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At the Supreme Court
Sitting as the High Court of Justice

HCJ 1891/10

In the matter of:

1. _____ **Jarbo'a, ID No.** _____
2. _____ **Jarbo'a, ID No.** _____
Residents of the Occupied Palestinian Territories
3. _____ **Jarbo'a, ID No.** _____
4. _____ **Jarbo'a, ID No.** _____
Minors, by their parents, petitioners 1-2
5. **HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger - RA**

all represented by counsel, Adv. Elad Cahana (Lic. No. 49009) and/or Ido Bloom (Lic. No. 44538) and/or Yotam Ben Hillel (Lic. No. 35418) and/or Hava Matras-Irion (Lic. No. 35174) and/or Sigi Ben Ari (Lic. No. 37566) and/or Daniel Shenhar (Lic. No. 41065) and/or Leora Bechor (Lic. No. 50217)

Of HaMoked Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

1. **Military Commander of the West Bank Area**
2. **Coordinator of Government Activities in the Territories**

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:

- A. Why they should not allow the passage of the petitioners through Israel, to enable petitioner 1 to return from the Gaza Strip to his home in the West Bank with his wife, petitioner 2, and their children, petitioners 3-4;

- B. Why they should not refrain from conditioning said permits on petitioner 1's cooperation with the Israeli security forces.

The court is hereby requested to order the respondents to respond to the petition as soon as possible. Petitioner 1 has been distanced from his home for years, despite repeated applications to allow him to return to his home. Needless to say that with the passage of time, the severity of the injury increases; and in the words of this court:

A continued violation of human rights quite often broadens the scope of the injury and may result in the erosion of the right as well as in a severe and continued injury to the individual.

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

Preface

A is unlawfully expelled from his home and place of residence. As time passes, the authority refuses to handle his applications to return to his home. Years thereafter, after A has established his business and accumulated assets in the place to which he had been expelled, the authority finally agrees to hear his application and even approves it. However, surprisingly enough, its consent is conditioned on a "tiny" condition: that A leaves his assets and business behind, and returns to his home destitute.

It is clear that the decision of the authority in this case is appalling: not only that the authority expelled a person unlawfully; now it demands that he extinguishes, in one stroke, the life he has established for himself, to a large extent due to its own conduct. The condition posed by the authority to such person, turns its consent for his return to his home to merely a theoretical one, to a statement which is nothing more than lip service.

It is clear that this decision does not serve any security purpose. In fact, it is not clear whether it serves any purpose. It seems that its whole purpose is to *de-facto* prevent A's return to his home.

And if this is the case in A's matter, it applies even more forcefully to petitioner 1's matter, who was expelled to the Strip and established a family over there, and now, after his return to his home was approved, he is required to leave behind his wife and young children. Due to respondents' refusal to allow petitioner 1 to return to his home with his family, this petition is filed.

The Factual Background

The Parties

1. Petitioner 1 (hereinafter: **petitioner 1**), a 31 years old Palestinian, is a resident of the Occupied Palestinian Territories (OPT). Petitioner 1 was born in Gaza, in the Strip, and in 1995, when he was 17 years old, he moved to Qalqiliya, in the West Bank. In 2003 petitioner 1 was caught in Israel while he was unlawfully staying there, and was expelled to the Gaza Strip. Since then, he has submitted a number of applications to return to his home, and until recently these applications remained unanswered.
2. Petitioner 1 married his wife, petitioner 2 (hereinafter: **petitioner 2**), in the Gaza Strip, in 2006, after his said applications were not answered, and petitioner 1 was forced to meanwhile continue to live in the Strip. On February 9, 2006 the spouses' son, petitioner 3, was born; and on June 19, 2008 their daughter, petitioner 4, was born.

3. Petitioner 5 (hereinafter: **HaMoked**) is a not-for-profit association situated in Jerusalem, which promotes human rights of Palestinians in the OPT.
4. Respondent 1 is in charge of the West Bank Area on behalf of the State of Israel, which has held the West Bank under belligerent occupation for over forty five years.
5. Respondent 2, the Coordinator of Government Activities in the Territories, is responsible for the implementation of the policy of Israel in the West Bank and in the Gaza Strip, and is in charge, *inter alia*, of the Israeli desk at the Gaza District Coordination Office.

The expulsion of petitioner 1 to the Gaza Strip

6. As aforesaid, petitioner 1 has been living in Qalqiliya since 1995, at first with family members, and since 1997, after his entire family moved to live in the city, together with them. In 1998, petitioner 1, like his other family members, updated his registered address with the Palestinian population registry.
7. In 2003 petitioner 1 and his brother were arrested within the boundaries of the State of Israel, when they were staying there without a permit, after they entered Israel to assist with the livelihood of their family.
8. Petitioner 1's brother was arrested for a period of one year, following which he was released to his home in the West Bank. Nonetheless, petitioner 1 was released on the same day on which he was arrested, but surprisingly enough, **he was released to the Gaza Strip, a place he had no connection to.**
9. Petitioner 1 tried to explain to his interrogators that he was living in the West Bank, that his home and family were there. This was also clearly indicated by petitioner 1's identification card. In response, petitioner 1 was told that should he cooperate with the Israeli security forces he would be released to his home in the West Bank, and should he decline – he would be immediately expelled to Gaza. Petitioner 1 obviously rejected the "offer", and consequently immediately found himself trapped in the Strip.

Petitioner 1's applications to return to his home and respondents' policy in this matter

10. Since his expulsion, petitioner 1 has submitted a number of applications to allow him to pass through Israel, so that he would be able to return to his home in the West Bank. However, these applications did not receive a proper response from the respondents. Thus, an application which was submitted by him in 2003, has never been answered; another application which was submitted by him in 2005, has also remained unanswered.
11. It should be noted that from 2001 the State of Israel has been implementing a policy of separation between the West Bank and the Gaza Strip. Within the framework of this policy, the Israeli side refused to receive applications to relocate from the Gaza Strip to the West Bank which were submitted through the Palestinian Civil Affairs Committee; and when it agreed to receive such applications, it used to reject them. HaMoked handled cases of additional applicants, who were expelled to the Gaza Strip or entered it for visitation purposes and found themselves trapped therein, as the respondents have refused to examine and approve their applications.
12. The time passed, and petitioner 1's applications remained unanswered. At this point petitioner 1 had no alternative but to accept the fact that he was trapped in the Gaza Strip for an unknown period, and that he should carry on with his life at the current place of his residence. Petitioner 1 worked

for a certain period as a floorer, but after a while stopped. Currently petitioner 1 is supported by his parents, who send him money on a monthly basis.

13. In 2006 petitioner 1 married petitioner 2, and they were living together in the Strip. Over time, the minor children of the spouses, petitioners 3-4, were born. After his marriage, petitioner 1 continued to submit applications to allow him to return to his home, and at this time, together with his family: he did so in 2006 after his marriage, and also in 2007. Again, his applications remained unanswered.

A copy of the marriage agreement of petitioners 1-2 is attached and marked **P/1**.

Exhaustion of remedies

14. Petitioners' last application to relocate to the West Bank was submitted to the Israeli side in October 2009, through the Palestinian Civil Affairs Committee. However, the representative of the Civil Affairs Committee told the petitioners, that the Israeli side agreed to receive the application and examine it only in as much as it concerned petitioner 1, excluding his wife and children.
15. On December 6, 2009, HaMoked wrote to the Humanitarian desk at the Gaza DCO, and requested that the required relocation permit to the West Bank be issued to all petitioners. In its request HaMoked noted that according to notices of the legal advisor for DCO Gaza and the Head of the HCJ department at the State Attorney's Office, the Humanitarian desk at the DCO would pertinently handle cases, in which, for some reason, no request was received from the Palestinian Civil Affairs Committee.

A copy of HaMoked's letter to DCO Gaza dated December 6, 2009 is attached and marked **P/2**.

16. On January 3, 2010, HaMoked wrote to DCO Gaza, in an attempt to find out what was the status of several requests which were sent to it, including the request concerning petitioners' matter.

A copy of HaMoked's letter to DCO Gaza dated January 3, 2010 is attached and marked **P/3**.

17. On January 6, 2010, HaMoked wrote again to DCO Gaza in petitioner 1's matter, and noted that a month has elapsed from the date of its letter and no response has been received. DCO Gaza was requested again to issue to all family members the required permit which would enable petitioner 1 to return, together with his family, to his home in the West Bank.

18. On January 14, 2010, HaMoked received DCO Gaza's response of the same day. The response stated that petitioner 1 would be summoned for a "security discussion", which would be held on January 17, 2010, since he was a resident of Qalqiliya. The other petitioners, it was stated, were "Gaza residents" and therefore it was decided not to allow their passage to the West Bank "for the purpose of having their address changed".

A copy of the response of DCO Gaza dated January 14, 2010 is attached and marked **P/5**.

19. Despite respondents' notice of their intention to summon petitioner 1 to a "security discussion", no one has contacted petitioner 1 to summon him for "discussion" as aforesaid. The scheduled date passed, and until the filing date of this petition, petitioner 1 has not been summoned for the aforesaid "discussion". It should be noted that in any event, the summoning of petitioner 1 for a "discussion" is outrageous: from the beginning there was no reason to expel him to the Gaza Strip, and his right to return to his home after the unlawful expulsion is clear. However, now, the respondents take advantage of his condition in order to summon him to "discussions" with the Israeli Security Agency (ISA); and in this context we should bear in mind the purpose of the

previous "discussion" which petitioner 1 was summoned to, when he was expelled to the Gaza Strip due to his refusal to cooperate with the security forces.

20. It should be noted, that on February 11, 2010, HaMoked sent to respondent 2 a general letter concerning the return of residents of the OPT to their homes in the West Bank, together with their families. The letter described respondents' policy, to actually lock up Palestinians in the Gaza Strip, and only after they get married and have children, allow them to return to their homes – alone. In its letter, HaMoked emphasized that this was used as a means to apply pressure to keep a person away from his home, which amounted to a forcible transfer.

A copy of HaMoked's letter to respondent 2 dated February 11, 2010 is attached and marked **P/6**.

21. In view of the response of DCO Gaza, according to which petitioner 1's application to return to his home together with his wife and children was denied, and in view of the fact that in so doing the respondent practically prevents and thwarts petitioner 1's return to his home – from which he was unlawfully expelled in the first place – the petitioners have no alternative but to apply to this court.

The Legal Argument

A. The underlying premise – petitioner 1's right to return to his home

22. The underlying premise of the petition before us is that petitioner 1 is entitled to return to his home. Respondents' position also indicates, that they do not dispute petitioner 1's said right. As is recalled, petitioner 1's parents and bothers reside in the West Bank; this is where petitioner 1 established his home at the age of seventeen and continued to live there for years, until he was expelled to the Gaza Strip unlawfully and following his refusal to cooperate with the Israeli security forces.
23. It should be further clarified, that according to the petitioners, the expulsion of petitioner 1 – contrary to any logic and contrary to respondents' obligation to release a person to his place of residence – amounts to a **forcible transfer of a protected resident**. It should be noted that HaMoked handled the matters of many other Palestinians, who were transferred by the respondents, by foul means, to the Gaza Strip, or whose transfer to the Gaza Strip was facilitated by the respondents, and whose return to their home has been prevented ever since.
24. State authorities' decision to expel petitioner 1 specifically to the Gaza Strip, should be viewed against this backdrop. This decision must raise questions as far as its motives are concerned.
25. In view of the fact that from the beginning petitioner 1's expulsion to the Gaza Strip was made without authority, it makes no sense to take advantage of his condition for the purpose of subjecting him to additional "security interrogations" (of which petitioner 1 has, anyway, received no notice). Is it conceivable that despite the fact that there was no authority to expel petitioner 1 to the Gaza Strip, the respondents would take advantage of the situation which was created and keep him trapped in the Strip, contrary to international law and the rules of administrative law?

B. Petitioner 1's right to return to his home – with his family

(i) Respondents' decision concerning petitioner 1's family – a violation of petitioner 1's right to return to his home

26. Respondents' decision not to enable the joint relocation of petitioner 1 together with his wife and children, in fact, thwarts petitioner 1's return to his home. There seems to be a lot of cynicism in respondents' conduct, who have prevented petitioner 1's return to his home for years, and now, after he married and had children, all of a sudden it became possible – without them.

27. A person returns to his home 'as is'. He returns to his home with his property; he returns to his home with his religious devotion and practices; he returns to his home as a married man and as a father, together with his family. Respondents' decision forces petitioner 1 to make an impossible choice: to either leave his family behind, or stay trapped in the Gaza Strip. This decision cannot be disconnected from petitioner 1's initial expulsion to the Gaza Strip, the motives of which are questionable.
28. Respondents' decision also disregards the fact that petitioner 1's condition is the result of respondents' own doing. Petitioner 1 was expelled by them to the Gaza Strip and remained trapped therein for years, due to their refusal to examine his applications. Unless the respondents expected petitioner 1 to put his life on hold until his receipt of the longed for response, they cannot disregard, at this time, the family relations which were woven due to their own conduct. It is inconceivable that petitioner 1 would have to pay the price of respondents' unlawful conduct.

(ii) **The absurdity of Respondents' decision**

29. Respondents' decision is extremely unreasonable. This decision exposes their policy, according to which the passage through Erez crossing – which is open daily anyway – does not pose any problem. However, according to them, certain people should be prevented from crossing it. Petitioner 1 can pass through the crossing freely; but for his wife and children, who he is forced to desert and leave behind, the passage is like a glass ceiling. And all of the above, without any security reason whatsoever, which is the only consideration that the respondents can take into account in making their decision.
30. An administrative authority is obligated to examine the applications submitted to it pertinently, according to the circumstance of the matter and the considerations that it is authorized to take into account. It is clear that the case at hand concerns a person whose return to his home should be permitted, after his unlawful expulsion there-from. What is then the consideration which conditions petitioner 1's return on his waiver of his family life? Therefore, respondents' decision to condition petitioner 1's return to his home on a waiver of his family life – to the creation of which they are responsible – is disproportionate and unreasonable.

C. Violation of petitioners' rights

31. First and foremost, the respondents violate petitioner 1's right to return to his home. This honorable court emphasized, in a number of petitions, the central role that a person's home has in the formulation of his life (the above referenced '**Ajuri**; H CJ 1661/05 **Hof Aza Regional Council v. The Israeli Knesset**, IsrSC 59(2) 481). A person's home is his castle. If you harmed it – you harmed the center of his life, and an entire array of rights which form an integral part thereof.
32. According to international law, a person's right to return to his home and to his place of residence is a central and substantial fundamental right. This major principle was drafted by UN Commission on Human Rights as follows:

Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.

[...]

Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, to allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence.

(UN Commission on Human Rights – Economic and Social Council, *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2 (1998)).

33. The UN Commission on Human Rights emphasized the importance of the right in cases of forcible transfers and confined living, including, *inter alia*, in the following case:

The Committee is deeply concerned at the information that more than 1,300 Tajiks, citizens of Uzbekistan, were resettled from their villages in the mountains to the steppes of the Sherabad region, about 250 miles away. The State party explained that the action was taken in order to improve the living conditions of the people concerned. It did not however, refute that the resettlement was enforced by military forces, that the Tajiks had to leave their homes without their belongings and that their villages were subsequently destroyed.

The State party should immediately stop any further action to expel people from their homes in violation of articles 12 and 17 and possibly, in certain situations, article 27 of the Covenant. The State party should take steps to compensate the individuals concerned for the loss of their property and their suffering, resulting from their forcible displacement and its aftermath, and to report on their present living conditions.

(Concluding observations of the Human Rights Committee on Uzbekistan, UN Doc. CCPR/CO/71/UZB, 26 April 2001, para 16).

34. Accordingly, Article 49 of the Geneva Convention (1949) strictly prohibits a forcible transfer of protected citizens from their homes:

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 their motive.

This Article also concerns, according to the standard interpretation which was accepted in the drafting of Article 17(1) of the second protocol of the Geneva Convention, forcible transfer within an occupied territory, from one part to another, in the same territory.

35. The prohibition of a forcible transfer is one of the strictest prohibitions in the covenant., the violation of which is regarded as a severe violation, according to Article 147 of the convention.
36. The scholar Roch, in his article about forcible transfers which were carried out in Yugoslavia, emphasizes that the prohibition concerns any removal of groups or individuals from their homes against their will:

Regardless of which method the perpetrator chooses, the effect is the same: individuals or groups of individuals are removed from their homes and *Heimatslaander* against their own free will.

(M.P. Roch, *Forced Displacement in the Former Yugoslavia: A Crime Under International Law?*, 14:6 DICKINSON JOURNAL OF INTERNATIONAL LAW 18 (1995-1996)).

37. According to the constitution of the international criminal court, deportations and forcible transfers are defined as war crimes, with respect of which the court has jurisdiction (Article 8(2)(a)(vii)). Forcible transfer also constitutes a crime against humanity according to the constitution of the court, when it is executed within the framework of a systematic policy. In this context it was defined in Article 7(2)(d) thereof as follows:

Forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.

38. The scholar Stavropoulou emphasizes the great severity of a person's forcible transfer from his home:

Some have observed that an individual's forced deprivation of his home violates a basic human right. "Home" constitutes not only a means of "shelter", but also a means of placing a person in a social and physical space, and of circumscribing a person's private life and social interaction... Observers have never disputed the tragedy involved in one's separation from his home...

(Maria Stavropoulou, *The Right Not To Be Displaced*, 9 AM. U. J. INT'L L. & POL'Y 689, 717 (1993-1994)).

39. Stavropoulou also emphasizes, that a person's forcible transfer from his home necessarily violates a large number of fundamental rights under international law, and even amounts to a violation of the strict prohibition to act "in a cruel, inhuman or degrading" manner:

Displacement threatens the life, liberty, and security of the displaced – rights which are guaranteed, *inter alia*, in article 3 of the Universal Declaration and 6 of the International Covenant on Civil and Political Rights. In such cases, **there can be little doubt that displacement will amount to cruel, inhuman or degrading treatment** as illustrated in Article 5 of the Universal Declaration and article 7 of the International Covenant on Civil and Political Rights.

Article 12 of the Universal Declaration and article 17 of the international Covenant on Civil and Political Rights prohibit arbitrary interference with an individual's home and privacy. Article 17(2) of the Universal Declaration provides that "no one shall be arbitrarily deprived of his property". Article 25(1) also provides that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family..." similar provisions are found in the International Covenant of Economic, Social and Cultural Rights. It provides for the protection of the family (article 10); the right to an adequate standard of living, Shelter and food (article 11); the right to physical and mental health (article 12); the right to work (article 6); the right to education (article 13); and the right to pursue freely one's own economic, social and cultural development (article 1); the right to participate in cultural life (article 15). All of the above rights are inevitably violated to a greater or lesser degree when forced displacement occurs.

Displacement may also infringe on a number of other provisions of the International Covenant on Civil and Political Rights...

The Freedom of movement is inherently breached when displacement occurs, not only because the displaced are restricted invariably in their movement... but also **because they cannot exercise their right to return to their home country or principal area.**

(*Ibid.*, pages 736-737; emphases added – E.C.)

40. The residents of the OPT have the right to change their place of residence as they may deem fit within the OPT, including between the Gaza Strip and the West Bank, which constitute one integral territorial unit. This was certainly the case when petitioner 1 moved to the West Bank. The right to freedom of movement is the main expression of a person's autonomy, his freedom of choice and the realization of his rights and abilities. The right to freedom of movement is one of the norms of customary international law.

See:

HCI 6358/05 **Vaanunu v. GOC Home Command**, TakSC 2006(1) 320 (2006), paragraph 10;

HCI 1890/03 **Bethlehem Municipality et al. v. State of Israel**, TakSC 2005(1) 1114 (2005), paragraph 15;

HCI 3914/92 **Lev v. Regional Rabbinical Court**, Tak SC 94(1) 1139 (1994), 1147.

41. The right to freedom of movement is the engine which drives the entire body of a person's rights, the engine which enables a person to realize his autonomy, his choices. When freedom of movement is limited, that "engine" is damaged, as a result of which some of the choices and rights of the person cease to exist. His human dignity is violated. Hence, the great importance attributed to the freedom of movement
42. When a person is prevented, on a permanent basis, from traveling to vast integral parts within the territory of the state or authority in which he lives, his social life is injured, his cultural life and human rights are violated, his freedom of choice is harmed. Restrictions are imposed on the most substantial issues of his life: his place of residence, the individuals with whom he will share his life, where his children will study, where he will receive medical treatment, who will his friends be, where he will work, what will his occupation be and where he will pray.
43. The right to freedom of movement is also entrenched in humanitarian international law, The fourth Geneva Convention establishes the freedom of movement as a fundamental right of protected persons, either in the occupied territory or in the territory of the occupying power. Article 27 of the convention provides that protected persons will be entitled, in all circumstances, to have their dignity treated respectfully.
44. Articles 41-43 (which apply in the territory of the state party to the conflict) and Article 78 (which applies in an occupied territory) should also be mentioned. These Articles concern the limitation of liberty by detention or assigned residency. The measures are specific and the exercise thereof is specific, which indicates that the freedom of movement of protected persons in all other circumstances was very important to the state members. Only where there is, as a general rule, a duty to respect the freedom of movement, explicit and specific rules must be established for the limitation thereof:

Article 78 of the Fourth Geneva Convention constitutes a source for both the protection of the right of the assigned person and the impingement thereof. This is expressed in the provisions of Article 78 of the Fourth Geneva Convention itself which provides that the measures established by it are the measures that the occupying power (namely, the military commander) may "at most" use.

(Ajuri, page 1027)

45. International human rights law is also a binding source, which enshrines freedom of movement as a fundamental human right. Article 12(1) of the International Covenant on Civil and Political Rights which was signed and ratified by Israel provides as follows:

Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

46. The above Article 12 is a binding source. As a source for interpretation see also Article 13 of the Universal Declaration on Human Rights and Article 2 of the Fourth Protocol from 1963 of the European Covenant on Human Rights.
47. In the past, it was acknowledged by the court that when a military commander exercises his authorities *vis-à-vis* Palestinian residents of the territories, he is obliged to respect human dignity.

The value of man, the sanctity of his life and the fact that he is entitled to liberty... His life or his dignity as a human being may not be harmed, and his dignity as a human being must be protected... The duty of the military commander, according to this basic rule, is twofold. Firstly, he must refrain from operations which injure the local inhabitants. This is his "negative" obligation. Secondly, he must carry out acts which are lawfully required to ensure that the local inhabitants are not harmed. This is his "positive" obligation.

HCI 4762/04 Physicians for Human Rights v. Commander of IDF Forces in Gaza, IsrSC 58(5) 385 (2004), 394).

48. In addition, the respondents violate petitioners' right to family life. The right to family life is a recognized and protected right in the law which applies in the Area, by virtue of customary consensual international law and administrative law.

See:

Article 46 of the Hague Articles;
Article 27 of the Fourth Geneva Convention;
Article 10 of the Covenant on Economic, Social and Cultural Rights, 1966;
Articles 17 and 23 of the Covenant on Civil and Political Rights, 1966;
Article 12 and Article 16(3) of the Universal Declaration on Human Rights, 1948;
Article 12 of the European Convention on Human Rights;
HCI 3648/97 **Stamka et al. v. Minister of Interior**, IsrSC 53(2) 728, 787.

49. The underlying premise of the right to family life is a person's right to live his life with his loved one. The natural family is the basic unit of society which must be protected:

The most basic and ancient social unit in the history of mankind, which was, is and will be the basic element that facilitates and ensures the existence of human society.

(Justice Elon CA 488/77 **A. v. General Attorney**, IsrSC 32(3) 421 (1978), 434).

50. The violation of family life is a violation that amounts to a violation of petitioner's dignity as a human being. As noted by President Barak:

Family relations, the protection thereof and the protection of its nuclear elements (the spouses and their children) are situated at the basis of Israeli law. The family has an essential and central purpose in the life of the individual and the life of society. Family relations, which the law protects and which it seeks to develop, are some of the strongest and most significant in a person's life.

[...]

The family ties of a person are, to a large extent, the essence of his life... There are few decisions that shape and affect the life of a person as much as the decision with whom he will join his fate and with whom he will establish a family. This is also the case with regard to the right of parents to raise their children...

Thus, from human dignity, which is based on the autonomy of the individual to shape his life, arises the derivative right of establishing the family unit and continuing to live together as one unit.

(HCJ 7052/03 **Adalah - Legal Centre for Arab Minority Rights in Israel et al. v. Minister of Interior**, TakSC 2006(2) 1754 (2006), paragraphs 25, 30-34 of the President's judgment).

The recognition of the right to family life as a protected right under the Basic Law: Human Dignity and Liberty, was accepted by the majority of the Justices and is the prevailing case law.

Conclusion

51. This petition concerns petitioners' [*sic*] continued attempt to cause petitioner 1 to remain in the Gaza Strip. This affair started with petitioner 1's inappropriate expulsion to the Strip; it continued with respondents' refusal to consider his request to return to his home in Gaza; and it has currently reached the point in which petitioner 1's return to his home is conditioned on his desertion of the family he has established in the Gaza Strip, a condition which, in fact, frustrates his return to his home.
52. Respondents' conduct amounts to a forcible transfer of petitioner 1 into the Gaza Strip. The respondents severely violate petitioner 1's rights, the realization of which is conditioned by them on a severe violation of petitioners' right to family life. However, it is petitioner 1's right to return to his home and it is his right to realize it together with his family members.

This petition is supported by an affidavit which was signed before an attorney in the occupied territories and was sent to the undersigned by fax, subject to coordination by phone. This honorable court is requested to accept this affidavit, and the power of attorney which was also sent by fax, taking into consideration the objective difficulties in arranging a meeting between petitioner 1 and his legal counsels.

In view of all of the above, the honorable court is hereby requested to issue an *order nisi* as requested and after hearing respondents' response, to make it absolute. In addition, the court is requested to order the respondents to bear petitioners' costs and expenses including attorneys' fees.

Elad Cahana, Advocate
Counsel to the petitioners

March 8, 2010

[File No. 63291]