Occupying Power or its organizations. In other words, the expression "in the hands of" need not necessarily be understood in the physical sense; it simply means that the person is in territory which is under the control of the Power in question.

#### **G. The harm caused to the petitioner**

103. The petitioner, a protected resident of an occupied territory, is entitled that the respondents safeguard her rights. She is entitled to have her address updated as specified above, so that it reflects the facts as they are and to be freed from the detentions, hindrances and daily hardships encountered by her – and especially the constant fear from a sudden expulsion from her home and family.
104. Respondents' long failure to respond to applications concerning petitioner's matter and their failure to update her registered address, are in contrary to the provisions of the law and constitute a severe violation of her rights.
105. Petitioner's right to have her address updated by the respondent in the population registry derives, first and foremost, from his general duty to safeguard her orderly daily routine, which is severely interrupted. Secondly, the petitioner complies with the terms of the "political gesture", announced by the respondents. And thirdly, in accordance with respondents' notice in HCJ 4019/10, they have no intention to forcibly transfer to Gaza individuals who moved to the West Bank by the end of 2005 and therefore, there is no reason why petitioner's address, who has been living in the West Bank since 1994, when she was one year old, should not be updated.
106. The violation of this right of the petitioner, entails a violation of many other protected rights to which the petitioner is entitled: her right to freedom of movement; her right to leave her country; her right to equality *vis-à-vis* other West Bank residents whose address is compatible with their place of residence and therefore, are not subject to the severe limitations imposed on the petitioner; her right to family life which is violated as a result of her inability to leave her place of residence and meet family members who live abroad and even in other parts of the West Bank; her right to education and her right to freedom of occupation which is derived from such education; and her right to plan her life and realize her aspirations, without the sword of expulsion and detention constantly hanging over her head.

#### **Conclusion**

107. The petitioner, an eighteen years old young woman who has been living all her life in the West Bank, wishes to amend her address in the copy of the Palestinian population registry held by Israel, so that it complies with the facts as they are.

108. Respondents' long disregard of her application, puts the petitioner in a daily risk of expulsion to the Gaza Strip; of lengthy detentions in the military check points; and prevents her from going abroad and returning to her home afterwards. Thus, her right to freedom of movement and her daily routine are severely violated.

In view of the above, the honorable court is hereby requested to grant an *Order Nisi* as requested, and after hearing the respondents' response, make it absolute. The court is further requested to order the respondents to pay petitioners' trial costs and attorneys' fees.

January 23, 2013

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Tal Steiner, Advocate

Counsel to the petitioners

[file No. 58456]