At the Supreme Court **HCJ 9657/07**
Sitting as the High Court of Justice

In the matter of:

1. **_____ Jarbo`a, Identity No._____,**
Resident of the Palestinian Authority
2. **_____ Jarbo`a, Identity No._____,**
Minor, represented by her mother, petitioner 1
3. **_____ Jarbo`a, Identity No._____,**
Minor, represented by her mother, petitioner 1
4. **_____ Jarbo`a, Identity No._____,**
Minor, represented by her mother, petitioner 1
5. **_____ Jarbo`a, Identity No._____,**
Minor, represented by her mother, petitioner 1
6. **HaMoked: Center for Defence of the Individual founded by Dr. Lotte Salzberger - registered non profit organization**
Represented by attorneys Ido Blum (lic. no. 44538) and/or Abir Joubran (lic. No. 44346) and/or Yotam Ben Hillel (lic. No. 35418) and/or Hava Matras-Iron (lic. no 35174) and/or Sigi Ben-Ari (lic. no. 37566) and/or Yadin Elam (lic. no. 39475) and/or Alon Margalit (lic. no. 35932)
Of HaMoked: Center for Defence of the Individual founded by Dr. Lotte Salzberger
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The Petitioners

- Versus -

1. **Commander of the Army Forces in the West Bank**
2. **General of the Southern Command**
3. **Minister of the Interior**
4. **The State of Israel**

The Respondents

Petition for an Order Nisi

A petition for an Order Nisi is hereby filed which is directed at the respondents ordering them to appear and show cause why they will not issue petitioner 1 and her

children, petitioners 2-5 with entry permits to Israel for the purpose of their passage from the Gaza Strip to the West Bank to visit petitioner 1's three children who live there and for the purpose of their return from the West Bank to their home in the Gaza Strip.

The Parties

1. Petitioner 1 (hereinafter: the "**petitioner**") is a Palestinian born in 1964, who resides in the Gaza Strip.

2. Petitioners 2-5 are the minor children of the petitioner.

3. Petitioner 6 (hereinafter "**HaMoked: Center for Defence of the Individual"** or "**HaMoked"**) is a non profit organization working for the promotion of human rights in the occupied territories.

4. Respondent 4 holds the territories of the West Bank and the Gaza Strip under belligerent occupation. Respondent 1 is the army commander, authorized by respondent 4 as the responsible person in the West Bank territory.

5. Respondents 2-3 are responsible for issuing entry permits into Israel for the purpose of passage from the Gaza Strip to the West Bank. Respondent 3 is vested with the authority which it delegates to respondent 2.

The factual basis

6. The petitioner was married to Mr. _____Katou`a, ID No. _____ and eight children were born to them: _____, _____, _____, _____, _____, _____, _____, and _____.

7. The petitioner and Mr. Katou`a were divorced in 1997. In the wake of the divorce Mr. Katou`a left the Gaza Strip and relocated to the West Bank together with his six sons, whereas the petitioner continued to reside with her daughters in the Gaza Strip.

8. In 1998 the petitioner became remarried to Mr. _____ Jarbo`a (ID No. _____) and four children were born to them (petitioners 2-5): _____ aged seven; _____ aged five; and _____ and _____, twins aged 3.

9. Three of her children from her first marriage still reside in the West Bank, in the city of Qalqiliya (hereinafter: the "**three children**")

   _____ Katou'a (ID No. _____) aged 22;

   _____ Katou'a (ID No. _____) aged 18;

   _____ Katou'a (ID No. _____) aged 16;

10. The last time the petitioner went to the West Bank to visit her three children was **in 2005.**

Exhaustion of proceedings

11. The petitioner over the course of 2006 approached the Palestinian DCO in the Gaza Strip a number of times, and filed applications for an entry permit to Israel for the purpose of her passage to the West Bank. She was informed by the Palestinian DCO that her applications were not answered by the Israeli side.

12. On 28 January, 2007 petitioners 1-5 through HaMoked: Center for Defence of the Individual applied to the humanitarian center of the District Coordinator's Office of respondent 2 in Gaza (hereinafter: the "**Gaza DCO**") and requested that an entry permit to Israel be issued for them for the purposes of their passage from the Gaza Strip to the West Bank, to visit the petitioner's three children.

    A copy of the letter dated 28 January, 2008 is attached and marked **p/1.**

13. On 25 February, 2007 a reply was received from the Gaza DCO stating that "**entry to the West bank shall not be permitted for the following reasons: the criteria have not been approved**".

    A copy of the letter dated 25 February, 2007 is attached and marked **p/2.**

14. On 22 July, 2007 HaMoked: Center for Defence of the Individual appealed to the legal advisor of the Gaza DCO, with a request to intervene in the issue.

    A copy of the application dated 22 July, 2007 is attached and marked **p/3.**

15. On 26 August, 2007 in a telephonic conversation with the legal advisor of the Gaza DCO, Sergeant Chaim Sharvit, HaMoked was informed that for some reason or other the application did not reach him. That being the case, HaMoked: Center for Defence of the Individual forwarded their application once again to the legal advisor of the DCO. Receipt of the application was confirmed telephonically the next day by Sergeant Sharvit.

    A copy of the application dated 26 August, 2007 is attached and marked **p/4.**

16. On 8 October, 2007 the undersigned applied telephonically to the office of the legal advisor of the Gaza DCO in order to clarify the fate of the application. The assistant to the legal advisor of the Gaza DCO informed HaMoked that Sergeant Sharvit was on vacation and there is **no** vestige **of the application in question.** Therefore, an application was sent to the office of the legal advisor for the **third time,** this time around to the assistant to the legal advisor of the Gaza DCO Corporal Yarden Zer-Aviv.

    A copy of the application that was sent for a third time, dated 8 October 2007, is attached and marked **p/5.**

17. After the application was forwarded for the third time, it was finally informed that the application was received and that it was "being handled". Since then, a month has passed and the "consideration" continues and even at the time of writing these lines no answer has been received to the application.

The Legal Argumentation

The Respondents' Obligation to Ensure the Petitioners' Orderly Living

> **The life of a population, like the life of an individual, does not remain stagnant but it is in a constant state of flux, but is one filled with expansion, growth and change. A military administration cannot ignore all of this. It is not permitted to freeze this life.**
>
> (Dicta of (the then) Justice Barak in HCJ 393/82 **Jami'yat Iskan v. Commander of the IDF Forces in the Judea and Samaria Area**, *Piskei Din* 37(4) 785, 805).

18. The respondents cannot ignore the fact that even at a time of hostilities life carries on. It is also during this time of hostilities that the residents of the territories are entitled to realize their family life with their spouses and their children. The respondents cannot demand that the petitioners delay realizing their family life, and force them to be separated until peace prevails.

19. Regulation 43 of the **Hague** Convention, establishes:

> 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…

20. The obligation to ensure public order and an orderly life and to act for society's needs apply to all spheres of civilian life:

> The preface to Article 43 grants the military administration the authority and imposes upon it the obligation to ensure public order and public life… the article does not limit itself to any special aspect of public order and public life. It is all-encompassing and includes all aspects of public order and public life. Therefore this authority applies – alongside security and military issues – also to those multidimensional "civilian" circumstances, such as economic, societal, educational, sanitary, health, transport conditions and others of the type to which the life of a person in modern society is connected.
>
> (Paragraph 18 of the judgment of Justice Barak in HCJ 393/82 Jami'yat Iskan above)

21. When assuring an orderly life much weight is given to the passing of time and to the impact upon the population:

> We are not dealing with a specific one-time activity but rather with a continuous obligation, and as such it may only be fulfilled when considering the ever-changing circumstances, and through paying necessary attention

> to the time-dependent needs and those that continue to crop up with the passing of time. The circumstances in question are not necessarily security related but are also of an economic, sanitary, or transport nature, and the like.
>
> […]
>
> The course of time … is bound to impact the nature of the needs, and the need for coordinating activities and for making renewed preparations is bound to grow as the length of time increases… within the framework of the legal writings on Article 43 it has thus been emphasized on more than one occasion that there is a link between the element of time and the dress which shall be worn by the fulfillment of the provisions of article 43.
>
> (HCJ 69/81 **Abu 'Aytah v. The. Area Commander of Judea and Samaria**, *Piskei Din* 37(2). 197, 310-311)

22. Within the framework of this obligation the respondents may only take into account two types of considerations: the security consideration on the one hand, and the welfare of the protected population on the other hand. Any other consideration falls under the category of an alien consideration:

> Indeed, the military commander of territory that is held under belligerent occupation must balance between the needs of the army on the one hand and the needs of the local inhabitants on the other. Within the framework of this delicate balance there is no room for an additional system of considerations whether they are political considerations.
>
> (HCJ 2056/04 **Beit Surik Village Council v. The Government of Israel**, *Piskei Din* 58(5) 807, 829).

23. Within the range of the balance between security needs and the needs of the local population, the army commander is charged with the obligation to protect the rights of the residents and to consider their human rights:

> The Hague Convention authorizes the area commander to act in two main spheres: The first one - assuring the legitimate security interest of the occupier of the territory, and the second – assuring the needs of the local population in the territory that is under belligerent occupation…the first need is military and the latter is humanitarian-civilian. The first focuses on the security concern of the military force that occupies the place, and the second – on the responsibility to maintain the welfare of the inhabitants.

> In the latter sphere the area commander is charged not only with the maintenance of public order and security of the inhabitants but also the protection of their rights, and especially the constitutional human rights that are granted to them. The concern for human rights stands at the center of humanitarian considerations that the commander has an obligation to consider…among his considerations, the commander must focus on the needs of the area, and he should not take into account the considerations of the state by virtue of which the military occupation of the territory exercises its authority.
>
> (HCJ 10356/02 **Hass vs. the IDF Forces in the West Bank**, *Piskei Din* 58(3) 443, 455-456.)

24. From the respondents' decision it clearly transpires that the refusal to permit the petitioner's passage to the West Bank is not based on a security impediment, since in those cases where there have been security impediments the respondent has made an explicit note of this.

25. **The step adopted by the respondents, which flows from considerations that are not security related (and certainly do not have anything to do with the welfare of the protected population) is completely improper.** The respondents are thus harming the basic rights of family members without a justifiable reason for doing so. The respondent must weigh up all the relevant considerations, and must relate in a grave manner to the hash separation that has been forced upon the family members.

26. In the case of the petitioners there is no doubt that a serious flaw arose in the discretion exercised by the respondents: on the one side of the scales there is the family life of the petitioner and her children, who do not constitute any kind of security risk whatsoever, whereas on the other side of the scale there are concealed "criteria", which are based on considerations which at best are hypothetical, and which at worst are invalid, and do not contain anything that justifies such a harsh infringement of the right to a family life, to dignity and to freedom of movement.

<u>The petitioners' right to a family life</u>

> **A person has no stronger mental relationship than the ties he has to his close family members. And the relationship between a man and his children and spouse is the strongest of all. So too is the relationship between a mother and her children as well as the relationship between a father and his children. This is based in natural law, a law that is stronger and more elevated than any other law.**
>
> (HCJ 4365/97 **John Doe v. Minister of Foreign Affairs**, *Takdin Elyon* 99(1), 7, 30).

27. The right to a family life is a recognized and protected right in international humanitarian law and in international human rights law.

Article 16 of the Universal Declaration of Human Rights, 1948, determines:

> The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

See also:

Article 46 of the Hague Convention;

Article 27 of the Fourth Geneva Convention;

Article 10 of the International Covenant on Economic, Social and Cultural Rights, 1966;

Articles 17 and 23 of the International Covenant on Civil and Political Rights, 1966;

Article 12 and Article 16(3) of the Universal Declaration of Human Rights, 1948;

Article 12 of the European Convention on Human Rights;

HCJ 3648/97 **Stemke et al v. Minister of the Interior**, *Piskei Din* 53(2) 728, 787.

28. Harm to family life may be equated with harm to the petitioner's dignity as a human being. (See HCJ 7052/03 **Adalah: The Legal Center for Arab Minority Rights in Israel et al v. Minister of the Interior**, *Takdin Elyon* 2006(2) 1754, paragraphs 25, 30-34 of the judgment of Chief Justice (ret.) Barak, where a majority of the judges accepted the notion that the right to a family life be recognized as a protected right per the Basic Law: Human Dignity and Liberty, and is therefore settled law).

29. The right to a family life also includes the rights of parents to maintain a familial relationship with their children after divorce or in any circumstances where they are no longer together with them.

30. The European Court, for example, explicitly held that within the framework of the obligation of the State to respect the right to a family life the State is also charged with the positive obligation of ensuring the continued maintenance of a familial relationship between a father and his son after divorce:

> There may in addition be positive obligations inherent in effective "respect" for family life… the instant case features both types of obligations: on the one hand, a positive obligation to ensure that family life between parents and children continue after divorce, and, on the

> other, a negative obligation to refrain from measures which cause family ties to rupture.
>
> (App. No. 29192/95 **Ciliz v. The Netherlands**, *Eur. Ct. H.R.* (11 July 2000), para. 61).

31. The respondents are preventing the petitioner from exercising her right to parenthood and to a family life together with three of her children. The respondents are preventing the three children from expressing their love and respect toward their mother and from maintaining a standard mode of living with her and with their siblings, petitioners 2-5 (on the right to parenthood and its importance see: CA 577/83 **The Attorney General v. Jane Doe**, *Piskei Din* 38(1), 461, 465-466).

The right to freedom of movement

The right to dignity, to freedom of movement and to autonomy

32. Residents of the territories have a right, within the territories, to move around wherever they see fit, including passage between the Gaza Strip and the West Bank, which constitute one territorial unit. This is their basic and essential right.

33. See with regard to the recognition by the State of Israel of the Gaza Strip and the West Bank as one territorial unit:

Article 5 of the "Declaration of Principles" dated 13 September, 1993, and which was signed by Israel and by the PLO;

Article 23(6) of the Gaza and Jericho Agreement, the "Cairo Agreement", which was signed by Israel on 4 May, 1994;

Article 11(1) of Interim Agreement, which was signed by Israel at the White House on 28 September, 1995;

Article 1(2) of the First Annexure to the Interim Agreement, Security Arrangements;

The Proclamation with Respect to the Implementation of the Interim Agreement (Proclamation No. 7);

HCJ 7051/02 **Ajouri v. Commander of the IDF Forces in the West Bank**, *Takdin Elyon* 2002(3), 1021;

HCJ 9586/03 **Salame v. IDF Commander in the Judea and Samaria Area** *Piskei Din* 58(2) 342, 345.

And also after the completion of the "Disengagement Plan":

Agreement on Movement and Access between Israel and the Palestinian Authority dated 15 November, 2005;

34. The right to freedom of movement is the primary expression of human autonomy, of his free choice and the realization of his abilities and his rights. The right to freedom of movement is numbered among the norms of international customary law.

See:

HCJ 6358/05 **Vanunu v. the. Commander of Homefront Command**, *Takdin Elyon* 2006(1) 320, paragraph 10;

HCJ 1890/03 **Bethlehem Municipality and 21 others v. The State of Israel**, *Takdin*. *Elyon* 2005(1) 1114, paragraph 15;

HCJ 3914/92 **Lev v. The District Rabbinical Court**, *Takdin Elyon* 94(1) 1139, 1147.

35. The right to freedom of movement is the motor that sets into motion the tapestry of human rights, the motor that enables a person to realize his autonomy, and his free choice. When freedom of movement is restricted that very "motor" becomes harmed and as a result thereof some of the possibilities and human rights cease to exist. Human dignity is thus harmed. Thus there is great importance that flows from the right to freedom of movement.

36. Restricting a person from regularly travelling to broad integral territories within the territory of the State or entity in which he lives, infringes upon his social life, infringes upon his cultural life and human rights, and infringes upon his freedom of choice. That very person is then limited by the most essential questions of his life: where will he live, with whom will he share his life, where will he educate his children, where will he receive medical care, who will be his friends, where will he work, what will occupy him and where will he pray.

37. The right to freedom of movement is also enshrined in international humanitarian law. The Fourth Geneva Convention reinforces the right to freedom of movement as a basic right of protected persons, whether they are in occupied territory or whether they are in territory of a hostile state. Article 27 of the Convention determines that protected persons shall be entitled in <u>all circumstances</u> to humane treatment and to respect for their honor.

38. It is important to also note articles 41-43 (which apply to territory of a state that is involved in conflict) and 78 (which applies to occupied territory). These articles deal with the restrictions upon freedom through detention or through assigned residence. These means are specifically mentioned and thus they are the exclusive means that may be used. We may derive from this, that the freedom of movement of protected persons in all other circumstances is very important to the contracting States. Only in a place where there is, as a general rule, an obligation to respect freedom of movement would there be a necessity to establish explicit and specific rules to restrict it:

> Article 78 of the Fourth Geneva Convention constitutes the source for the protection of the right of the injured

> party as well as the source for the possibility of harming this right. This is given expression, among other things, in the provisions of Article 78 of the Fourth Geneva Convention itself, which establishes that the means determined by it are the means which the occupying power (that is to say the army commander) may "at most" carry out. (HCJ 7015/02 **'Ajuri v. IDF Commander in West Bank**, *Takdin Elyon* 2002(3), 1021, 1027).

39. International human rights law is also a positive source which enshrines the freedom of movement as a basic human right. Thus article 12(A) of the International Covenant on Civil and Political Rights, which Israel signed and ratified establishes:

> 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.

40. The aforesaid Article 12 is a positive source. As a source of interpretation see also Article 13 of the Universal Declaration of Human Rights and Article 2 of the Fourth Protocol (1963) to the European Convention on Human Rights.

41. The honorable court has in the past recognized the fact that when the army commander exercises his authority vis-à-vis the Palestinian residents of the territories, it must do so in a spirit of respecting human dignity.

> When dealing with human value, the sanctity of human life and the fact that he is a free agent…one cannot harm his life and dignity as a human being, and his dignity as a human being needs to be protected … the obligation of the army commander in accordance with the basic rule is twofold: firstly, he must avoid activities which harm the local inhabitants. This is the "negative" obligation; secondly, he must undertake action, which is required under the law, and which ensures that the local inhabitants are not harmed. This is the "positive" obligation.
>
> (HCJ 4764/04 **Physicians for Human Rights et al v. Commander of the IDF Forces in Gaza**, *Piskei Din* 58(5) 385, 394).

<u>The right of transit via Israel</u>

42. The petitioners are not requesting entry to Israel for the purpose of staying there. The petitioners have no interest or desire to stay in Israel. All they ask is to move between the two parts of their country, which are geographically split, with Israel in the middle.

The right that is relevant to our situation is therefore not the right to enter Israel – but rather the <u>right of transit via Israel</u>.

43. **The right of transfer/transit** is recognized in international law and is qualitatively different from the right to entry.

We shall now elaborate somewhat on this right:

44. Already during Biblical times one may find the approach, in terms of which people were entitled to come to a country with a legitimate claim to pass through it:

> Let me pass through thy land: we will not turn aside into the fields or into the vineyards; we will not drink of the waters of the well: but we will go along by the king's highway, until we have past thy borders (Numbers XXI: 21).

The refusal there to accede to this claim was considered to be capricious, and therefore justified going to war.

45. **International law recognizes the existence of a right of transfer even if it infringes upon the principle of sovereignty**. The State is obligated to facilitate passage within its territory to foreign subjects wishing to arrive at another state. The right of transfer comes into being when passage is required (even if there are other alternatives), and when there is no harm to the State through which the passage is made. Attached to the passage may be conditions, whose aim it is to protect the legitimate interest of the State being passed through.

46. The scholar Uprety notes in his book that:

> Jurists over the past six decades have definitely favored the view that States whose economic life and development depend on transit can legitimately claim it.
>
> (K. Uprety, *The Transit Regime for Landlocked States: International Law and Development Perspectives* (The World Bank, 2006), p. 29).

47. In the case of an enclave, the right to transfer has the validity of custom, and naturally flows from the very existence of the enclave. The scholar Farran bases this, among other things, on the legal principle in terms of which there is a presumption upon the granter that it has also granted that thing, without which the original grant is worthless (*cuicunque aliquis auid concedit concedere videtur et id sine quo res ipsa non potuit*).

In the words of Farran:

> The law would not recognize the right of state A to a detached piece of its territory enclaved in state B's unless it was possible for state A to use that right. The

> existence of a right implies its exercise: without a right of free communication the rights of a state to its exclaves would be incapable of exercise and therefore nugatory. Hence there is no need for an express treaty between the two states concerned to give such a right: it is implicit in the very existence of the enclave. If a treaty is made, it may well regulate the exercise of this international way of necessity: but in its absence the right of way will still exist, for the necessity in still in being.
>
> (d'Olivier Farran, C., International Enclaves and the Question of State Servitudes, *The International and Comparative Law Quarterly*, Vol.4, No. 2. (Apr. 1955) 294, pp. 304).

48. The right to transfer also exits in a place where there are no close ties. Classic cases where the principle of the right of transfer has evolved are those cases of **landlocked states** (for example Switzerland or the Caucuses), **enclaves** that are completely engulfed by another state (for example West Berlin before the reunification of Germany and the Mount Scopus enclave between 1948-1967) and **states that are geographically divided** (such as the Palestinian territories).

49. In his comprehensive article on the right of transfer, the scholar Lauterpacht describes it in the following manner:

> On that view, there exists in customary international law a right to free or innocent passage for purposes of trade, travel and commerce over the territory of all States – a right which derives from the fact of the existence of international community and which is a direct consequence of the interdependence of States.
>
> (E. Lauterpacht, Freedom of Transit in International Law, *Transactions of the Grotius Society*, Vol. 44 (1958), pp. 313-356, p. 320).

Lauterpacht bases the customary nature of the right of transfer on the writings of the scholar Grotius and up until the present day, as well as on the practice of States. He proves that the basic principle of freedom of passage is consistently repeated in numerous bilateral and multilateral treaties (the earliest treaty to which he refers dates back to the eleventh century), which regulate its concrete implementation in various contexts: passage through rives and waterways or terrestrial passage through the territories of other states. He shows how the same logic was exercised with respect to seaways.

Amongst the most modern and broadly based treaties from the perspective of the number of signatories to them, mention may be made of the Convention on the High Seas (1958) (article 3 thereof, with respect to access of landlocked states); the Convention on the Territorial Sea and Contiguous Zone (1958)

(articles 14-24 thereof, with respect to the right of innocent passage); the United Nations Convention on the Law of the Sea (1982) (article 125 thereof on the right of access to and from the sea and freedom of transit) and the GATT Treaty (article V with respect to the right of transfer).

50. The right of transfer is conditioned, as stated, on the absence of harm to the state passed through. For this purpose the right may be conditioned on the payment of expenses that are related to passage itself; to other requirements such as a quarantine to prevent the spread of disease, and anything else of this nature. With regard to security considerations, Lauterpacht writes the following:

> In terms of the problem of transit, there is room for the view that States are not entitled arbitrarily to determine that the enjoyment of a right of transit is excluded by considerations of security. What they may do is, by reference to the factor of security, to indicate one route of transit in preference to another or, possibly, to allow the use of the route subject only to certain conditions. But it must be doubted whether the discretion of the State stretches beyond this.
>
> (*Ibid*. at 340).

51. This approach is reflected in the covenants that have enshrined, in concrete circumstances, the general principle of the right of transfer. The right of transfer does not cease to exist at the time of emergency, and even not during the time of war, however it is possible to limit it pursuant to the circumstances. The limitation must, as far as is possible, be minimal – from the perspectives of both its scope and its duration.

52. The relevant provisions may be found in the New York Convention on Transit Trade of Land-locked States (1965) (the full text may be found at http://www.austlii.edu.au/au/other/dfat/treaties/1972/4.html)

> Article 12 - Exceptions in case of emergency
>
> The measures of a general or particular character which a Contracting State is obliged to take in case of an emergency endangering its political existence or its safety may, in exceptional cases and for as short a period as possible, involve a deviation from the provisions of this Convention on the understanding that the principle of freedom of transit shall be observed to the utmost possible extent during such a period.
>
> Article 13 - Application of the Convention in time of war
>
> This Convention does not prescribe the rights and duties of belligerents and neutrals in time of war. The

Convention shall, however, continue in force in time of war so far as such rights and duties permit.

The right of transfer as opposed to the right of entry

53. The right of transfer and the right of entry are different rights and are qualitatively distinct from each other – both from a legal perspective and from a practical perspective. When dealing with transfer, the required **period of stay** must be brief. This is the shortest time needed for the sake of traversing the required distance necessary for crossing the relevant portion of land. With respect to the **purpose of entry**, in the case of transfer the transferring person has no interest in the state passed through, and his sole purpose is to reach his desired destination on the other side – the transfer is exclusively the means for accomplishing the goal, but not the goal itself. This obviously is in contradistinction to entry, where the purpose of the enterer is the staying itself in the State and sometimes even residing or working there.

54. The difference in the nature of these two rights means that there are significant ramifications for the level of potential security risk that flows from each one of them, as well as the possibility for minimizing the risk. As opposed to entry for the purpose of long-term staying, transfer carries with it a far lesser security risk. Moreover, in the case of transfer, it is relatively easy for the state passed through to minimize the security risk to almost nothing, by means of setting conditions with respect to the transfer. It may, for example, dictate a particular transfer route, impose various security requirements, and even closely supervise its implementation.

55. In other words, the scope of the right of transfer is broader than the scope of the right of entry for the purpose of staying, and therefore most considerable reasons are needed in order to violate the same.

Summary

56. All the petitioner is asking is to pass through Israel together with her children in order to visit her three children who live in the other part of her country. The respondents may not cut off the family members from each other, by merely relying on vague statements regarding "non-compliance with criteria". The only considerations that the respondents may take into account are pure security considerations, which from the decision of the respondents do not appear to be present in our case. Moreover, even if there was some type of security risk to their passage through Israel, one could, with relative ease, deal with this risk and limit it, in numerous ways. Certainly it is insufficient to completely prevent the right of family members to meet with each other.

This petition is supported by an affidavit which was signed before an attorney in the Gaza Strip and which was sent to the undersigned by fax, after coordinating do so via the telephone. The honorable court is requested to accept this affidavit, as well as the power of attorney which was also given by fax, considering the objective difficulties with respect to a meeting between the petitioners and their counsel.

For all these reasons the honorable court is requested to issue an *order nisi* as requested at the beginning of this petition, and after receiving the respondent's response, make it absolute. The court likewise is requested to order the respondent to pay the petitioners' costs and attorney fees.

14 November, 2007

Adv. Ido Blum
Counsel for the petitioners

[T.S. 47735]