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At the Supreme Court
Sitting as the High Court of Justice

HCJ 660/08

- In the matter of:
1. _____ 'Amer, Identity No. _____, resident of the Palestinian Authority
 2. _____ 'Amer, Identity No. _____, resident of the Palestinian Authority
 3. **HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Saltzberger (R.A.)**

Represented by attorneys Abeer Jubran (lic. No. 44346) and/or Yossi Wolfson (Lic. No. 26174) and/or Ido Blum (lic. No. 44538) 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 Alon Margalit (lic. no. 35932) and/or Yadin Elam (lic. no 39475)

of HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Saltzberger
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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. **Coordinator of Activities in the Territories**
5. **The State of Israel**

The Respondents

A 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 as follows:

- A. Why they will not update the registered address of petitioner 1 in the copy of the Palestinian Population Registry that is in Israel's possession, to reflect the

true and correct address, which is in Alsharawia – Alar in the District of Tulkarem in the West bank, where she has in fact lived with her spouse, petitioner 2, as stated in the notice by the Palestinian side which was delivered to the Israeli side on 22 April, 2007.

- B. Why they will not proclaim which explicit authoritative source or which explicit order, pursuant to which authority is given for updating the registered address, is in the respondent's possession, which explicitly indicates that such authority has not been transferred to the Palestinian side, notwithstanding section 28 of Appendix III of the Interim Agreement and the platform for its application.
- C. Why they did not present the petitioners in particular and the Palestinian public in general, with the agreement between the Palestinian authority and respondent 1, which is concerned with the procedure for updating the registered address of a Palestinian from the Gaza Strip who moves to the West Bank, if such procedure exists, and/or any other procedure that touches upon this matter, if such exists.
- D. Why they will not thaw the freeze that has been placed by the respondents for over seven years, and receive from the Palestinian side notices as to the updating of addresses of Palestinians, including the updating of an address which has been changed from the Gaza Strip to the towns and villages of the West Bank, and thus update the Palestinian Population Registry that is in their possession accordingly.
- E. Why the respondents will not proclaim that petitioner 1 may receive a return address for her enquiries at the District Coordination Liaison Office that is close to her home in Tulkarem, and allow her departures abroad and her return home to the Tulkarem district that is in the West Bank to be done via the Allenby Bridge border crossing.

Request for a Temporary Injunction

The honorable court is hereby requested to issue a temporary injunction forbidding any steps being adopted against petitioner 1 owing to the address that is registered in the copy of the population registry that is in possession of respondent 1, including deporting petitioner 1 from her home in the Tulkarem district – where she lives with her spouse, petitioner 2 – to the Gaza Strip.

Petitioner 1, bearing the status of a Palestinian resident of the Palestinian Authority has the right to live in the Palestinian territories of the Authority, including the Gaza Strip and the West Bank. However it is the respondents' view that so long as her address has not been updated in the copy of the population registry that is in its possession, petitioner 1 is an "illegal resident" in her own home. And take note further: the address was updated in the official population registry of the territories, which is administered by the Palestinian Authority. The respondents refuse to update the copy of the registry that is in their possession, which is supposed to match the official registry.

This petition is not concerned with the legality of petitioner 1's settling in the Tulkarem district – in this matter the petitioners do not require relief from the respondent. The petition is concerned rather with the updating of the address in the copy of the registry that is held by respondent 1, and the reason for it is the difficulties that the respondents have devised for persons in the position of petitioner 1 with respect to receiving various services, to going to Jordan for instance, and at times also to being expelled from their home.

The petitioners are a married couple who share the same status in the territories, namely they are both residents of the Palestinian Authority, who live together in their common home in the Tulkarem district.

The petitioners have the right to choose their place of residence in the Palestinian Authority territories, including Gaza and the West Bank.

The non-updated address of petitioner 1 in the annexure to her identity document is Bney Soheyla, in contradistinction to her correct address, which is Alsharawia – Alar in the Tulkarem district.

The updated address in the Palestinian Population Registry is Alsharawia – Alar in the Tulkarem district. However the respondents, including respondent 1, refuse to update the registered address because of the freeze, that has lasted seven years, and which has been imposed upon updating addresses in the copy of the Palestinian Population Registry that is in their possession.

There is no security impediment whatsoever against petitioner 1.

Within the framework of the legal proceedings that have been conducted thus far in the matter of petitioner 1 (within the framework of HCJ 2680/07) which has continued for about ten months, the respondents have consented to petitioner 1's residence in the Tulkarem District which is in the West Bank for as long as the pleadings progress. This should remain the case for the continuation of the pleadings.

Any harm to the family life of the petitioners will cause irreparable damage and suffering. In contradistinction, no interest of the respondents will be harmed from the continued residence of petitioner 1, who is a Palestinian, in the territory of the Palestinian Authority.

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The parties

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- 2. B The [internal] contradictions in the respondent’s claims
- 2. B.1 The respondent recognizes that section 28 of **Appendix III** of the agreement has been anchored into internal military legislation, including a procedure for updating the registered address in the Palestinian Authority territories.
- 2. B.2 The respondent recognizes the authority of the Palestinian Authority to update the registered address of a resident of the Palestinian Authority, without conditioning it on the respondent’s approval.
- 2. B.3 The explicit recognition by respondent 4 of the authority of the Palestinian Authority to update a registered address from Gaza to the West Bank

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- 3. B Analysis of the respondents’ claims with regard to the deficiencies in the proceedings.
- 3. B. 1 The claim that the notice of change of address is not reasoned and therefore an exception cannot be made to the freezing policy
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Conclusion

The factual infrastructure

The parties

1. Petitioner 1, born in 1984, is a Palestinian who resides in Alsharawia – Alar in the Tulkarem district in the West Bank (hereinafter: “**Tulkarem district**” or “**Tulkarem**”) and whose non-updated address in the annexure to her identity document is Bney Sohila in the Gaza Strip.
2. On 14 January, 2006 petitioner 1 married petitioner 2, a Palestinian from Tulkarem and at the beginning of April, 2007 she moved from Bney Sohila which is in the Gaza Strip to live with her husband in Tulkarem, after organizing a wedding night ceremony.
3. Petitioner 3 (hereinafter: “**Center for the Defence of the Individual**” or “**Hamoked**”) is a human rights organization based in Jerusalem.
4. Respondent 5 occupies the territories of the West Bank and the Gaza Strip under belligerent occupation. Respondent 1 (hereinafter: the “**respondent**”) is the military commander acting on respondent 5’s behalf in the West Bank territory.
5. Respondent 2 is responsible for the Gaza Strip territory. Respondents 2-3 are in charge of issuing entry permits to Israel for the purposes of passage from the Gaza Strip to the West Bank and vice versa, for Palestinians, whose registered address in the copy of the Palestinian population registry held by Israel, is Gaza. Respondent 3 is vested with the authority which it delegates to respondent 2.

The facts

6. Petitioner 1 is married to petitioner 2, Mr. 'Amer, who is from Tulkarem and whose particulars appear above. The marriage certificate was signed on 4 January, 2006.

A copy of the marriage certificate is attached and marked p/1.

7. The wedding night ceremony of the spouses was postponed on a number of occasions because of the respondent’s unjustified refusal to grant petitioner 1, her parents, and her siblings entry permits to Israel for the purpose of their passage from the Gaza Strip to the city of Tulkarem which is in the West Bank.

The first petition – Petitioner 1’s relocation to her spouse in Tulkarem, via Israel

8. On 22 March, 2007 petitioner 1, her siblings and her parents, with the help of the Center for the Defence of the Individual, filed a petition (HCJ 2680/07) (hereinafter: the “**first petition**”) in terms of which the respondents were requested to issue them with entry permits to Israel for the purpose of the

wedding in Tulkarem. The court was requested to hold an urgent hearing in the petition since the date that the wedding night ceremony was to take place was set for 5 April, 2007.

9. Within the framework of the first petition, the parents and siblings of petitioner 1 requested that their return via Israel to the Gaza Strip be arranged for after the wedding night ceremony. However petitioner 1, naturally and as a consequence of her marriage wished to continue her life with her spouse in their house in Tulkarem. This clearly emerged from the relief that was requested in the petition, and which was explicitly mentioned in the body of the petition.

A copy of the first petition (HCJ 2680/07) without the appendices is attached hereto and marked **p/2**.

10. The respondents in their preliminary reply categorically opposed granting the relief in the petition. In the hearing that was held on 28 March, 2007 the court dealt with the need to find a pragmatic solution to petitioner 1's family life, especially in light of the fact that there was no security material whatsoever against petitioner 1. The parties accepted the court's recommendation in terms of which:

Petitioners 1-4 shall be allowed to leave to go to petitioner 1's wedding in Tulkarem in the West Bank. Petitioners 2-4 will return to the Gaza Strip within two weeks of the wedding day. Petitioner 1 may reside in the West Bank for two months after the wedding and in the interim may make an application to transfer her place of residence according to the accepted practice, without harming the parties' claims with regard to the fundamental legal plane. The supplementary notice must be filed within two months, and pursuant to it the court shall decide on the further handling of the matter.

A copy of the amended court decision is attached and marked as **p/3**.

A copy of the respondents' preliminary reply to the first petition (HCJ 2680/07) dated 27 March, 2007 is attached and marked **p/4**.

11. The assumption that prevailed until the end of the hearing was that it would be possible to complete the handing of the petition without entering into the dispute between the parties with respect to the significance of the registered address in the populations registry (is a person obligated to live in the place where he is registered) and with respect to method of updating the registered address.
12. On 1 April, 2007 petitioner 1 received a permit. The permit was issued on behalf of the **"State of Israel – Ministry of the Interior"**. It was titled **"Entry permit to Israel, including an overnight stay"**. At the outset of the permit it is stated that **"by virtue of the authority vested in me by the Minister of the Interior, I hereby approve the entry into Israel for"** The permit that was

issued and which included an overnight stay was valid from 1 April, 2007 to 30 May, 2007.

A copy of the permit is attached and marked as **p/5**.

13. Petitioner 1's parents received entry permits into Israel that were valid for a number of days, and which were supposed to resolve the matter of their entry to and exit from the West Bank via Israel.
14. The wedding took place on the set date, petitioner 1's family returned to their home, and petitioner 1 remained in Tulkarem, together with her spouse.

Updating petitioner 1's address in the Palestinian Population Registry

15. On 21 April, 2007 petitioner 1 informed the Palestinian Ministry of the Interior of her new address in Tulkarem.
16. Petitioner 1's notice of change of address was given within the framework of section 13 of the Population Registry (Judea and Samaria) Order (No. 297) 5729-1969. Pursuant to the Interim Agreement which was anchored in article 7, approvals in this matter have been transferred to the Palestinian Council.

A copy of the confirmation of delivery of the notice is attached and marked **p/6**.

17. **On that very day petitioner 1's address was updated in the Palestinian population Registry, reflecting her new address in Tulkarem.**

A computer printout of the Palestinian Population registry is attached and marked **p/7**.

18. At the time of updating the registered address in the population registry, the Palestinian Authority delivered a notice about this to the Israeli side.

The notice was delivered pursuant to the obligations of the Palestinian Authority in terms of the Interim Agreement, in section 28 of Annexure III. (Hereinafter: "**Annexure III of the Interim Agreement**" or "**The Civilian Annexure**") which states:

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

A copy of the relevant page in Annexure III of the Interim Agreement is attached and marked as **p/8**.

19. Petitioner 1's actions and the Palestinian Ministry of the Interior's actions with respect to the updating of petitioner 1's registered address in Tulkarem in the Palestinian population registry, is described in a detailed letter by the Director General of the Palestinian Ministry of the Interior which is attached hereto.

The letter also relates to the general question of the procedure for notifying a change of address of someone who in the past lived in the Gaza Strip and currently resides in the West Bank.

A copy of the letter is attached and marked as **p/9**;

A translation of the letter into Hebrew is attached and marked as **p/10**.

20. On 15 May 2007 the petitioners' counsel informed the respondents' counsel that a notice had been delivered by the Palestinian side to the Israeli side, in which it sought to clarify whether the new address had been updated in the copy of the population registry in Israel's possession.

A copy of the letter dated 15 May, 2007 is attached hereto as appendix **p/11**.

21. From the respondents' supplementary notice to the first petition dated 31 May, 2007 it transpires that the respondents have refused to recognize the fact that the registered address has been updated. The respondents have claimed among other things that:

The notice [...] is not reasoned at all, and as such it contains no reason that would justify an exemption from the respondents' policy in terms of which, from the beginning of the outbreak of security incidents in September 2000, Israel has ceased to approve relocating one's address to the Judea and Samaria region, except under exceptional and humanitarian circumstances. Therefore it is necessary that a notice of change of address shall be well reasoned and shall indicate the special and exceptional reasons that justify an exemption for the current policy.

[...]

The notice that was delivered to the Israeli side does not in fact constitute an official request for change of address but a clarification request

A copy of the respondents' supplementary notice to the first petition dated 31 May, 2007 (including the appendices) is attached and marked **p/12**.

22. In order to maintain the *status quo*, the parties agreed to allow petitioner 1's continued residence in Tulkarem, while reserving their claims in the case, and on 10 June, 2007 petitioner 1 was issued an additional permit to regulate her movement within the West Bank at the various internal checkpoints.
23. The permit, according to the respondents' claims, was supposed to regulate petitioner 1's residence in the West Bank, however the heading of the permit read "special transit visa for internal checkpoints in the Judea and Samaria region" which meant that it was not a special type of permit for regulating petitioner 1's residence in the West Bank. It is fact a permit to regulate petitioner 1's movement since the West Bank contains a host of internal checkpoints, where movement between them is frequently prohibited to all

residents of the territories, even visitors from outside, so that it is not a special permit for residence in the territories.

As was indicated in the permit, it is intended to allow for the realization of “personal needs within the territories”, which is to say the ability to overcome the internal travel restrictions in the West Bank and not the restrictions which pertain to her actual residence there.

A copy of the permit is attached and marked **p/13**.

24. On 5 July, 2007 the Center for the Defence of the Individual filed a supplementary notice to the first petition in which it responded to the multitude of the respondents’ claims with respect to the updating of petitioner 1’s address in the copy of the Palestinian population registry, which constitutes the source of authority.

A copy of the supplementary notice to the first petition (without the appendices) is attached and marked **p/14**.

25. As a result of the supplementary notices that were filed on behalf of the petitioners and respondents, a hearing on the first petition was set for 3 December, 2007.

Withdrawal of the first Petition

26. In their preparation for the hearing on the petition, the petitioners reconsidered the issues in depth, and reached the conclusion that the first petition had exhausted itself and had become redundant, since the requested relief as it was worded in the original had been granted in full.

27. Therefore on 28 November 2007 the petitioners filed an application by consent to withdraw the petition. In the application the petitioners noted that they reserved the right to file an amended petition, which relates to the updating of the registered address in the Palestinian population registry in Israel’s possession.

The respondents’ counsel, Adv. Sherman, consented to the withdrawal of the petition, and announced that the respondents would not expel petitioner 1 from the West bank until the filing of the petition, provided that it would be filed within 45 days.

A copy of the petitioners’ notice to withdraw the petition is attached and marked as **p/15**.

28. On 10 December, 2007 the offices of the Center for the Defence of the Individual received the court’s decision to withdraw the petition, in accordance with the agreement between the parties.

A copy of the court’s decision is attached and marked **p/16**.

The Legal Section

Introduction – the dispute between the parties

29. The dispute between the parties centers on the issue of the source of authority, with the respondents claiming that they have the right to approve or disapprove an updating of the address of Palestinians in the unified and only Palestinian Population Registry of the territories, including the updating of an address from Gaza to the West Bank.

The dispute also concerns the explicit source of authority which if we base ourselves upon it we see that the respondents have refused to act pursuant to platform number 7, which applies to the territories, and which includes among others, appendix III to the Interim Agreement and the established procedure in section 28 of the appendix, which is concerned with the updating of the registered addresses of a Palestinian who resides in the Palestinian territory, including the Gaza Strip and the West Bank, which was declared to be one integral unit.

30. The respondents argue on the one hand that a Palestinian is obliged to reside at his registered address – and take note: this refers to the registered address as it appears in the respondents' copy of the territories' population registry, a registry that is administered by the Palestinian side. On the other hand, the respondents for over seven years have frozen the matter of updating addresses, including updating addresses from Gaza to the West Bank.
31. In the wake of the respondents' freeze policy, the registered addresses of dozens of Palestinians in the annexure to their identity documents is marked as Gaza, which is at variance with their true address, which is in a town or village in the West Bank.

Chapter 1 – the procedure for giving notice of change of address: the law

32. The legal situation, before the signing of the Oslo Accords with regard to the updating of the registered address is set out in section 13 of the Identity Documents and Population Registry (Judea and Samaria) Ordinance (No. 297), 5729-1969, in terms of which the obligation of the resident of the territories to inform the authorized body of a change of address only applies after he has changed his place of residence, within 30 days after the change has taken place:

In the event of a change or amendment to one of the particulars enumerated in section 11, a resident who received an identity document is obligated to provide notice of the change within 30 days to the Population Registration Office whose territorial jurisdiction

includes the new place of residence, as shall be determined by the authorized body.

As a consequence of the Oslo Accords the responsibility for the population registry was transferred to the Palestinian Council.

A copy of the Identity Documents and Population Registry (Judea and Samaria) Ordinance (No. 297), 5729-1969, is attached and marked as **p/17**.

33. It should be noted, that even before the interim agreement there was an obligation to retroactively report the change of address of a Palestinian resident of the territories, and it was not conditional on the prior or subsequent approval of the army commander.
34. The Oslo Accords determined that the Palestinian Authority would administer the population registry of the residents of the territories. The registry under the administration of the Authority is the authoritative registry.

Nonetheless updating procedures were also set forth, with the goal:

[t]o ensure efficient passage procedures and to avoid discrepancies and with a view to enabling Israel to maintain an up-to-date and current registry.

One of the rules explicitly stated in the Agreement in section 28 of Appendix III determines:

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

See p/8 above.

35. This therefore means that the Palestinian side reports to the Israeli side in the matter of updating the registered address of a Palestinian who is a resident of the Palestinian territories; with the aim of enabling Israel to administer an accurate copy of the registry. If Israel does not avail itself of the tool provided to it and does not update its copy of the registry, the result is that that copy of the registry is incorrect – and not that the entries in the registry itself are invalid.
36. It should be emphasized that the Oslo Accords, and section 28 of appendix III speaks constantly of **“the residents of the West bank and Gaza Strip”** in one breath and refers to one registry and not two population registries. There is no special reference to a change of address between the two parts of the territories. In contrast, as shall be seen there is a reference to physical passage between the parts.
37. Platform 7 entrenches the Oslo Accords, including Appendix III into military legislation. Thus it is determined in section 5 of the Platform:

The transfer of forces and of spheres of responsibility pursuant to Appendix III of the Interim Agreement includes the transfer of all rights, obligations and commitments that pertain thereto, and the provisions of the Interim agreement shall apply to this case.

A copy of platform 7 is attached and marked **p/18**.

38. This is the appropriate place to mention, what the respondents regard as the procedure for delivering notices of updating one's address (or in the respondent's words "requests for reassigning one's place of residence") from the Gaza Strip to the West Bank, as they have expressed themselves in their reply in HCJ Vered:

The applications to move from one's place of residence and to enter Israel were applications that were filed with Israel by the Palestinian Authority... for many years the Palestinians have not delivered a uniform document. At times this has been done by lists of names that have been delivered by the Authority, and at other times through letters containing private requests...

Since these documents are not Israeli the respondents are unable to confirm that the said documents are those that were used by the Authority throughout the years ...nonetheless attached to this reply is an example of a form, of which, the Palestinians in the past made use. (From the Respondents' Reply to the Application for Additional Details dated 25 June, 2006 in HCJ 3519/05).

A copy of the relevant pages of the reply is attached and marked **p/19**. The sample form which was attached by the respondents in the same case is attached and marked **p/20**.

39. As may be seen from appendix p/20 the form includes the particulars of the resident, his old address and his new address, and there is no place provided for stating reasons, and from its content and heading it complies with the updating process set forth in the agreements cited above.
40. Before we state our claims in the matter of the contradiction in, and absence of the source of authority for the respondents' claims, **it is important to clarify and note that section 28 of appendix III of the Interim Agreement discusses the matter of updating a registered address in the Palestinian territories, which is considered one integral unit pursuant to the Agreement, and which is administered according to one Palestinian population registry.**

41. In other words, **section 28 discusses both the matter of updating an address within the Gaza Strip and within the West Bank and from the Gaza Strip to the West Bank and vice versa, since this involves one territory and one population registry.**
42. And now we shall refer to the respondents claims in general, and their opposition to updating the registered address of petitioner 1 in particular.

Chapter 2 – respondent 1’s claim in the matter of updating an address registered in the Palestinian territories, including Gaza and the West Bank

2. A.1 The respondent’s claim that the authority to update the registered address from Gaza to the West Bank rests with respondent 1

43. Respondent 1, the army commander of the West Bank, seeks to base his jurisdiction on the putative claim that the Palestinian Authority has throughout the years recognized his authority to approve or reject applications for relocating one’s place of residence. Alternatively he makes the **absurd** claim which is based on the provision in section 6(b) of platform 7, in terms of which:

A determination by the commander of the IDF forces in the region, because the forces and spheres of responsibility continue to remain in his hands, shall be decisive in this regard.

44. **In the respondents’ opinion, this provision allows them to consider the mere word of the commander as authoritative even if it is has never been anchored in an Ordinance.** Indeed it is clear that the provision with respect to a decisive ruling is concerned with someone who has authority that has already been vested in him by law, and not with the creation of new authority.
45. As may be seen, the language of section 6(b) is very general. Indeed if the respondent held that the general matter of change of address should remain in his hands, he had a duty to issue a clear and specific order which regulates the matter, and which outlines a procedure for updating the registered address.
46. Moreover, even if the authority was in the hands of the Israeli side, it still does not include the jurisdiction of respondent 1 with regard to a change of address or as he claims, to the relocation of one’s place of residence. Rather it involves – pursuant to the Identity Documents Ordinance (see **p/17** above) – the exclusive obligation of updating the address, which the Israeli side is supposed to carry out in its copy of the population registry pursuant to the report on the transfer of an address of a Palestinian resident of the territories from one place to another within the Palestinian territories.
47. If the respondent had wanted to change the nature of its jurisdiction with respect to a change of address, and to expand it and change it into material jurisdiction, which would require not only its knowledge of a change of address but also its prior approval, it was duty bound, pursuant to the

principles of administrative law, to do this in an explicit ordinance, and to publish the procedure with respect to the process for changing an address.

2. A.2 The respondent's claim of a secret agreement between it and the Palestinian Authority in the matter of updating an address from Gaza to the West Bank.

48. **The respondent claims that there is a secret agreement between it and the Palestinian Authority** that has not been published, is not entrenched in an Ordinance and it is unclear where it is written or where it is entrenched, but which determines special rules for a change of a registered address between the two parts of the territories.

49. If there is indeed such a written agreement it would be a secret agreement that has not been publicized amongst the Palestinian public and with which no one aside from the army commander is familiar. The respondents claim that according to this mysterious agreement the authority to update a registered address from Gaza to the West Bank is dependent upon the approval of the Israeli side:

The interim agreement does not refer directly to the question of settlement (there is reference to the technicalities of passage between Gaza and the Judea and Samaria region, the so-called secure passage). **The army commander's interpretation of the agreement was and is that the authority to approve permanent residence in the Judea and Samaria region has been given over to them, as was the situation before the interim agreement came into force.** This interpretation was presented to the Palestinian side immediately upon the implementation of the agreement and it was on this premise that the sides continued to operate uninterruptedly until September 2000. (Paragraph 19 of the preliminary reply of the respondents to the first petition dated 27 March, 2007).

See p/4.

50. As shall be claimed below, there is no gain whatsoever to the respondents' attempts to rely upon secret agreements (assuming that these do indeed exist), confidential agreements (if there any) and on rules that have never been published (assuming that they were written at all). A basic principle of administration is that the norms that determine the rights of citizens and which regulate the conduct of the regime must be clear, explicit, and most importantly – publicly reported.

2. B The [internal] contradictions in the respondent's claims.

2.B.1 The respondent recognizes that section 28 of Appendix III of the agreement has been anchored into internal military legislation, including a

procedure for updating the registered address in the Palestinian Authority territories.

51. The respondents recognize that the administration of the Palestinian population registry has been transferred to the Palestinian Authority, including the transfer of powers and obligations with respect to the administration of the population registry, and they also recognize that the Authority is responsible for its administration. Likewise, the respondents recognize the obligation of the Israeli side to update the copy of the Palestinian population registry in its possession, pursuant to the notices of the Palestinian Authority and pursuant to bilateral agreements and procedures that have been determined in appendix III of the agreement.
52. Thus for example, on 14 May, 2007 the Center for the Defence of the Individual received a letter from the office of the legal adviser of respondent 1, and which is addressed to Adv. Wolfson, where it was explicitly stated that:

The Palestinian registry is under the direct jurisdiction of the Palestinian Authority which it administers. A copy of this registry is also in possession of the Israeli side, pursuant to section 28 of the civilian appendix of the Interim Agreement. The Israeli side, in its capacity as an orderly administrative body is obligated to ascertain that the recordings are reliable, are in order, and comply with the requirements of security legislation, court rulings, and orderly administration.

[...]

A unilateral update of the registry by the Israeli side is not possible since the registry is entirely administered and supervised by the Palestinian side pursuant to the provisions of the agreement.

A copy of the letter from the office of the legal adviser of the respondent is attached and marked **p/21**.

53. Thus the respondent indeed recognizes that the Palestinian population registry is under the control of the Palestinian Authority, and recognizes section 28 of the civilian appendix to the agreement. He is therefore also supposed to recognize and work pursuant to the rule for updating the registered address in the population registry, which is entrenched in the provisions of section 28 of the appendix to the interim agreement.

2. B.2 The respondent recognizes the authority of the Palestinian Authority to update the registered address of a resident of the Palestinian Authority, without conditioning it on the respondent's approval

54. In sections 108-109 the respondent replied in its reply in HCJ 7577/06 The Association for Civil Rights in Israel et al v. Commander of the IDF Forces on the West Bank dated 7 January, 2007 – to the claims of the Association for Civil Rights in Israel in the matter of the difficulties of updating the registered

address of Palestinians, including updating the address in the West Bank, because:

Firstly, the population registry of the region is administered by the Palestinian Authority and not by the Civil Administration as has been claimed. Secondly the limitations that have been currently placed on relocating from one's place of residence in the region with respect to limited areas (for example the seam zone), but which restrictions in any event do not apply to the greater district of Nablus. Thirdly, a copy of the population registry administered by the Civil Administration continues to be updated, as a matter of routine, via the Palestinian Authority, which delivers constant updates to the Civil Administration, and in this regard there has not been a severing of relations between the sides as claimed by the petitioner.

A copy of the relevant pages of the reply is attached and marked p/22.

55. This means that respondent 1 continued to maintain the provisions of the Interim Agreement with regard to the change of address and thus recognizes that the authority to update the registered address rests with the Palestinian Authority, and the only obligation imposed on the Palestinian Authority is to update the Israeli side of changes that it has made with regard to addresses.

2. B. 3 The explicit recognition by respondent 4 of the authority of the Palestinian Authority to update a registered address from Gaza to the West Bank

56. On 4 November, 1995, MK Naomi Chazan approached General Oren Shachor, the then coordinator of activities in the territories, and raised with him a number of questions with regard to the passage between Gaza and the West Bank, and inter alia:

Changing an address from the West Bank to the Gaza Strip, or vice versa; may one make such change of address? To which authority must one file an application, and how long does the decision making process last?

A copy of the letter dated 4 November, 1995 is attached and marked p/23.

57. On 9 January, 1996, which was after the publication of the Interim Agreement Implementation (Judea and Samaria) Ordinance (No. 7) 5756-1995, which was enshrined Appendix III of the Agreement into the internal military legislation of the territories, a reply was received from the Assistant Coordinator of activities in the territories, Deputy General Shmulik Ozneboy, which stated:

With regards to your question pertaining to a change of address from the West Bank to the Gaza Strip, I hereby inform you that the responsibility for handling of the matter has been transferred to the Palestinian Authority and therefore you should approach them in this matter.

A copy of the letter dated 9 January, 1996 is attached and marked **p/24**.

58. In other words in 1996 the respondents explicitly recognized the authority of the Palestinian Authority to update the addresses of Palestinians from Gaza to the West Bank and vice versa, pursuant to the procedure that was laid down in section 28 of appendix III to the Interim Agreement, in term of which the Palestinian Authority was obliged, without having to receive prior approval, to update the Israeli side of any change of a registered address from Gaza to the West Bank that was carried out in the population registry.
59. **Had the respondents thought any differently then, and had they indeed intended to leave the authority of updating a registered address in their own hands, they would have declared already then that despite what is stated in the Oslo Accords, the authority for updating an address rests with the respondents.**
60. In other words, the provisions of section 28 of the civilian appendix to the Interim Agreement, with regards to the updating of the registered address are still in force.

Chapter 3 – the reality test – how the Palestinian Authority updated the correct registered address of petitioner 1 and the claims of the respondent in refusing to update the address

3.A The process for updating the registered address in the Palestinian registry, as this was carried out in the case of petitioner 1, according to the Palestinian Ministry of the Interior.

61. In the respondents' supplementary note it was claimed that the "application", which was delivered from the Palestinian side was unsatisfactory. As we have seen, official registration is carried out in the Palestinian population registry, which the Palestinian Authority maintains, and the question of updating it by the Israeli side – does not affect the Palestinian registry. Superfluously, we shall discuss these claims of the respondents. All the facts that shall be raised in this chapter are based upon an official letter from the Director General of the Ministry of the Interior in the Palestinian Authority, who was responsible for delivering the notice in the matter of petitioner 1 to the Israeli side.

See **p/9** and **p/10**.

62. As stated above, petitioner 1 approached the Palestinian Ministry of the Interior on 21 April, 2007 and filed a notice of change of address from Gaza

to her husband's house in Alsharawia in the Tulkarem district. Together with the notice of change of address she attached the court's decision, and in the words of the director general of the Ministry of the Interior:

The above-mentioned (Mrs. _____ 'Amer, petitioner 1) filed a notice with the Palestinian ministry of the Interior for change of place of residence from her parents' home in Gaza to her husband's home in the Alsharawia region in the Tulkarem district... and she attached to her notice the Supreme Court's decision in terms of which it was incumbent upon petitioner 1 to work towards changing her place of residence from Gaza to Tulkarem pursuant to the customary procedure...

See p/9 and p/10.

63. Pursuant to the notice of update, an update of petitioner 1's place of residence was inserted into the Palestinian computer database, which is the Palestinian population registry. After that a notice of change of the registered address was sent to the Israeli side, and in the words of the director general of the Ministry of the Interior:

And we [the Palestinian Ministry of Interior] changed Mrs. _____ 'Amer's address and we entered the change into the Palestinian computer database pursuant to section 28 of the Oslo Accords. And a notice was filed in this matter with the Israeli side.

See p/9 and p/10.

See the copy of the computer printout from the Palestinian side which attests to the updating of the registered address that is attached and marked p/7.

64. Pursuant to the respondents' declaration, beginning in September 2000 Israel ceased to receive or to update notices of change of address which were filed by the Palestinian Authority.
65. The respondents chose not to take note of the fact that the Palestinian Authority, even after the announcement of a freeze policy, and for a short period, continued to receive notices of change of Palestinian addresses and were updating the new addresses in the annexure to the identity documents, and after that were sending the updated notices of change to the Israeli side.
66. However because of the Israeli side's refusal to update the new address in its copy of the population registry, many and various problems arose in this area, among others many Palestinians were detained at internal check points of the West Bank by the soldiers of respondent 1, since the registered address in their identity documents differs from that which appears in the copy of the

population registry of the Israeli side! Therefore the Authority has ceased to receive notices of change of address.

67. For this very reason the registered address in the annexure to Mrs. 'Amer's identity document was not updated, and this was in order to avoid a situation where she would be detained for a number of hours at the checkpoints by the respondents' soldiers, since the registered address in the annexure would be different from that which appears in the Israeli copy of the population registry.

It should be noted that as a result of the freeze policy we have in the past received complaints from many Palestinians. Since they were detained and investigated for a number of hours when they passed through the military checkpoints because there was a difference in the address that appeared in the Israeli computer database since the Israeli side did not change the addresses pursuant to the notices sent by the Palestinian side.

Since this is so, we have not changed the address of Mrs. _____ 'Amer in the annexure to the identity document in order to spare her from the problems that she is bound to encounter when she passes through the checkpoints in the West Bank. This situation shall continue until we receive a sign from the Israeli side that it has changed the address in the Israeli computer database pursuant to the notice that was sent to them.

See p/9 and p/10.

68. As a result of the ongoing freeze policy by the Israeli side, and its total refusal to receive notices of change of address that are filed by the Palestinian side and in order to insure that the Israeli side does receive at least petitioner 1's notice of change of address, the Palestinian side has attached the Supreme Court's decision to the notice, and has noted the matter of the decision on the same page of the notice of change of address (see p/12 – appendix R/2 of the Respondents' Supplementary Notice to the First Petition).

3. B Analysis of the respondents' claims with regard to the deficiencies in the proceedings.

3. B. 1 The claim that the notice of change of address is not reasoned and therefore an exception cannot be made to the freezing policy

69. As we have seen, in the form that the respondents themselves presented as the typical form for "applications for reassigning one's place of residence" from Gaza to the West Bank (p/20) there is no space for providing reasons. Despite this, the respondents continue to claim that in the absence of a reasonable

cause, the notice (or “application”) by the Palestinian Authority does not comply with the procedures.

70. First and foremost this constitutes a formalistic pretence of innocence: the respondents know full well the reason for the application, and they know that it involves the realization of a right to a family life.

It is difficult to accept the fact which the respondent claims that it cannot deal with the application because it does not understand how it came about or what the reasons are for it. Is it possible that the respondent in this petition and the respondent which received the documentation from the Palestinian Authority are two separate bodies, like a two-headed creature, with each head living in its own world?

71. However let us return to the procedures themselves. We have seen the words, which the respondents themselves wrote to the honorable court and the form which they attached and which does not include a space for reason (see p/20). Let us now turn to the picture painted by the Palestinian side.
72. The Ministry of the Interior of the Palestinian Authority has informed the undersigned that filing an explanatory letter does not constitute a condition for filing a notice of change of address, and indeed there were a few cases in which the Palestinian Authority attached an explanatory letter, purely as a voluntary act, especially to notices of change of address of Palestinians within the West Bank, and this in order to convince the Israeli side to at least agree to physically receive the update notices from the Palestinian side.
73. The respondents hide behind purely formalistic arguments, since they are completely familiar with the finer details of the case. Likewise, during the court hearing of the first petition, Captain Sandra Ofinkro from the legal advisor’s office of respondent 1 was present, and it was her who received the notice of change of address, as it appears from the respondents’ supplementary notice in the first petition (see **p/12**).
74. Had the respondents informed the petitioners before filing their supplementary notice that they need an explanatory letter, the petitioners – for the sake of upholding law and order and without ceding the principal argument that they have in the matter – would have had no obligation to the filing of an explanatory letter, either directly or to deliver it via the Palestinian Authority.
75. It is easy to see that the respondents had formulated their tough position, even before the filing of the notice of change of address. This position which was already clear in their preliminary reply to the first petition stated that they would act in every possible manner in order to prevent petitioner 1 from continuing to enjoy life with her husband. To achieve this goal we are currently faced with new claims concerning the required procedure; claims that contradict the respondents’ responses in the past as well the common practice as reported by the Authority.

The respondent could have prepared and presented new and orderly procedures, it could have enshrined these procedures in the ordinances that would have been released to the public. However it is more convenient for the respondent to act according to hidden oral procedures and to change them at its whim, and even to claim – according to wherever its desire leads it – that this time the procedure is like this and the next time the procedure will be like that. This is all aimed at obstructing civilian family life.

Raising formal arguments of this nature leaves no doubts as to the respondents' deficient conduct, which is tainted with lack of bona fides.

76. Moreover the respondents' claim in the supplementary notice made within the framework of the first petition, that this does not involve a humanitarian case, raises many question marks about what is considered humanitarian in the eyes of the respondents. Especially since in their notice they did not even bring one example in which they had agreed to update the address of a Palestinian in the registry in their possession, from Gaza to the West Bank!

3 B. 2 The claim that the notice of change of address that was received in the matter of petitioner 1 is not an official notice by the Palestinian Authority but a request to clarify – is this so?

77. The following claim is even stranger and is contradicted by the documents which the respondents themselves have presented.
78. According to this claim, petitioner 1 attempted to “cheat” the respondents with regard to the content of the court decision – again, the respondent are acting as if they are not one of the parties to the decision as if their right hand does not know what their left hand is doing. However from the documents that the respondents attached it transpires that the Palestinian Council attached to the notice (or “application”) the honorable court's decision (see MS/2), without anything else, and this speaks for itself!

The respondents claim further, on the basis of subjective interpretation, which has no source in the legal literature, and which bases itself on a gut-feeling, and which has no substantiating documentation, that in the notice of the Palestinian Authority, the Authority merely sought a “clarification” from the Israeli side.

79. The respondents went to great lengths to claim in their supplementary reply to the first petition that the petitioners acted prima facie “with a lack of bona fides”, and their action, which entailed approaching the Palestinian Authority with the court's decision is tainted with a lack of clean hands. Thus, according to this claim the petitioners presented the Authority with a false presentation when stating that there was a “judgment”, which held that petitioner 1 had to change her address.
80. We should firstly point out **that the claims of the respondents' counsel, in the respondent's supplementary notice to the first petition severely**

harmed the dignity of the petitioners. The petitioners operated in accordance with the court recommendation which was accepted by both parties. In the petition it is explicitly written – “petitioner 1 shall make a formal application for the relocation of her place of residence in accordance with the procedure”.

81. Petitioner 1 approached the Palestinian Authority with a copy of the court’s decision in her hands in order to get the Palestinian Authority to agree to receive the notice of change of address and in turn to send it to the Israeli side. Indeed because of the freeze policy and the circumstances that were noted above the Palestinian Authority generally does not receive notices of change of address, and only makes an exception in cases where there has been a legal process such as in the case before us.
82. The Palestinian Authority officer who received the notice of change of address and sent it to the Israeli side knows how to read and write in Hebrew so that there can be no basis to the claim of lack of good faith on the part of the petitioners!
83. **It bears emphasizing that the notice that was filed with the Israeli side was an official notice by the Palestinian Authority, and was not a request for clarification, as the respondents understood it, or wanted to understand it.**
84. In reply to the respondents’ claim, the petitioners shall merely express their satisfaction with the words of the director general of the Ministry of the Interior, who transferred the notice to the Israeli side, and who said:

We wrote a note on the notice of change of address stating that there is a court decision attached to it and we requested that they examine the decision of the court **and that they accept** the notice of change of address of Mrs. _____ 'Amer. The note **was written for the exclusive purpose of preserving a polite working relationship and not to request clarification from the Israeli side.**

It should be borne in mind that ever since 2000 the Israeli side refuses to receive notices of change of address served on it by the Palestinian Authority especially changes of address from Gaza to the West Bank. Therefore there is some importance in clarifying the reason for serving the notice of **change** of address of Mrs. _____ 'Amer and the note that was attached to the notice. This in order to insert the change of address into the Israeli computer as it [Arabic translator’s note: i.e. the address] varies from that of the Palestinian computer [emphasis mine - A.G.]

See **p/9** and **p/10**.

85. The letter from the Director General of the Ministry of the Interior leaves no room for doubt as to the intentions of the Palestinian Authority in officially informing the Israeli side of the change of address of Mrs. 'Amer – which was not to “clarify” or to “examine” the court’s decision, especially in light of the fact that the one who sent the notice knows how to read and write in Hebrew and he is perfectly able to understand what is written in the court’s decision.
86. The Israeli side acted with a lack of good faith and interpreted what was written as it pleased, without responding in the matter to the Palestinian Authority and taking the time to deal with petitioner 1’s notice.

Chapter 4 – The respondents’ claims are at variance with Administrative Law

4. A The respondents’ conduct is at variance with the principle of the legality of the administration

87. Respondent 1 is subject to the law and principles of administrative and constitutional law. Pursuant to the principle of administrative legality, the powers of the respondent must be enshrined in explicit orders, and must be confined in writing in those orders.

The principle of administrative legality determines that no administrative authority whatsoever has any independent power other than that which is vested in it under the law. This is the basic rule of public administrative law: it is used as a tool for review of the legality of an administrative decision, without exception.

[...]

There are two aspects to the principle of administrative legality: the principle requires that with regard to any administrative act it is firstly authorized by the Law, and secondly – harmonized with the Law. (Y. Zamir, *The Administrative Authority* (Volume 1, Nebo, 5756), 49-50).

88. The principle of administrative legality requires the adoption of clear and explicit language with respect to the power that has been vested in the authority or administrative body, in order to ensure that the intention was to grant that power to that specific public authority.

On more than one occasion the court has declared that the principle of administrative legality requires that the Law determine the administrative power in clear language. There is no reason to act in any way that varies from the administrative power. Indeed the law, in the words of Justice Barak states that “a governmental body is comprised of nothing except for that which has been granted to the governmental body (explicitly or implicitly).”

What then has the court come to teach us when it says that the power needs to be explicit and not implicit? It is not saying that in principle power cannot be implicit from the language of the Law. It is merely saying that even if the power could be implicit, and not necessarily explicit, in these circumstances, in order to be convinced that Law intends to grant that power, it requires that such authorization be explicit, or at least (according to another version) completely clear. (Y. Zair, *The Administrative Authority* (Volume 1, Nebo, 5756), 255-256).

89. Respondent 1, the army commander in the West Bank sees himself as being vested with the authority for updating the address and he claims that pursuant to section 6(b) to platform 7 he can accept upon himself the sphere of authority with respect to changing the address, despite that which is stated in section 5 of the platform. The respondent is going too far, and does not merely satisfy himself with the authority to update an address, but he is conditioning the matter on his approval, something that had never been done prior to the Oslo Accords (see Chapter 1 above).
90. **Furthermore, he does not point to any recently updated Military Order which was promulgated after the signing of the Oslo Accords, when he announces that he received the matter of the change of address in contravention of section 28 of Appendix III of the Interim Agreement. Likewise he leaves the procedure for changing one's address concealed from the eyes of the petitioners!**
91. **Does the respondent wish to determine that a change of address requires its approval? Does the respondent wish to determine that the residence in the West Bank of a resident of the territories requires a permit? Does the respondent wish to determine a procedure for these matters? He should therefore partake of such an honor and commit these things to writing in the form of a clear and orderly order. And if the Order is reasonable and within the ambit of the respondent's authority as prescribed by law – whatever is written therein will be complied with.**
92. Rather it seems more convenient for the respondent to come with claims created from the air, which change from one time to the next – whether with respect to its powers or with respect to **procedures**: without any constitutional source, without publication and without transparency. The respondent demands that these actions be carried out “according to procedure” – but does not specify any procedure whatsoever. The respondent seeks to hold all authority and shirk all duties – but does not promulgate methodical orders that define these powers. Thus – anarchy reigns.
- 4. B A secret agreement – between respondent 1 and the Palestinian Authority?!**
93. In chapter 2.A.2 we saw that the respondents claimed in their supplementary reply to the first petition, that supposedly there was an agreement between

respondent 1 and the Palestinian Authority in terms of which it was made clear to the Palestinian Authority that the authority to update a Palestinian's official address from Gaza to the West Bank requires the approval of the army commander.

94. The respondent did not indicate any written source where such an agreement appears, and did not even hint where and when such a procedure was published for the public and where it had been explicitly enshrined, or received final approval.
95. As is well-known, political arrangements and agreements, and likewise international covenants and agreements do not become part of Israeli law or military legislation if they are not explicitly adopted into legislation. Therefore such "agreements" between the army commander and the Palestinian Authority have no validity whatsoever.

The principles of International Treaty Law are not automatically absorbed and do not become part and parcel of the law applying to Israel, so long as they have not been adopted or integrated via legislation and have become part of the law that applies to Israel by virtue of the provisions of the Freedom Law or through secondary legislation that draws its strength from *raeter legem* (compare: section 10 of Army Jurisdiction Law, 5715 – 1955). In this context the court declared, in the words of Justice Berenson in CA 148, 145, 25/55 at page 1829:

The Rhodes Agreement is a Treaty between the State of Israel and another state. The strength and validity of such a treaty from an international law perspective be it what it may is not a law which our courts have to rely upon or to which they have to grant any form of validity. The rights which it grants and the duties that it imposes are the rights and obligations of the states that have entered into the agreement and which may be realized only through ways that are dedicated to carrying out international treaties. This type of treaty is not at all subject to the jurisdiction of the state courts, unless and to the extent that the rights and obligations that flow from the treaty have been appended to the state's body of legislation and have taken the form of a mandatory Law. In this case, the truth is that the court has not needed to rely upon such a treaty but rather on a Law that received its stamp of authority and its legal life-force from our own municipal law. (HCI 69/81 Basil Abu Ita v. Commander of the Judea and Samaria Region, *Piskei Din* 37(2), 197, 229-230).

96. Even if we were to assume that there is a written agreement that has been enshrined in some form or other in internal military legislation, there is still an obligation upon the army commander to publish the procedure for the general public and to enshrine that very agreement in an explicit agreement. Especially since the harm resulting from the non-updating of the official address is very severe and its ramifications are very significant, inter alia in light of the many checkpoints in the West Bank which restrict the movement of Palestinians who live there.

We are dealing with a topic that is one of the fundamentals of constitutional life, the freedom of a person to leave and enter the borders of the state as his heart desires. Interference in this area, which is designed to apply to the whole public, is something of an affront to the central pillars of justice of a democratic state. Therefore one must be doubly and triply cautious that no act of interference as described above be carried out without a legislative act, and supreme care must be taken to maintain one of the greatest principles of any legislation that finds expression in section 10 of the Administration of Rule and Justice Ordinance namely, that there can be no law if it has not been brought to the attention of the public through the means which the law itself determines, for if this were not the case a chaotic situation would be created where a person would not be able to know what is permitted and what is forbidden, and therefore it is impossible to demand from him that he obeys the law and does not act unlawfully. (HCJ 220/51 Gamal Mahmud Aslan and 30 others v. The Military Governor of the Galilee, Nazareth *Piskei Din* 5(2), 148.)

4. C The obligation to publish administrative guidelines and procedures

97. The respondent must act in a transparent manner and must publish and reveal the procedures pursuant to which it acts with regard to updating the addresses of Palestinians, and the work procedure which it alleges was agreed upon between it and the Palestinian Authority.
98. Even Professor Yoav Dotan in his article “Publishing Administrative Guidelines” stressed the great importance of publishing administrative guidelines:

Exposure of these guidelines correlate with the requirements that may be found at the core of the principle of the rule of law: equality, the predictability and consistency of the law. It assists the citizen in planning his steps and in predicting the impact of a governmental action on matters of his concern. It is also essential to ensure that these guidelines will act as an

effective constraint against negative phenomena that are bound to accompany the exercise of sporadic discretion: discrimination, arbitrariness, and even corruption. This exposure is also meant to make the public administrative act more efficient and to save the authority time and resources that are dedicated to the handling of hopeless applications or requests for information and clarification. Therefore there is no doubt that the exposure of these guidelines will also aid in improving the relationship between the citizen and the Civil Administration and will increase public trust in its representatives". (Law and Administration vol. 3, 475, p. 484-485).

99. And furthermore – in the judgment on the administrative petition of the Association of Civil Rights in Israel v. Ministry of the Interior which was concerned with the right to study the guidelines and their provisions of the publication of guidelines of the Ministry of the Interior, it was established that:

The obligation to publish guidelines and procedures of the public authority flows from the principle of publicity and is founded upon two primary reasons: first, the recognition of the right of the individual to know the general and political norms that impact his rights. Lack of knowledge of the content of the procedures and guidelines has direct ramifications upon the ability of the individual to act to realize his rights and prevents him from being able to deal with and to protect his rights.

The second reason concerns the public authority and the propriety of its actions. The publication and consequent transparency constitute a vital barrier that ensures the correct behavior of the Administration and protects against discrimination, acts of arbitrariness and disregard toward the citizen. Moreover, publication and the granting of a right to study the matter facilitates the courts' and the public's critical review of the administrative decisions and conduct of the authority, which is something that is an essential contributor to the improvement, repair and re-organization of the Public service. (Adm. Pet. 530/07 The Association for Civil Rights in Israel et al v. Ministry of the Interior judgment dated 5 December, 2007).

100. In conclusion, the obligation of the military commander, in his capacity as an administrative authority, and if we accept his claim that it is within his

exclusive jurisdiction to approve or refuse to update registered addresses of Palestinians from Gaza to the West Bank, is to prove to the petitioners that there is an explicit authoritative source which substantiates his claim. And if he claims that there is an agreement with the Palestinian Authority on this matter, it is incumbent upon him to refer the petitioners to that agreement or to that arrangement, and to the procedure that has been established. This is especially so in light of the fact that according to the letter in possession of the petitioners, the Palestinian Authority insists that it operates exclusively in accordance with section 28 of Appendix III of the Agreement.

Chapter 5 – Petitioner 1 may live in the West Bank without updating her address, in light of her status as a resident of the Palestinian Authority

101. **Petitioner 1 is not requesting status in the territories, since she is already a resident of the territories.** All the petitioner seeks is to update her registered address to reflect her correct place of residence, which is Tulkarem.
102. Petitioner 1 is a Palestinian resident of the Palestinian Authority. Thus she has the right to live in the territories of the Authority, namely the West Bank or Gaza (for a detailed examination of this point see Chapter 4 of the Petitioners' Supplementary Notice in HCJ 2680/07, see **p/13**).
103. Updating her registered address would have great importance and significant ramifications for petitioner 1's rights. She would thus be able to receive the services of the District Civil Liaison Administration which is nearby her place of residence.

Updating the address in the annexure to the identity document ensures that petitioner 1 has freedom to travel outside the West Bank via the Allenby Bridge. So long as petitioner 1's address is not in the West Bank, she will not be able to leave the territory of the West Bank and go abroad, and if she does leave for a family visit in the Gaza Strip, it is doubtful whether she will be able to return to her home without filing an additional petition in her case.

104. Petitioner 1 belongs to a large group of Palestinians who live in the West Bank, and whose registered addresses have not been updated and who remain in the Gaza Strip, and this in light of Israel's freeze policy that has lasted seven years.
105. This selfsame group has on a daily basis encountered problems because of the non updated address in the annexure of the identity document. For example, the Center for the Defence of the Individual filed a series of petitions in the matters of Palestinians who live in the West Bank and whose registered address remains the Gaza Strip, and who have through the agency of the Civil Liaison Administration in the West Bank requested permits to visit their family members who are imprisoned in Israeli prisons.

The state has committed itself to formalize the procedure for visitor permits of that group of Palestinians in Israeli prisons, and their return to the West Bank territory.

A copy of the procedure is attached and marked **p/25**.

Conclusion

106. Petitioner 1 requests that her registered address be updated in the annexure to her identity document in order that she be able to receive the services of the Civil Liaison Administration nearby her home, and additionally, in order that she be able to leave the West Bank via the Allenby Bridge so that in turn she would be able to visit her family in the Gaza Strip without fear that she will not be able to return after that to her house in Tulkarem, because of the respondents' policy that restricts the amount of transit visas into Israel for the purpose of traveling between the parts of the territories.
107. Petitioner 1 is not requesting that she receive status in the territories, since she is a resident of the territories and her status is identical to that of her husband who is also from the territories.
108. All petitioner 1 desires – an update of her address in her Palestinian identity document to reflect her correct address, the place where she currently resides.
109. From the letter of the Director General of the Ministry of the Interior one may clearly see that the Palestinian Authority views itself as vested with the authority for updating the registered address of Palestinians, pursuant to section 28 of Appendix III to the Interim Agreement, and which is enshrined in military legislation pursuant to section 5 of platform 7, and thus it operates accordingly.
110. As a result of the sweeping freeze policy that has been imposed for the last seven years, because of problems encountered by Palestinians at the various military checkpoints in the West Bank, and as a consequence of the respondents' refusal to update their new addresses in the copy of the population registry, the Palestinian Authority has ceased to receive notices of change of address, except for those cases where there has been a legal process and the parties have agreed that the petitioner will work towards changing his address.
111. Respondent 1, the army commander in the West Bank views himself as the one vested with the authority to update an address, and he claims that pursuant to section 6 of platform 7 he is able to accept upon himself the areas of responsibility for changing an address despite what is stated in section 5 of the platform.
112. Section 6 of the platform is a general section and is not detailed, and there is thus no explicit reference to the matter of the army commander's authority to approve the updating of addresses in the Palestinian Population Registry from Gaza to the West Bank.
113. If the respondent would like to augment its authority in the matter of changing an address in contravention of that which is stated in section 28 of the Oslo

Accord, and to expand it, it is duty bound – and by virtue of it being an administrative body – to do this in an orderly manner by means of an Order that determines what the procedure is for changing an address, and what documents are required for this, while at the same time clearly indicating that the procedure laid out in the Oslo Accords with regard to updating an address no longer applies.

114. If the respondents deny the authority of the Palestinian Authority vested in it by virtue of the Oslo Accords, then the arrangement which applies is that which existed in the pre-Oslo era, in terms of which a notice of change of address operated retroactively without the need of prior approval for transferring to the new address or new place of residence, and which was filed directly with the Israeli Civil Liaison Administration.
115. Petitioner 1 updated her address, pursuant to the customary procedure, with the Palestinian side, in the Palestinian population registry, which is the source document. Her address was thus updated, but the respondents, including respondent 1, continue to invent excuses in order to reject the notice of updating petitioner 1's address in the copy of the population registry which it retains, and by doing so tries to make it more difficult for petitioner 1 to continue her life in Tulkarem, the place in which she actively resides together with her spouse.

This petition is supported by an affidavit that was signed before an attorney in the West Bank and which was sent by fax to the undersigned, after telephonically arranging to do so. The honorable court is requested to receive this affidavit, and the power of attorney which was also given by fax, considering the objective difficulties in holding a meeting between the petitioners and their counsel.

For all these reasons the honorable court is requested to issue an order nisi as requested, and after receiving the respondent's response, make it absolute. Likewise the court is requested to order the respondent to pay the Petitioners' costs and attorney fees.

21 January, 2008

Adv. Abeer Jubran
Counsel for the petitioners

48633T.S.