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At the Supreme Court
Sitting as the High Court of Justice

HCJ 2905/08, HCJ 660/08

1. **Vadad Jafal Muhammad Abu Snar**
2. **Fuzia Muhammad Rashid Razee**
3. **Ashraf Ismail Halil Gorani**
4. **HaMoked Center for the Defence of the Individual,
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The Petitioners in HCJ 2905/08

- Versus -

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

All represented by the Office of the State Attorney
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The Respondents in HCJ 2905/08

1. **Aisha Kamal Hassan Amer**
2. **Piras Manif Jamil Amer**
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The Petitioners in HCJ 660/08

- Versus -

1. **Commander of the IDF Forces in the West Bank**
2. **GOC Southern Command**
3. **Minister of the Interior**
4. **Coordinator of Activities in the Territories**
5. **The State of Israel**

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The Respondents in HCJ 660/08

A Notice on behalf of the Respondents

In accordance with the decision of Deputy President, the Honorable Justice E. Rivlin, dated 16 September, 2008, and in accordance with the motion for an extension of one day, which was filed on 1 December, 2008, a notice is hereby filed on behalf of the respondents in both petitions in the title.

General

1. The subject matter of the two petitions before us is the petitioners' request to enable the settlement of the petitioners, residents of the Gaza Strip, in the Judea and Samaria Region, due to their marriage (or the execution of a marriage agreement) with a spouse who is a resident of the Judea and Samaria Region. It should be clarified already at this point that even though this is the petitioners' material request in both petitions, the explicit remedies requested in the petitions do not so state openly, as shall be described below.
2. The respondents' position is that a permit for the settlement of a Gaza resident in the Judea and Samaria Region is under the authority of the IDF commander in the Judea and Samaria Region, since in view of the outbreak of the security incidents in September 2000, the respondents discontinued the approval of the passage of Palestinians from Gaza to the Judea and Samaria Region, as well as the relocation

to the Judea and Samaria Region, to the exclusion of exceptional and humanitarian cases.

As it shall be described below, the respondents will argue that the petitions should be summarily dismissed with prejudice. On the merits of the case, the respondents will argue that the policy which was formulated properly balances between the security needs on the one hand, and between the need to be considerate in exceptional humanitarian cases on the other, and that this is a reasonable and appropriate policy. Certainly it is within the range of reasonability. Therefore, there is no cause for the Honorable Court to intervene with respect to this position, and the fate of the petitions is to be dismissed on their merits.

The remedies requested in the petitions

HCJ 2905/08

3. The remedy requested in HCJ 2905/08 is that the respondents enable the passage of petitioner 1-2 from the Gaza Strip to the Judea and Samaria Region in order to allow for their participation in the wedding ceremony of petitioner 1 with petitioner 3, a ceremony which was supposed to have been performed in the Judea and Samaria Region in April 2008, **by issuance of permits of entry into Israel.**
4. Nevertheless, and despite the fact that the petitioners do not explicitly mention it in their petition, the explicit remedy requested by the petitioners in the introduction to the petition, in other words the permits of entry into Israel, is not the exclusive – and not even the main – remedy which the petitioners are seeking to obtain in practice. Note well: a person who thoroughly reads the petition will discover that indeed the respondents are requested to enable the **bride and her mother** (petitioners 1-2) to pass through Israel **for the purpose of participation in the ceremony**, but only with respect to the **mother of the bride** (petitioner 2) is the arrangement of the passage back to the Strip upon the end of the ceremony being requested. The petitioners do not request to arrange for the bride's return to the Gaza Strip after the ceremony.
5. **Therefore, hiding behind the declared remedy that is being requested in the petition – the request to participate in the wedding ceremony – is an additional main intention of the petitioners, one that is not explicitly mentioned in the petitioners' motion for an order nisi as it is worded in the beginning of the petition: this petition is also intended, in practice, to enable the bride to relocate – on a permanent basis – from the Gaza Strip to the Judea and Samaria Region.**

This intention can also be inferred from the petitioners' arguments with respect to the right to family life, and the right to choose a place of residence, which are described in the petition, and this is the case despite that as aforesaid, the petitioners refrained from actually requesting the practical remedies required for exercising this request.

6. **The respondents will request to emphasize, with respect to the remedy requested in the petition, *ex gratia*, that they agreed to arrange the passage of petitioners 1-2 through Israel for the purpose of the participation thereof in the wedding ceremony, but this was with an undertaking on the part thereof, including on behalf of petitioner 1, to return to the Strip upon the end of the ceremony, subject to the deposit of a guarantee in the sum of NIS 20,000 to guarantee petitioners 1-2's return to the Strip.**
In accordance with the position of the security agencies, this agreement is subject to petitioner 1's reporting for a briefing with the security agencies, and to the results thereof.

HCJ 660/08

7. The matter of the petition in HCJ 660/08 is the petitioners' request that the registered address of petitioner 1 (hereinafter: the "petitioner in HCJ 660/08") will be updated to "her correct and true address" as it is today, according to the petitioners, in the Tul Karem district in the West Bank, which is where she resides with her spouse, petitioner 2.

The petitioners also raise arguments with respect to the respondents' authority to prevent the "update of the registered address", and argue that this authority has been transferred to the Palestinian side in the context of the interim agreements.

8. It should be clarified at this point, that in their claim that all they request is an application to update an address, the petitioners are feigning innocence, since the request of the petitioner in HCJ 660/08, similarly to the request of the petitioner in HCJ 2905/08, does not amount only to an application **to change the registration of the address**, as presented by the petitioners, but an application **to relocate from Gaza to the Judea and Samaria Region, move her life center there and settle in the Judea and Samaria Region**, and therefore the issue before us exceeds the mere issue of the administration of the registry.
9. It shall also be clarified that this petition was preceded by a previous petition which was filed by the petitioner in HCJ 660/08 and by her family members. This is the petition in HCJ 2680/07 (hereinafter: the "**First Petition**"), which was filed on 22 March, 2007. In the same petition, the petitioner in HCJ 660/08 and her family members requested from the Honorable Court to instruct the respondents to issue the petitioners permits of entry into Israel for the purpose of their passage from the Gaza Strip to the Judea and Samaria Region "in order to enable their participation in petitioner 1's wedding ceremony, which was supposed to have taken place in Tul Karem in the West Bank, on 5 April, 2007".

The first petition was based on the request to enable the petitioner in HCJ 660/08 and her family members to participate in the wedding ceremony. Also with respect to that same matter, the petitioners did not explicitly mention in the First Petition, that the material remedy being requested is to enable the petitioner in HCJ 660/08 to settle in the Judea and Samaria Region. However, a review of the

First Petition indicated that the respondents wanted to enable the four family members to pass through Israel for the purpose of participation in the wedding ceremony. However the return of the petitioner in HCJ 660/08 to the Gaza Strip upon the end of the ceremony was not requested.

Therefore, even the First Petition was intended, in practice, to enable the petitioner in HCJ 660/08 to relocate – permanently – from the Gaza Strip to the Judea and Samaria Region.

The relevant facts in this case:

10. Both petitions discuss requests of spouses, one is a resident of the Judea and Samaria Region and the other is a resident of the Gaza Strip, who were recently married or who recently executed a marriage agreement, and they request to reside together in the Judea and Samaria Region. And for this purpose they request to receive a passage permit as well as a permit of settlement in the Judea and Samaria Region.
11. As aforesaid, on 22 March, 2007 the First Petition was filed. In their preliminary reply to the First Petition, the respondents clarified that they have no objection to the arrangement of the petitioners' passage through Israel for the purpose of the participation thereof in the wedding ceremony. However they conditioned it by an undertaking on the part of the petitioners, **including on behalf of the petitioner in HCJ 660/08** to return to the Strip upon the end of the ceremony.

The respondents also clarified that the petitioners, who are well aware of the respondents' position with respect to the settlement of Gaza residents in the Judea and Samaria Region tried, with all due respect, through masking the petition with the guise of a request to visit the Judea and Samaria Region for the purpose of participation in a wedding ceremony, and through the short time constraint dictated by the performance of the ceremony on 5 April, 2007, to "bypass" a head-on confrontation with the respondents' position with respect to the issue which relates to the change of address (relocation) from Gaza to the Judea and Samaria Region, without explicitly presenting this intention to the respondents and to the Honorable Court.

A copy of the respondents' preliminary reply in the first petition is attached hereto and marked Res/1.

12. On 28 March, 2007 a hearing was carried out before the Honorable Court in the First Petition. Following the hearing it was determined in the Honorable Court's decision dated 1 April, 2007, *inter alia*, as follows:

"The parties accepted the court's suggestion according to which petitioners 1-4 will leave for petitioner 1's wedding in Tul Karem on the West Bank. Petitioners 2-4 will return to the Gaza Strip within two weeks from the day of the weddings. **The petitioner may stay in**

the West Bank for two months after the wedding and in the meantime she will apply through a request to relocate according to procedure.”
(Emphasis added).

A copy of the Honorable Court’s decision dated 1 April, 2007 is attached hereto and marked Res/2.

13. On 15 May, 2007 the petitioners’ counsel notified in a letter to the Office of the State Attorney that on 21 April, 2007 the petitioner in HCJ 660/08 applied to the Palestinian Interior Ministry in Tul Karem, “and filed a notice with respect to change of address from her parents’ house in Bani Suhila in the Gaza Strip to her husband’s house in Tul Karem on the West Bank... the notice about my client’s change of address was transferred by the Palestinian side to the Israeli side on 22 April, 2007”.

A copy of the letter dated 15 May, 2007, including the exhibit thereto, is attached hereto and marked Res/3.

14. On 31 May, 2007 the respondents filed a complementary notice to the First Petition, in which they clarified, *inter alia*, that it transpired from a clarification carried out with the relevant official in the Palestinian Authority that **the notice that was transferred to the Israeli side, does not constitute in practice an official request for settlement in the Judea and Samaria Region, but solely a clarification demand, which was also not reasoned and did not include any exceptional circumstances which would require an exception from the respondents’ policy, as it shall be described below.**

Therefore, the respondents clarified that as of the date of filing their complementary notice, a properly reasoned request for changing a place of residence “**according to the procedure**” as required was not transferred to the Israeli side.

A copy of the complementary notice (including the exhibits thereof) dated 31 May, 2007 is attached hereto and marked Res/4.

15. On 28 November, 2007 (after even the petitioners filed a complementary notice on their behalf), the petitioners filed a stipulation to cancel the date of the additional hearing determined in the First Petition and to dismiss the petition without prejudice, after reaching the conclusion that the first petition has exhausted itself and it being rendered unnecessary. The respondents agreed to the dismissal of the petition without prejudice, without agreeing to the content of the petitioners’ stipulation, and notified that they will not deport the petitioner in HCJ 660/08 until the filing of an amended petition on her behalf, provided that it is filed within 45 days (the stipulation was attached as Exhibit P/15 to the petition in HCJ 660/08).

16. On 3 December, 2007 the first petition was dismissed without prejudice by the decision of the Registrar of the Honorable Court (the decision was attached as Exhibit P/16 to the petition in HCJ 660/08).
17. On 21 January, 2008 the current petition was filed in HCJ 660/08. In this petition the petitioners argue as aforesaid that all they request is the update of the registered address of the petitioner in HCJ 660/08 “in accordance with her correct and true address” (Section A of the introduction to the petition). The petitioners add and argue that:

“The matter of the petition is not the legality of the petitioner’s stay in the District of Tul Karem – with respect to this matter the petitioners do not need a remedy from the respondent” (page 2 of the petition).
18. As at shall be clarified below, even this presentation is inaccurate, to say the least, especially since it was known and clear to the petitioners, in view of the respondents’ position which was clarified in the context of the first petition, **according to which the issue of whether the petitioner needs the respondent’s consent in order to “stay in the Tul Karem District” in a legal manner, is the heart of the disagreement between the parties.** Nonetheless, the petitioners chose this time as well to present the petition as a petition for an allegedly technical remedy – the change of the address registered in the registry, in lieu of a presentation of the matters as they are, in other words – that the remedy requested in the petition is to enable the petitioner in HCJ 660/08 to relocate from the Gaza Strip to the Judea and Samaria Region and move her life center there.
19. It shall be noted that in April 2008 a petition was filed in HCJ 3592/08 **Hammidat et al. v. the Commander of the IDF Forces in the West Bank et al.** (hereinafter – the **Hammidat Case**), which is very similar in its facts to the First Petition of the petitioner in HCJ 660/08. Even in the **Hammidat Case**, the remedy requested by the petitioners was to enable the passage through Israel to the Judea and Samaria Region of a woman and her two parents, so that they could participate in the bride’s wedding ceremony, as well as to enable the return passage of both parents, **but not the return passage of the bride.**
20. In their reply to the petition in the **Hammidat Case**, the respondents also mentioned that in fact, the remedy that is being sought in the petition is in practice the settlement of the woman in the Judea and Samaria Region, and not solely the receipt of passage permits, and that the petitioners had unclean hands in presenting the case as a request for entry permits only. The respondents also mentioned that they did not receive a request for settlement from the appropriate sources in the Palestinian Authority in the matter of the petitioner, and therefore the petition lacks exhaustion of proceedings.

On the merits of the matter the respondents mentioned that since the outbreak of the incidents in 2000, Israel stopped approving the passage of Palestinians from Gaza to the Judea and Samaria Region, as well as the relocation to the Judea and Samaria Region, to the exclusion of in exceptional and humanitarian cases.

However, and beyond the letter of the law, the respondents agreed to enable the passage of the petitioners through Israel for the purpose of the participation thereof in the wedding ceremony, including an undertaking on their behalf, as well as on behalf of the bride, to return to the Strip upon the end of the ceremony, subject to the deposit of a guarantee at a sum of NIS 20,000 **to guarantee the return of the petitioners to the Strip.**

21. On 11 June, 2008 a hearing was held in the Honorable Court with respect to the **Hammidat Case**. On the same day the Honorable Court decided as follows:

“The fundamental issue raised by the petitioner is pending before this court in the petition in HCJ 660/08. Therefore we have decided that the current petition will be joined to the hearing of the petition in HCJ 660/08. We noted before us the State’s notice that the petitioner and her parents will be enabled to enter Israel for the purpose of the wedding ceremony in the Region if she undertakes to return to Gaza within a short time from the ceremony and provides guarantees for the same, until the final decision on the fundamental issue is made. **The petitioners shall apply to the Palestinian Authority as soon as possible with a request to enable the petitioner to change her status from Gaza to the Judea and Samaria Region.**

Prior to the date of the hearing on the fundamental issue, the respondents shall file a reply which details the procedure with respect to spouses, regarding those instances in which a resident of Gaza requests to be unified with a spouse in the Judea and Samaria Region, as well as the reasoning for the policy which will be formulated in the procedure.” (Emphasis added).

A copy of the court’s decision dated 11 June, 2008 is attached hereto and marked Res/5.

22. On 24 June, 2008 a decision was given by the Honorable Justice Y. Danziger, to consolidate even HCJ 2387/08 with HCJ 660/08 and with HCJ 3592/08 (it shall be noted that in the context of HCJ 2387/08 a reply to the petition on behalf of the respondents has already been filed).

On 2 July, 2008 the respondents requested to even consolidate the hearing in HCJ 2905/08 with the hearing in the aforesaid cases, and to file their reply to the petition prior to the date of the hearing. On 3 July, 2008 a decision was given on behalf of the Honorable President Beinisch, following the respondents' request, to even consolidate the hearing in HCJ 2905/08 with the aforesaid cases.

23. On 4 October, 2008 a motion was filed on behalf of the petitioners in the **Hammidat Case** to withdraw their petition. In the withdrawal motion the petitioners mentioned that the bride moved to the Judea and Samaria Region under circumstances that are not related to the petition and that now she resides in Hebron with her spouse.

A copy of the petitioners' motion to withdraw the petition in the Hammidat Case is attached hereto and marked Res/6.

24. In their reply to the withdrawal motion, the respondents pointed out that the bride was given a **one day** permit dated 18 August, 2008 for entry into Israel for receipt of treatment in a hospital. The respondents clarified that the **entry was only approved with respect to Israel, for one day only, after which she was required to return to the Gaza Strip, and that the bride never received a permit of entry into the Judea and Samaria Region.**

The respondents emphasized, that the petitioner exploited her permit for entry into Israel, which she was given for humanitarian, medical reasons, in order to unlawfully enter Judea and Samaria (and, as is implied in the request to withdraw the petition, to continue to stay there unlawfully.)

Under these circumstances, the respondents clarified that **the petitioner's stay in the Hammidat Case is an illegal stay**, and that they intend to act **for the deportation of the petitioner from the Judea and Samaria Region**, as customary with respect to any other person who unlawfully stays in the Region, whether or not her petition is withdrawn.

25. The respondents insisted that the petitioner's conduct in that matter is infected with severe lack of integrity, and that it is in complete contradiction with the court's decision in her matter dated 11 June, 2008.

A copy of the respondents' reply to the motion for the withdrawal of the petition in the Hammidat Case is attached hereto and marked Res/7.

26. On 22 October, 2008 the Honorable Court decided to dismiss the petition in the Hammidat Case without prejudice.

A copy of the judgment dismissing the petition in the Hammidat Case without prejudice is attached hereto and marked Res/8.

27. At this time, after the petition in the **Hammidat Case** has been withdrawn, and since the respondents have already filed a reply to HCJ 2387/08, the petitioners' reply to the title petitions is filed.

The respondents' position:

28. The respondents will first argue that the petitions are tainted by unclean hands and non exhaustion of administrative remedies, and should therefore be summarily dismissed with prejudice.

Second, the respondents will argue that the petitions should also be dismissed with prejudice on the merits, in view of the authority of the IDF Commander in the Judea and Samaria Region to approve requests for settlement in the Judea and Samaria Region, and in view of the respondents' current policy not to approve passage or relocation of Palestinians from Gaza to the Judea and Samaria Region, to the exclusion of exceptional humanitarian cases (which we will address below, and which do not include the matter of the petitioners). The respondents will argue that this policy properly balances between security needs on the one hand, and between the need to be considerate in exceptional humanitarian cases on the other, and this is a reasonable and appropriate policy, which certainly is within the range of reasonability. Therefore, there is no cause for the intervention of this Honorable Court in this position.

The respondents will describe their position below.

The dismissal of the petition with prejudice due to the petitioners' unclean hands and non-exhaustion of administrative remedies:

29. As described above, the original remedy which was requested by petitioner 1 in HCJ 2905/08, as well as in the First Petition in matter of the petitioner in HCJ 660/08 (hereinafter: the "petitioners"), was "only" that they be given a permit for the purpose of passage to the Judea and Samaria Region through Israel. However, the actual remedy requested by the petitioners is settlement in the Judea and Samaria Region.
30. We shall clarify that the respondents of course are not denying the petitioners' right to request from the respondents, and to the extent necessary from the Honorable Court as well, to enable the petitioners to relocate from their permanent residence in the Gaza Strip to the Judea and Samaria Region.

Indeed there is a legal disagreement between the respondents and the petitioners on the issue of the legal context which applies to the relocation from Gaza to the Judea and Samaria Region, as shall be described below. However, all that is expected from the petitioners is that they shall explicitly state that in practice a very central remedy which they request to achieve through the petition is **the permanent stay** of the petitioners in the Judea and Samaria Region.

The petitioners did not do so, and the remedy which they requested addressed **the passage for the purpose of participation in the ceremony**, and no more. That is the manner in which the petitioners' motion for grant of an order nisi in HCJ 2905/08 and in the First Petition in the matter of the petitioner in HCJ 660/08 is worded.

As aforesaid, even in the current petition filed in the matter of the petitioner in HCJ 660/08, the petitioners did not request the true remedy desired by them – the settlement and establishment of the petitioner's life center in the Judea and Samaria Region, but allegedly requested a technical remedy of changing her address which is registered in the Population Administration.

Under these circumstances, the petitions are tainted by bad faith and should be summarily dismissed with prejudice. Insofar that the petitioners want the respondents to enable the petitioners, Gaza residents, to permanently move to the Judea and Samaria Region, they shall do the honors and mention the same. As long as the petitioners have not done so, their petitions are infected with lack of integrity, and for that reason alone their fate is to be dismissed with prejudice.

31. We shall add to the aforesaid that in exceptional humanitarian cases (which we shall address below), the respondents will allow the relocation of a Palestinian resident from Gaza to the Judea and Samaria Region, despite the State of Israel's principle position with respect to this issue, as shall be described below.

In order for the military commander to examine a relocation request as aforesaid, this request is required to be transferred to him through **the Manager of the Office of Civilian Matters in the Palestinian Authority**, after a request with respect to the person who wants to settle (whether he is the applicant, and whether a family member is making the request for him) was received in the Palestinian office.

However, it has been notified on behalf of the military commander that **to this day no request for relocation was transferred from the Palestinian side on behalf of the petitioners – not even for special grounds.**

As shall be clarified in the complementary notice on behalf of the respondents in the First Petition in the matter of the petitioner in HCJ 660/08, even her application to the Palestinian Ministry of Interior, in order for it to change her registered address, and the update notice transferred to the respondents on behalf of the Palestinian side, does not amount to the filing of a reasoned request for settlement in the Judea and Samaria Region, which addresses **any** exceptional circumstances **which will require deviation from the respondents' policy.** Therefore, the petitions are infected with lack of exhaustion of proceedings with respect to the petitioners' intention – an intention which as aforesaid is not explicitly expressed in the petitions – to relocate to the Judea and Samaria Region.

32. In this context it is not superfluous to mention that in a judgment made on 11 June, 2008 by the panel that discussed the abovementioned HCJ 3592/08, the circumstances of which are very similar to the circumstances of this petition, and the hearing of which was consolidated several months ago with the hearing of the petition at bar (and which in the meantime was withdrawn by the petitioners), the Honorable Court **explicitly mentioned in its decision** that the petitioners are to promptly apply to **the Palestinian Authority** in a request “to change the petitioner’s status from Gaza to the Judea and Samaria Region”.
33. Under these circumstances, in which an application to the Israeli side was not made **on behalf of the authorized agencies in the Palestinian side**, indeed **the petition is infected with non exhaustion of proceedings**.

In fact, the petitioners rival is not the respondents at all, but the Palestinian Authority, and for that reason alone the fate of the petition is to be summarily dismissed with prejudice.

For this matter see, *mutatis mutandis*, the Honorable Court’s judgment in HCJ 4332/04 **Odeh Nancy v. Commander of the IDF Forces** (unreported), dated 20 May, 2004, in which a petition confronting the issue of granting visitation licenses for the Judea and Samaria Region was summarily dismissed with prejudice. The court there determined as follows:

“It transpires from the State’s reply to the petition that petitioner 3 entered the Region on 23 March, 2000 based on a three month visitation license, and since the expiration of the license he has been staying in the Region without any license whatsoever. It also transpires from the State’s reply that in the Israeli coordination and liaison offices no family unification request had been received in the matter of the petitioner by September 2000, the date on which the State of Israel ceased to accept requests for family unification in the boundaries of the Region, as was arranged until then in the interim agreement with the Palestinian Authority. After reviewing the petition and the State’s reply thereto, **we have been convinced that the fate of the petition is to be summarily dismissed with prejudice due to lack of legal cause for the intervention of this court in the respondent’s decision.** Article 28(11) of the First Addendum of the Civilian Annex to the Interim Agreement with the Palestinian Authority (Treaties 1071, Volume 33, on p. 215) determines that the authority and discretion with respect to the transfer of requests for family unification within the boundaries of the Region to the Israeli side are granted to the Palestinian Authority, and the latter decides whether to

award a permit for permanent stay, subject to the approval of the State of Israel. In view of the political and national situation which prevails in our region since September 2000, the activity of this mechanism which was determined in the article was discontinued and no requests for family unification within the boundaries of the Region are being transferred by the Authority. In any case, **even if a request as aforesaid was filed to the Palestinian Authority prior to September 2000, as the petitioners argue, indeed such a request was not delivered for the approval of the authorities in Israel, and in any event the respondent could not have taken care of the petitioners' matter and therefore no basis has been laid for our intervention in the decision to deport petitioner 3 from Israel.**" (Emphasis added).

Also see, *mutatis mutandis*: HCJ 7607/05 **Jamal Mustafa Yussef Abdallah (Hussein) v. Commander of the IDF Forces in the West Bank**, Takdin Elyon 2005(4), 2859, HCJ 8881/06 **Najech v. The Civil Administration in the Judea and Samaria Region**, Takdin Elyon 2007(1), 4077.

The authority of the military commander in the Region to approve or to deny requests for relocation from Gaza to the Judea and Samaria Region

34. In 1967, upon IDF's entrance to the Judea and Samaria Region and to the Gaza Region, those territories were declared as closed zones, which the entrance to and the exit from are conditioned by a permit from the Commander of the IDF Forces in the Region, according to the Order with respect to the Closure of the Region (The Gaza Region) (No. 144), 5728-1968, and the Order with respect to Closed Zones (The West Bank Region) (No. 34), 5727-1967.
35. After the declaration of Gaza and of the Judea and Samaria Region as closed zones, Gaza residents, who held a permit of exit from the Gaza Region, were given a general permit of entry into the Judea and Samaria Region, by virtue of a General Entry Permit (Residents of Occupied Territories) (No. 5) (Judea and Samaria), 5732-1972. At the same time, a general permit of exit from the Gaza Region was issued, and which enables the residents of the Gaza Region to exit from the Gaza Region subject to certain conditions (General Exit Permit) (Gaza Strip) (No. 2), 5732-1972).
36. This general entry permit was suspended by an Order with respect to the Suspension of a General Entry Permit (Residents of Occupied Territories) (No. 5) (Temporary Order) (Judea and Samaria), 5748-1988. **This postponement order, which prohibits the entrance of Gaza residents to the Judea and Samaria Region and their stay therein without a personal permit from a military commander or on his behalf, is in effect till this day.**

37. From the aforesaid it transpires that in accordance with the prevailing security legislation, the Judea and Samaria Region is a closed military zone, which the entry to and exit from are prohibited apart for a **specific permit** by the Commander of the IDF Forces in the Region, or a person authorized thereby.
38. In all matters relating to **the Gaza Strip**, indeed as it is known, during August-September 2005 the State of Israel implemented the plan of disengagement from the Gaza Region. **Upon the completion of the plan and after the last IDF soldier left the Strip, on 12 September, 2005, a manifest by the Commander of the IDF Forces in the Region was issued notifying with respect to the end of the military rule in the Region.**
39. The determination of the Judea and Samaria Region (and in the past the Gaza Strip as well) as a closed zone, and in any event the considerations with respect to allowing entry, stay and exit from the region, are based, *inter alia*, on security considerations. In other words, there is a concern with respect to the presence of a security threat which may be caused as a result of granting the possibility of free entrance to the region and free exit therefrom, which may be exploited for carrying out contacts with hostile organizations for various causes (military training, recruiting, transfer of information, orders, assignments, weapons, etc.) and for performance of terror activity.
40. In the context of the activation of the military commander's discretion with respect to allowing entry into, stay, and exit from the region, he is required to weigh the extent of the security threat related to granting the request, in whole or in part, in order to prevent the applicants from misusing the freedom of movement out from the region and back thereto. He is also ordered to weigh the super-essential interest of preserving the security of the region on the one hand, and the desire of the region's resident to leave the region for this purpose or another, on the other hand.

Relocation from Gaza to the Judea and Samaria Region:

41. As described above, the Judea and Samaria Region was declared as a closed military zone. Therefore, anyone who is not a permanent resident in the Judea and Samaria Region is required to receive a permit for entry and stay in the region. In accordance with the same, even the permanent relocation from Gaza to the Judea and Samaria Region requires the receipt of approval from the commander of the IDF Forces in the Judea and Samaria Region, according to a request for change of address transferred by the Palestinian Authority on behalf of the resident.
42. Thus, those who have been approved entry to the Judea and Samaria Region and have requested to relocate **permanently** to the Judea and Samaria Region were required to receive the approval of the respondents for the same, and only once this approval was given, did the relocation, in fact, formulate, and did the permanent stay in the Judea and Samaria Region become legal.

43. The validity of a permit of passage given to those who are not residents of the Judea and Samaria Region, and which the military commander decided to approve **the visit thereof in the Judea and Samaria Region for this reason or another**, expires upon expiration of the permit, or when the purpose for which the permit was given has been realized, and also when a closure has been imposed. At which time the resident who held the permit is required to return to the region from which he came and his stay in the Judea and Samaria Region is no longer permitted. **The cancellation of the permit of passage, of course, does not apply to whoever the military commander has approved relocation to the Judea and Samaria Region, since then he becomes a permanent resident in the Judea and Samaria Region, and the matter is also registered in the Region's population registry.**

44. The interim agreement between Israel and the PLO did not change this status.

On 28 September, 1995 the Israeli – Palestinian interim agreement with respect to the West Bank and the Gaza Strip (hereinafter – the Interim Agreement) was executed in Washington between the State of Israel and the PLO. The Interim Agreement determines, *inter alia*, provisions with respect to the transfer of certain powers as described therein from the military commander to the Palestinian Authority.

Security considerations play a significant role in all the political agreements with the Palestinian Authority and are interlaced in the language of the aforesaid agreements. All the agreements are subject to the principle according to which **the State of Israel has the total security responsibility for the surrounding of the region and for the passages**. The State of Israel has the responsibility for protection from outside threats as well as the total responsibility for the security of the Israelis and for the security of those regions which have remained under belligerent occupation.

Therefore, even according to the Interim Agreement and also according to the provisions of the law prevailing in the region (the security legislation) the Commander of the Military Forces in the Judea and Samaria Region still has the authority to prevent the entry and exit of residents to and from the region, on security grounds, and no change occurred with respect to the existence of the aforesaid authority.

45. The Interim Agreement was anchored in the region's legislation in a Proclamation on the Implementation of the Interim Agreement (Judea and Samaria) (No. 7), 5756-1995.

Article 6 of the Manifest determines that the commander of the IDF forces in the region will continue to have authorities and areas of responsibility, *inter alia*, the areas of responsibility that were not transferred to the council. **Article 6 of the Manifest also determines that the commander of the IDF Forces'**

determination that authorities and areas of responsibility will continue to be held thereby shall be decisive with respect to this matter.

A copy of Manifest no. 7 is attached hereto and marked Res/9.

46. It shall be noted that throughout the years this Honorable Court discussed many petitions regarding the authority of the military commander to prevent entry and exit from the boundaries of the region. In this case law, the Honorable Court affirmed, time and again, the security legislation's legal validity, and at the same time addressed the framework of the discretion and the contents of the security considerations weighed by the military commanders in the region when they decide with respect to the movement of residents from or to the region.

See for example HCJ 9293/01 **M.K. Muhammad Barakeh v. Minister of Defense**, Piskei Din 56(2) 509, pp. 515-516, as follows:

“In the Order regarding the Closure of the Region (Gaza Region) (No. 144), 5728-1968, issued by the commander of the IDF forces in the region, it was determined that for the purpose of “maintaining the orderly administration and security in the region”, “the entire region will be a closed zone” (Section 1 of the Order). It was also determined that: “No person shall enter or leave the region, unless by a license from me or from whoever was authorized by me in writing, or in accordance with a general permit issued by me”... **Indeed, there is no disagreement in the petition before us with respect to the authority of the region's commander to issue these sorts of orders or to prevent entry and exit from the boundaries of the closed zone.**” (Emphasis added).

47. Also see HCJ 709/88 **Rafet Tzubechi Muhammad Teib v. Head of Civil Administration**, Takdin Elyon 88(3), 138, p. 139, as follows:

“It has already been said with respect to this issue in this court (HCJ 66/80, unreported): “We did not see any reason for the intervention of this court in the judgment exercised by the region commander. **When an administrative authority in an area of the military administration examines a request either to exit or enter the region, it is entitled to weigh the security risks involved in accommodating the request. For this purpose a reasonable suspicion is sufficient basis for refusing to grant a permit, and it is not condition precedent to exercising this power that the authority possess at that time evidence that would be**

sufficient grounds for a conviction in a court of law.

The respondent is entrusted with the safety and the security of the region, and a doubt with respect to the legitimacy and reliability of the petitioner regarding his contacts with terrorists may tilt the scale to the detriment thereof when the issue at hand is a permit for free movement to places which may serve as a rendezvous with agents of the terror organizations. Therefore it should not be said at all that the considerations which were taken into consideration in the case at bar do not amount to relevant considerations, or that a higher extent of proof is required for the purpose of an administrative decision of the kind discussed herein". (Emphasis added).

48. In view of the aforesaid, the respondents are entrusted with the preservation of the security in the region and in all the passages (external and internal), and the same have remained in accordance with the agreement under Israeli security responsibility, which includes the authority to prevent the entrance to the Judea and Samaria Region from whoever is not a resident of that region.
49. The Interim Agreement does not directly relate to the issue of passage between the regions for the purpose of **settlement** (there is a reference to the technical aspect of the passage between Gaza and the Judea and Samaria Region, in other words – the issue of safe passage). **The military commander's interpretation of the Agreement was and still is that the authority to approve permanent settlement in the area is granted thereto, as it was before the Interim Agreement came into effect.** This interpretation was presented to the Palestinian side immediately upon the implementation of the Agreement and that is how the parties continuously operated until September 2000. Throughout all those years Israel used to approve, in accordance with requests transferred on behalf of the Palestinian Authority, **and at the absence of a security impediment**, the relocation and the settlement in the Judea and Samaria Region.

In September 2000, in view of the outbreak of the security incidents, Israel stopped approving the passage of Palestinians from Gaza to the Judea and Samaria Region, as well as the relocation to the Judea and Samaria Region, to the exclusion of exceptional humanitarian cases.

50. Therefore, the respondents' requirement that the permanent relocation from Gaza to the Judea and Samaria Region, shall be carried out only under the approval thereof is not a new requirement. The respondents operated in this manner for years, before the establishment of the Interim Agreement, and even after the establishment of this Agreement, by coordination with the Palestinian Authority.
51. In view of the aforesaid, there is no flaw in the respondents' position according to which their approval is required for the relocation from Gaza to the Judea and

Samaria Region, and without this approval the settlement in the Judea and Samaria Region is unlawful.

The respondents are authorized to approve or to refuse to approve relocation, and this authority has even been activated in the years that preceded the Interim Agreement with the Palestinian Authority and in the years since the establishment of the Interim Agreement, by coordination with the Palestinian Authority, as described above.

52. On a side note, we shall mention that the petitioners' position is that the Judea and Samaria Region and the Gaza Strip are one territorial unit, and according to the same both regions are to be related to as one area. Therefore, as far as the petitioners are concerned, a Gaza resident does not need a permit for the purpose of passage to the Judea and Samaria Region or for settlement therein. These arguments had no room even before the implementation of the disengagement plan, **however now, once the legal situation (as well as the political and security situation) in the Gaza Strip has materially changed, it is clear that these petitioners' arguments are no longer valid.**
53. Today, after the exit of the IDF Forces from the Gaza Strip, Israel no longer controls the border between the Gaza Strip and Egypt, and therefore it no longer actually controls the entrance of people as well as the passage of various means and goods to Gaza. Acceptance of an argument according to which Israel is not entitled to prevent the passage of Gaza residents to the Judea and Samaria Regions and their settlement therein has far reaching risks, in the security and political aspects as one.
54. It shall be noted that the Honorable Court has more than once approved the respondents' position which prohibits the passage of Gaza residents to the Judea and Samaria Region. Thus, for example, see in this matter H CJ 7960/04 **Muhammad Mussa Alrazi et al. v. Commander of IDF Forces in the Gaza Strip**, Takdin Elyon 2004(3) 3384, in which the Honorable Court denied the petition of Gaza Residents who wanted to be permitted to move to the Judea and Samaria Region for the purpose of their studies, and determined as follows:

“The ten petitioners are young Gaza residents who want to study the occupational therapy profession. In the absence of a proper framework for the study of the aforesaid profession in their area, the petitioners enrolled to the occupational therapy department in the Bethlehem University. The university accepted them, but the respondent – to which the petitioners applied with a request to permit the exit thereof from the Gaza Strip to the Judea and Samaria Region – denied their request. The petition is directed against this decision.

The respondent based his decision not to grant the petitioners' request on the security agencies'

estimate according to which the petitioners' exit from their region – and especially on that they intend to stay in Bethlehem for the purpose of their studies – embodies risks to national security and to the regions' security. In a written reply on his behalf, the respondent clarified that his position is not based on a specific examination which relates to each and every one of the petitioners personally, **but on the estimation of the security agencies according to which the “risk profile” to which the petitioners belong is sufficient to establish a concern that the terror organizations acting in the Gaza Strip will exploit their exit to Bethlehem for carrying out attacks in Israel and in the Judea and Samaria Region...**

We have come to the conclusion that under the grave circumstances which prevail at this time there is no room to intervene in the respondent's decision. We are prepared to presume that at least some of the petitioners wanted to go to Bethlehem in order to study there, and for no other purpose. However, **we are convinced that by permitting their exit from the Gaza Region there is a material risk to the public's security in Israel and in the regions.** For the purpose of completeness we shall mention that in a reply to our question the counsel to the State clarified that subject to an individual examination and determination of the conditions thereof, the respondent has no principle objection to the exit of the petitioners, or any of them interested to do so, for academic studies overseas, including in Jordan or Egypt. Insofar that any of the petitioners are interested in this alternative, they may reapply to the respondent with an appropriate request. It is also hopeful that as time goes by, those of the petitioners whose only purpose is to indeed study the occupational therapy profession, will be able to renew their request also with respect to the study programs in the Bethlehem University. The petition is denied.” (Emphasis added).

55. In that same case the Honorable Court approved the respondents' position even though the respondents had no specific intelligence information which relates to each and every one of the petitioners that want to move to the Judea and Samaria Region.
56. **The respondents are of the opinion that the Military Commander of the Judea and Samaria Region has broad discretion in a decision about grant of entry to those who are not registered residents of the Judea and Samaria**

Region. This is all the more so true when the request is with respect to settlement in the Judea and Samaria Region.

Change of address as opposed to settlement:

57. In the petition in HCJ 660/08 the petitioners argue that all they are in fact requesting is to enable the petitioner in HCJ 660/08 **“to update her registered address in the copy of the Palestinian Population Registry, which is held by Israel, in accordance with her correct and true address”** (Section A of the introduction to the petition).
58. The petitioners refer in their arguments to the provisions of Article 28 of the Civilian Addendum of the Interim Agreement, according to which the authority of **management of the Palestinian Population Registry was transferred to the Palestinian Council**, which is obligated to update the Israeli side with respect to changes in its registry.
59. The respondents will argue that this claim constitutes feigned innocence, since the request of the petitioner in HCJ 660/08, as well as the petitioner’s request in the additional petitions regarding this matter, does not only constitute as a request **for the change of registration of the address**, as it is presented by the petitioners, but in practice, it is a request **to relocate from Gaza to the Judea and Samaria Region and move her life center there and a request to settle in the Judea and Samaria Region**, while granting legal relevance for the aforesaid. Therefore, the issue before us **exceeds the issue of the mere management of the registry**.

This issue is not regulated in Article 28 of the Interim Agreement, which does not directly address the issue of passage between the regions for the purpose of **settlement** (the Agreement only includes a reference **to the technical aspect** of the passage between Gaza and the Judea and Samaria Region, in other words – the safe passage issue). Thus, for example, the provision to which the petitioners refer in Section 18 of the petition in HCJ 660/08, addressed the **management of the registry**, and nothing more.

60. We have therefore come to the understanding that the material issue subject to this Honorable Court in the context of these petitions is the issue of **settlement in the Judea and Samaria Region**.
61. As noted above, the State of Israel’s interpretation of the Agreement was and still is that the authority to approve entry and stay in the Judea and Samaria Region, and certainly the authority to approve permanent settlement in the Judea and Samaria Region is given to the military commander, as was the case before the Interim Agreement came into effect.

As aforesaid, **this was also how it was clarified to the Palestinian side immediately upon the outset of the implementation of the Interim Agreement, and this is how the parties operated in practice, whether until the outbreak of the violent incidents in 2000, when requests for relocation were**

approved as a matter of routine (subject to the absence of a concrete security impediment), and whether since the outbreak of the incidents, when it was decided to reduce the policy of grant of approvals only to exceptional humanitarian cases, as shall be described below.

62. Under these circumstances it is easy to understand why the argument of the petitioner in HCJ 660/08, according to which it is sufficient that she updated her address with the population registry authorities in the Palestinian Authority, which “notified” the Israeli side about the change of registration as aforesaid, **in order to lawfully make her a resident of the Judea and Samaria Region**, is completely unfounded.

The petitioner (660/08) never received from the Commander of the IDF Forces in the Judea and Samaria Region, or from anyone on his behalf, who are the only agencies authorized for this matter, in accordance with the valid security legislation, any permit for settlement in the Region.

At the absence of such a permit, the petitioner is not entitled to relocate from the Gaza Strip to the Judea and Samaria Region, and a technical notice on behalf of the Palestinian Authority with respect to change of the registration of the address is irrelevant in this respect.

It is not superfluous to mention in this context that in accordance with the decision of the Honorable Court in the matter of the petitioner in HCJ 2680/07, it was agreed that the petitioner will move from the Gaza Strip to the Judea and Samaria Region **for a period of two months**, during which she will apply to the Palestinian Authority in a request **to relocate**, according to **procedure**. (Decision dated 1 April, 2007, attached as Exhibit Res/2 above).

Therefore, even according to this decision, which was given in accordance with the parties’ agreement in the petition in HCJ 2680/08, the petitioner was required to apply through a request for a **relocation** and not suffice in transferring a notice about the change of the **registered** address, and this, according to the procedure, in other words – a transfer of a reasoned request for relocation addressed to **a senior official in the office of civilian matters in the Palestinian Authority**, who will transfer the same, on behalf of the Palestinian Authority, **for the approval** of the Israeli side (as explained above).

The petitioner did not do so, and despite that fact, she is trying to achieve through a change of the registration of the address, a material remedy of **settlement** in the Region.

The respondents’ policy:

63. The current policy of the commander of the region is to frugally grant permits for settlement in the Judea and Samaria Region, and in any event, only according to an orderly application on behalf of the Palestinian Authority, at its senior echelons.

64. As it was mentioned above, in September 2000, in view of the outbreak of the security incidents, Israel stopped approving the relocation of Palestinians from Gaza to the Judea and Samaria Region, **to the exclusion of in exceptional and humanitarian cases.**

This policy is based on both political and security reasoning.

65. Thus, the respondents' position had already been since September 2000 that the move of population from the Gaza Strip to the Judea and Samaria Region involves a security threat to the region and to the State of Israel.

As far as the respondents are concerned there is no justification for the State of Israel taking on such risks. This is especially true in view of the security-political situation prevailing **at this time in particular.**

66. As is known, since September 2000, an armed confrontation is being weighed against the State of Israel, its citizens and residents. In the context of the confrontation, the Palestinian side, with its mechanisms and various organizations, is carrying out terror attacks against the life, body and property of innocent Israeli citizens and residents, including old people and children, men and women.

67. **In view of the fact that the Gaza Strip is a separate area, defined by a fence, and in view of the security agencies' efforts, the terror organizations are finding it difficult to send perpetrators of attacks from the Strip to Israel,** for the purpose of carrying out attacks and additional acts which endanger the State of Israel's security and the security of the residents thereof.

However, **in the area of the Strip there is a widespread terror infrastructure, which invests great efforts in finding various ways to send out human terror infrastructure from the region, for the purpose of carrying out acts which threaten the security of the State and its residents – whether in intelligence and preparation activities and whether by actual acts of terror.**

Inter alia, the terror organizations make an effort to harm the State of Israel through the launch of high trajectory rockets, the digging of tunnels and the entry into Israel through other countries (for example: the exit of terrorists from the Gaza Strip to Egypt and from there to Israel).

68. The aforementioned was very much the case even before the cancellation of the military rule and the exit of the IDF from the Gaza Strip, **but it is certainly all the more so after the exit of the IDF forces from the Strip. The aforesaid threats reached their peak after Hamas violently gained control of the Strip in June 2007.**

69. **The security agencies' updated evaluation is that in view of the Gaza Strip being a region that is under the control of the Hamas Organization, it became a center of knowledge in the field of terror, as well as a center for the**

accumulation of very large quantities of advanced weapons and development of innovative military abilities.

The terror organizations in the Gaza Strip are highly motivated to move the fighting against Israel to the Judea and Samaria Region, including, by way of transfer of knowledge, of military abilities and of explosive experts from the Gaza Strip to the Judea and Samaria Region for the purpose of the advancement and upgrade of this activity.

In order to promote these purposes, there is a common phenomenon of **recruitment of Gaza Strip residents who are staying in the Judea and Samaria Region and Gaza Strip residents who intend to arrive there**, and these residents have accessibility to civilian and military targets in Israel and in the Judea and Samaria Region, an accessibility which they naturally did not have in the Gaza Strip, and this for the purpose of military activity including suicide attacks, abductions and more.

70. An additional severe threat is the danger of the insertion of explosive experts who are knowledgeable in the preparation of deadly charges and in the manufacturing of high trajectory weapons.
71. It shall also be noted that in the last few years there were cases in which Gaza residents who entered the Judea and Samaria Region due to humanitarian requests, were used for hostile purposes (for this matter, see for example statements made in HCJ 5429/07 **Physicians for Human Rights-Israel v. The Minister of Defence**, Takdin Elyon 2007(2) 5055 (2007)).
72. In view of all the aforesaid, the security agencies' evaluation is **that permitting free passage between Gaza and the Judea and Samaria Region without the requirement of any approval on behalf of the military commander for the same, as well as permitting the relocation from Gaza to the Judea and Samaria Region without the need of receipt of approval from the military commander, may be used by the widespread terror infrastructure in the Gaza Strip as a means to fulfill the terror organizations' fierce desire to carry out acts which endanger the security of the State – a desire which they are having a hard time fulfilling from the Gaza Strip itself under the current conditions.**
73. Therefore the security agencies' professional, clear and unequivocal position is that due to decisive security grounds, the settlement of Gaza Strip residents in the Judea and Samaria Region should not be enabled, except for very few exceptions.

Insofar that it is necessary, the respondents will request to present the relevant confidential information which is at the basis of this position before the Honorable Court, *ex parte, in camera*.

The humanitarian exceptions:

74. As aforesaid, the respondents' policy is that there is no room at this time to approve the relocation from Gaza to the Judea and Samaria Region, to the exclusion of in exceptional humanitarian cases.

Below we will describe the respondents' position with respect to the nature of the exceptional cases, in which they shall enable Gaza Strip residents to settle in the Judea and Samaria Region, **provided, of course, there is no specific security impediment in those cases.**

75. As aforementioned, the consideration which guides the respondents when they are about to determine exceptions to the general policy adopted in view of the armed confrontation, and the terror organizations' intentions in the context thereof, as described above, is the **humanitarian** consideration.
76. In accordance with the aforesaid, in a hearing led by the Deputy Defence Minister during November 2008, the Deputy Defence Minister instructed that the coordinators of activities in the Territories, will coordinate with the relevant General Security Service agencies, for the purpose of the examination of appropriate cases which may be considered as exceptional humanitarian cases as aforesaid. These cases will only include cases of people who are directly related to residents of the Judea and Samaria Region and that in the case of which there are **objective** humanitarian circumstances, due to which **they can no longer continue to live in the Strip**, and the answer to their needs can be found **only** in the Judea and Samaria Region.

Thus, for example, was the case of a young child who was living with one of his parents in the Gaza Strip. The young child lost that parent and remained with no family, except for the other parent who resided in the Judea and Samaria Region.

Once this guideline was given by the political echelon, the respondents began to act for the purpose of formulation of detailed criteria with respect to the cases which may be included in the framework of the aforesaid. Also the procedure will relate in the future to the manner in which the requests are examined once they are received from the Palestinian side, and to the procedure of the treatment of the request, including the kind of approval, its term, etc.

77. It shall be noted that the guideline of the political rank was **that the mere existence of a marriage between spouses, one of which is a resident of the Judea and Samaria Region, and the other is a resident of the Gaza Strip, cannot be viewed as exceptional humanitarian circumstances as aforesaid,** since the couple has the option of living together in the Gaza Strip. In this perspective the realization of the intimacy and the family life is equally possible in both regions.
78. In any event, the petitioners in the petitions before us do not constitute as exceptional cases as aforesaid, and may realize the interest of a family life, mentioned in their petitions, by joint residence in the Gaza Strip.

Therefore, the respondents' position is that the petitioners' matter does not amount to an exceptional humanitarian case, in which the respondents will enable settlement in the Judea and Samaria Region.

79. The respondents will argue that the policy, including its exceptions, as described above, constitutes an appropriate balance between the security needs on the one hand, and between the need to be considerate in individual humanitarian cases, in which there are exceptional humanitarian circumstances which no longer enable the continuation of residence in the Strip, on the other hand.

The respondents will further argue that in the security and political situation which prevails **today**, and which requires to significantly limit the passage and the settlement of residents of the Gaza Strip in the Judea and Samaria Region, marriage does not constitute in itself as a sufficiently considerable circumstance in order to enable the settlement of the Gaza spouse in the Judea and Samaria Region, including its heavy security repercussions.

This is especially true in view of the fact that in these cases there is no impediment (at the absence of an individual security impediment) for the spouse who is a Judea and Samaria Region resident to relocate to the Gaza Strip, and taking into consideration that in the future there may be many cases of marriage between residents of the Judea and Samaria Region and between residents of the Gaza Strip, in which the settlement of the Gaza Strip spouses in the Judea and Samaria Region is requested.

80. In view of all the aforesaid, the respondents will argue that their position according to which there is no room to enable the settlement of the petitioners in the Judea and Samaria Region is very reasonable, and it is certainly within the range of reasonability. Also, the petitioners did not point out any cause for this Honorable Court's intervention in this position.
81. With respect to the limited policy which has long ago been carried out by the respondents with respect to the passage from the Gaza Strip to the Judea and Samaria Region see for example HCJ 9657/07 **Jarb'ua et al. v. Commander of the Military Forces in the West Bank et al.** (Published in the Court's Website) which was given on 24 July, 2008, in which it was stated:

“Petitioner 1, who resides in the Gaza Strip, is requesting to enter the Judea and Samaria Region, while passing through Israel, in order to visit three of her children who reside in the Judea and Samaria Region. These are children who are 17, 19 and 23.

The authorized authority decided that under today's circumstances passage as aforesaid should not be permitted unless it is in exceptional cases, and that petitioner 1's matter does not amount to the same. In

view of the current security reality, especially in the Gaza Strip, we did not find a flaw in the decision not to grant petitioner 1's request. The present case is significantly different than other cases in which there are exceptional medical circumstances and so forth. It should be noted that petitioner 1 does not have a granted right to enter into Israel for any purpose, including for passage to the Judea and Samaria Region. Therefore, in view of the present circumstances, the petition is denied."

82. We shall also mention that this issue of the settlement of Gaza residents in the Judea and Samaria Region is intimately tied to **the political relationship between Israel and the Palestinian Authority**. In other words: **the manner in which the Interim Agreement is implemented is a policy issue, whereas the Interim Agreement in itself does not award rights to individuals by virtue thereof** (compare: the Honorable Justice Zamir's judgment in HCJ 2829/96 **Samhadaneh v. the State of Israel**, Takdin 96(2) 36; the Honorable Justice Barak's decision in HCJFH 5744/96 **Karadeh v. the Prison Service**, Takdin 96(3) 1312; the Honorable Justice Dorner's judgment in HCJ 8012/98 **Atar v. the Israel Prime Minister**, Takdin 99(1) 494).
83. Under these circumstances, when the issue of the passage of residents from the Gaza Strip to the Judea and Samaria Region (certainly in the case of passage for the purpose of settlement), **is a political issue** which is relevant to the relationship between the parties, there is no room for the Honorable Court's intervention in these matters which are related to the State of Israel's foreign relations, **the manner of management of which is the prerogative of the Israeli government**.
84. With respect to the intervention of the Honorable Court **in issues which are clearly political by nature**, see HCJ 4395/00 **The Terror Victims' Headquarters v. the Government of Israel**, Takdin Elyon 2000(2), 2243, in which the Honorable Court dismissed with prejudice a petition which was filed against the political decision of Israel to instruct the release of Palestinian prisoners in the context of a political gesture, and determined as follows:
- "According to this court's consistent case law, the court will not intervene in government decisions which are clearly political by nature, including decisions such as the committee's decision".
85. Also see, *mutatis mutandis*, the many judgments made by this Honorable Court, in which it decided not to intervene in Israel's policy, with respect to receipt of licenses of visitation and of family unification in areas which are under Israeli military rule, since the matter constitutes part of the political relationship between Israel and the Palestinian Authority, and the issues are political issues. *Inter alia*, see in this matter the Honorable Justice Dorner's judgment in HCJ 8012/98 **Atar**

v. the Israel Prime Minister, mentioned above, HCJ 2231/03 **Elshalalda v. Commander of the Benjamin Brigade**, and HCJ 5957/02 **Eatedel v. Commander of the Benjamin Region** and more.

Conclusion

86. Finally, the respondents believe that the fate of the petitions is to be summarily dismissed with prejudice (due to unclean hands and non exhaustion of proceedings) and on the merits thereof, since the petitioners did not indicate any cause for intervention in the respondents' position according to which there is no room to enable the settlement of the petitioners in the Judea and Samaria Region.
87. Therefore, the court is requested to dismiss the petitions while charging the petitioners with the respondents' expenses.

This notice is supported by the affidavit of lieutenant colonel Fuad Halhal, Head of Operations Branch at the headquarters of coordination of government activities in the Territories.

Today, 4 Kislev 5769

1 December, 2008

Tadmor Atzion

Hila Gorni

Tadmor Atzion

Hila Gorni

Senior Deputy to the Office of the State Attorney

Senior Deputy to the Office of the State Attorney

Affidavit

I, the undersigned, **Lieutenant Colonel Fuad Halhal**, having been warned as to my obligation to state the truth, and that I will be subject to the penalties set by law should I do otherwise, do hereby make this affidavit and declare as follows:

1. I serve in the position of HODB CGAT at the headquarters of the coordination of government activities in the Territories.

2. This affidavit of mine is given as support to the notice on behalf of the respondents in HCJ 660/08 and in HCJ 2905/08 (hereinafter – the **respondents' notice**).
3. The facts stated in the respondents' reply are true to the best of my knowledge.

3790560 Lieutenant Colonel Fuad Halhal

Head of Operations Branch in the headquarters of the coordination of government activities in the Territories

Certification

I, the undersigned Shani Tzabari, Adv., certify hereby that on 1 December, 2008, Mr. Fuad Halhal, who is known to me personally, appeared before me, and after admonishing him that he must declare the truth and that he is subject to the penalties under the law for failure to do so, signed his affidavit in my presence.

Shani Tzabari
The Office of the Legal Advisor
to the Security Agencies
Lic. No. 49382
