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At the Supreme Court in Jerusalem
Sitting as the High Court of Justice

HCJ 2056/04

In the matter of:

- 1. Beit Surik Village Council
[Seven Other Village Councils
and 154 Persons]**

The Petitioners

v.

- 1. The Government of Israel**
- 2. Commander of the Military Forces in the West Bank**

all represented by the State Attorney's Office
Salah Al-Din Street, Jerusalem

The Respondents

Petition for Order Nisi and Temporary Injunction

A petition is hereby filed for an Order Nisi, directed to the Respondents and ordering them to appear and show cause:

- A. Why they do not cancel orders for the requisition of land that were issued on behalf of Respondent 2, which were given numbers T/84/03, T/103/03, T/107/03, T/108/03, and T/109/03 (hereinafter: the requisition orders).
- B. Why the route set by the Respondents, along which the separation fence is to be built in the area included in the above requisition orders, is not cancelled or altered.

Application for Temporary Injunction

The Honorable Court is requested to issue a temporary injunction ordering the Respondents and/or persons on their behalf to refrain from doing any work relating to paving, excavating, uprooting trees, leveling land, construction, building preparations and/or any action involved in the construction of the separation fence on the plots of land set forth in the requisition orders, until decided otherwise in this petition.

It should be noted that two days ago, Respondent 2 and/or a person its behalf began to level part of the land set forth in the above orders, in preparation for building the separation fence,

prior to completion of the process of hearing objections that were submitted by the undersigned as counsel for the Petitioners.

Regrettably, with the beginning of the work, the residents in the area have begun demonstrating against the work being done to build the fence. As a result, there have been confrontations between military forces and the residents, in which many persons have been injured.

While these lines are being written, the undersigned was informed that two residents of Biddu Village, who are petitioners herein, were killed by army gunfire during confrontations involving the beginning of construction work on the fence in the area. The granting of a temporary injunction forbidding the work to continue until the Petitioners' petition is heard will calm emotions in the area and likely save lives.

If the temporary injunction is not issued, there is a reasonable fear that the Petitioners will suffer irrevocable damages, and that irreversible facts on the ground will be created. If Respondent 1 continues the construction work, the result will be the uprooting of trees, destruction of orchards, and irreversible damage to farmland. In the event that the Petitioners succeed in their petition, without a temporary injunction having been issued, it will not be possible to return the situation to its previous condition because the damage to the land would be irreversible.

Furthermore, the work in building the separation fence entails great expense that is borne by taxpayers, and is paid from public moneys. Thus, if the temporary injunction is not issued, and the Petitioners succeed in the petition herein, public funds would ultimately be wasted.

The parties

1. This petition involves orders for the requisition of land that were issued by Respondent 2 for the purpose of building the separation fence.
2. Petitioners 1 to 8 are the local councils of the villages Beit Surik, Biddu, Al Qubeiba, Qatanna, Beit 'Anan, Beit Liqya, Beit Ijza, and Beit Duqqu. The other petitioners are residents of the said villages and are some of the owners and/or possessors and/or holders of rights and/or possession and/or ownership of land included in the requisition orders.
3. The maps attached to the said requisition orders indicate that the planned separation fence will surround the said villages from the west, south, and east, turn them into enclaves within the West Bank, and sever them from thousands of dunams of land owned by them, and also detach them from their natural surroundings and from the

nearby towns and villages, and turn the residents of the villages into prisoners within the fence-enclosed enclave.

To illustrate the above, attached hereto is a map of the area, marked Appendix A, which constitutes an integral part of this petition.

4. Respondent 2 is the commander of the military forces in the occupied territories in the West Bank. The said respondent issued the requisition orders for the land on which the separation fence is planned in the area of the villages that is the subject of the petition.

The grounds for the petition

Factual background

The requisition orders

A. Order for Requisition of Land T/103/03

5. On 15 December 2003, Respondent 2 signed Order for Requisition of Land T/103/03. The order relates to some 607 dunams of land located in the area of the villages Qatanna, Beit 'Anan, and Beit Liqya.

Order for Requisition of Land T/103/03 is attached hereto, marked Appendix B.

6. On 24 December 2003, a few days after the Petitioners were informed of the intention to seize their land, the undersigned, in his capacity as Petitioners' attorney, sent a letter addressed to the legal advisor for the West Bank, Col. Shlomo Politis (hereinafter: legal advisor for the West Bank), requesting that the period be extended, for at least thirty days, in which the relevant Petitioners would be allowed to submit objections to the said order, to enable the affected landowners to organize, prepare their documents of ownership, prepare a surveyor's and/or engineer's opinion, consider alternatives to the route set forth in the requisition order, and thus prepare a substantive and cogent objection. The letter to the legal advisor for the West Bank emphasized that the order had not been properly published, and that most of the landowners located in the relevant area were not informed of the order. It was further noted that the landowners did not know if a tour had been made, and that they had not been given any opportunity to state their contentions in the matter.

Attached hereto the request of 24 December 2003 to extend the period for filing objections, marked Appendix B/1.

7. On 25 December 2003, a response was received from the legal advisor for the West Bank through his assistant, Mr. Gill Limon, in which he stated that decision had been

made to extend the time for filing objections to 2 January 2004, i.e., an extension of only seven days!!

The response of 25 December 2003 by the legal advisor for the West Bank is attached hereto, marked Appendix B/2.

8. On 6 January 2004, due to the short time given to the Petitioners, a preliminary objection to the above requisition order was filed on their behalf. The said Petitioners spread out before the legal advisor for the West Bank their arguments against the requisition of their land and construction of the separation fence, and requested that the requisition orders be cancelled, and that the Respondents and/or anyone on their behalf and/or acting pursuant to their authority not do any act to seize the land, including work relating to excavations and/or uprooting of trees and/or any act that will cause other damage of any kind to the land, and that they not do any such act until a detailed objection setting forth the Petitioners' arguments is filed. The Petitioners contended that, if Respondent 1 intended to build the fence, it would be requested to build it on the Green Line, and thereby reduce the harm to the Petitioners and to hundreds of other Palestinian families.

A copy of the preliminary objection, of 6 January 2004, is attached hereto, marked Appendix B/3.

9. On 13 January 2004, a list of the names of the objectors to the said land-requisition order was provided to the legal advisor for the West Bank at his request.

The undersigned's letter of 13 January 2004 is attached hereto, marked Appendix B/4.

10. On 8 February 2004, the legal advisor for the West Bank, through his assistant Mr. Gill Limon, rejected the said objection to the order.

The decision of the legal advisor for the West Bank rejecting the said objection to the order is attached hereto, marked Appendix B/5.

B. Orders for Requisition of Land T/84/03, T/107/03, T/108/03, and T/109/03

11. On 9 December 2003, Respondent 2 signed Order for Requisition of Land T/84/03. This order, too, was not properly published, and the affected landowners were not directly informed about it. The Petitioners first learned of the existence of the said order, by chance, some time after it was issued. The Petitioners do now know if a tour was made of the land to be requisitioned by the army.
12. On 31 December 2003, Respondent 2 signed the other aforesaid orders, and these orders, too, were not properly published, and the landowners were informed about

them only indirectly some ten days after they were issued. To the best of the knowledge of the landowners included in the said orders, no tour was made of the relevant land, and they were not given an opportunity to voice their contentions in the field prior to the filing of the objection.

The said requisition orders are attached hereto, marked Appendixes C/1 to C/4.

13. On 13 January 2004, the undersigned requested the legal advisor for the West Bank to extend the time that the Petitioners would be given to file their objections to the said orders. The undersigned noted that the orders had not been properly published, and that the landowners were informed of them only by chance a few weeks after they had been issued.

The request to extend the period for filing objections to the above orders are attached hereto, marked Appendix D/1.

14. The legal advisor for the West Bank, through Mr. Gill Limon, responded on 20 January 2004, indicating that the request for an extension in the time to file an objection to Requisition Order T/84/03 was rejected, on the grounds that a copy of the requisition order and the map of the order were provided to the Palestinian liaison officials in the Ramallah sector, and that a tour in the field had been held, and that more than a month had passed since then. Regarding the other orders, the legal advisor for the West Bank acceded to the request and extended the period for filing objection to 22 January 2004, i.e., only two additional days!! The said period was clearly insufficient to prepare documents and an expert opinion, to consult with surveyors and engineers to consider and propose alternatives, and to file the objections. The short period of time given seriously impaired the opponents' right to file objection in a proper manner.

The response of 20 January 2004 by the legal advisor for the West Bank is attached hereto, marked Appendix D/2.

15. On 22 January 2004, in light of the extremely short and unreasonable period of time given to the Petitioners, a preliminary objection to the said orders was filed, in which the Petitioners requested that the said requisition orders be cancelled, and that the route be altered and the fence built on the Green Line.

The objection to the said orders is attached hereto, marked Appendix D/3.

16. In the time that followed, the sides entered into negotiations with the objective of reaching agreement and/or a compromise over the route along which the fence would be built, and it was agreed to hold a meeting on this matter on 9 February. The

meeting was held, and during the discussions, the undersigned, as counsel for the Petitioners, presented some of the Petitioners' contentions against the requisition orders, particularly as regards the route of the separation fence.

17. It should be noted that, at the said meeting, representatives of Respondent 2 presented clear, detailed maps showing the route of the separation fence. The maps clearly and unequivocally show that the villages subject to the petition will become enclaves, and that the planned separation fence will surround them on almost all sides, from the west, south, and east. The maps placed before the undersigned also showed that the fence would encircle some of the villages, and would be erected next to the houses at the edge of the villages, thus turning these villages into fence-enclosed communities, which would limit the residents' current free access to their land, and block any future development of the villages.
18. The maps displayed to the undersigned also showed that, in many areas, there are broad expanses of open land that are owned by the Petitioners and other residents of the villages, which Respondent 2 unjustifiably places outside the reach of the villages and their residents.
19. It should be mentioned that these maps are very important to the understanding of the overall picture and to enable a meaningful hearing on the points raised in the residents' objections. The reason is that the maps attached to the military orders are not prepared according to a proper scale, and are incomplete, showing only sections of the fence, and connecting them for the purpose of visualizing and understanding the whole picture requires much hard and exhausting work by trained professionals.
20. Thus, at the aforementioned meeting, the undersigned demanded that the representatives of Respondent 2 provide him with the said maps that were displayed before him, in part so that he could understand the entire picture, and to show them to the villages' officials and residents, and to enable the filing of detailed objections based on complete information. At the end of the meeting, it was agreed that the undersigned would be provided a map and/or maps as required for him to take to the villages' residents, and following that, to state the villagers' position and contentions to representatives of Respondent 2. For this purpose, a follow-up meeting between the undersigned and representatives of Respondent 2 was scheduled for 18 February 2004 at 7:00 P.M.
21. However, despite the promise, the legal advisor's representatives did not supply the undersigned with a copy of the maps that had been displayed at the meeting. Rather,

they provided a much smaller map that was not detailed and did not clarify the overall picture as appeared from the maps that had been presented at the said meeting. The undersigned pointed this fact out to the legal advisor's representatives and added that the map provided would not help clarify the situation, as was hoped, at the meeting with the residents intended to complete the procedure for hearing their contentions.

22. On 18 February, the day set for continuing the discussion on the residents' contentions, the undersigned was ill, so he was unable to attend the meeting. Persons from his office attempted to notify the representatives of Respondent 2 thereof, and left numerous messages, but regrettably received no response.
23. On 19 February, a surprise letter arrived from the legal advisor for the West Bank. The letter stated, in part, as follows: "In the event that, by 22 February 2004, a detailed objection in writing, to which are attached a power of attorney and documents of ownership, is not provided to the legal advisor for the West Bank, the work on implementing the requisition orders will begin..."

A copy of the said letter is attached hereto, marked Appendix D/4.

24. Again, and following the aforesaid letter, Attorney Miari, of the undersigned's office, continuously tried to contact representatives of Respondent 2, and left numerous messages for the purpose of setting another meeting to continue the procedure of hearing the residents' contentions. These messages, too, received no reply. It should be mentioned that the letter from the advisor for the West Bank arrived in the undersigned's office by fax on Thursday afternoon, and the letter requested that a detailed objection be filed by Sunday, although Friday and Saturday were rest days, as Attorney Gill Limon, assistant to the legal advisor for the West Bank, knew very well.
25. On 23 February, the Respondents began work on excavating and/or leveling the land and/or paving roads in the area of Beit Surik and Biddu (areas included within the above-mentioned requisition orders), with the objective of building the separation fence near these two villages, in violation, as noted, of the spirit of negotiations that were taking place between the sides.
26. That day, Attorney Miari hastily called Attorney Limon, assistant to the legal advisor for the West Bank, and asked him to cease immediately the work on building the separation wall in Beit Surik and Biddu, and to refrain from beginning the work in the other areas included in the above requisition orders. Attorney Miari explained that the said work was contrary to the spirit of the procedure for hearing the residents'

contentions, which were taking place up to that point, and requested that the hearing procedure be completed.

27. In addition, Attorney Miari wrote to the legal advisor's office and requested that the work cease until the hearing procedure was completed.

A copy of the said letter, of 24 February 2004, is attached hereto, marked Appendix D/5.

28. Furthermore, the undersigned, who was abroad at the time, called Attorney Limon, and tried to convince him to postpone execution of the work for two days, until the undersigned would return from abroad, so that the hearing of the objections could continue. Unfortunately, Attorney Limon rejected the undersigned's request.

29. Petitioner 2 then began the work, with military forces present, in the area of the petitioner villages. As a result, there were confrontations between residents of the villages, who view the separation fence as a means to create an enclave and thereby imprison them, and military forces, resulting in many casualties.

30. Furthermore, as these words are being written, the undersigned has been informed that two residents of Biddu, who are among the petitioners herein, were killed by IDF forces while protesting the building of the separation fence in their village.

The separation fence

31. The information that is known about the separation fence that Petitioner 2 is building in other areas indicates that the fence is composed of an electronic fence intended to give warning of every attempt to cross it. In the section of the fence closer to the area in which the residents live there is an obstruction against vehicles, and another fence to prevent crossing. A paved service road lies next to the fence. On the other side of the electric fence are a number of paths and roads – a detection path, a patrol road, a road for armored vehicles – and another fence. The average width of the barrier is about seventy meters, and at places it reaches one hundred meters (hereinafter: the separation fence).¹

32. Petitioner 2, being the holder of authority in the occupied territory, is the person who issues the orders to requisition land needed to build the separation fence in every area in which the fence is situated in occupied territory, i.e., in the West Bank. As stated in the beginning of the petition, Petitioner 2 issued several military orders which stated that the requisition order "is needed for military purposes, and in light of the special

¹ Response of the State in Appeal A 2579/02, *The Committee for the Development of Kafr 'Aqab et al. v. Ministry of Defence et al.*, before the Appeals Committee of the Tel Aviv Magistrate's Court.

circumstances prevailing in the region, and because of the need to take necessary measures to prevent acts of terrorism” (see the copy of the requisition orders attached hereto).

33. It should be mentioned already at this stage that the land that is the subject of the requisition orders is almost entirely privately owned by Palestinians living in the Occupied Territories. On some of the land, olive trees and fruit trees of various kinds have been grown for scores of years, and their owners work the land in the same manner that their fathers and grandfathers worked the land before them. Farming is the principal source of livelihood in these villages for hundreds of Palestinian families, primarily because Palestinians are no longer able to enter Israel and work.
34. The orders requisitioning land in the Occupied Territories are signed by Petitioner 2. The orders, which mention the lots and blocks of the land being requisitioned, are not properly published. As a result, the affected landowners are not given proper and fair opportunity to voice their contentions. The order “grants” a person affected the chance to file an objection through the office of the legal advisor for the West Bank or the Ramallah District Coordinating Office, within only seven days from the day that a tour was made of the land by the Ramallah DCL.
35. It should be noted that, in many cases, the requisition orders are not properly published, and the residents and/or affected landowners learn about them by chance. In addition, the tour that is to be made is not brought to the attention of all the residents, and many landowners are not given the opportunity to take part in the tour and to raise their objections to the order.
36. It should also be mentioned that the affected landowners were given a very short period – only seven days – to file their objections. This period is neither reasonable nor rational, and does not enable a fair hearing procedure in accordance with the principles of natural justice. The period allotted for filing objections and/or a hearing is astonishing in that the plans for building the fence are complex, and the army spent some two years in planning it. However, the army then began to build it at lightning speed, in severe violation of the residents’ property rights, causing drastic changes in their lives, in the villages in which they were born, in their land, in the roads providing access between them and their fellow Palestinians, in their livelihood, and more. The demand that the residents file objections within such a short period of time is intended solely to meet the requirement, and to thwart every attempt to oppose the requisition orders most effectively. The task of locating the land referred to in the order, organizing the owners to file the objection, retaining experts, such as planners,

surveyors, and attorneys, is a lengthy process that cannot be completed within the allotted one-week period, even with the extension of a few days.

37. It goes without saying that the requisition orders and the failure to give proper opportunity to object to them have caused the landowners great and irreversible damage. The action harms, to a greater extent than necessary, the landowners' property rights, is for an improper purpose, and violates the Basic Law: Human Dignity and Liberty.
38. The land to which the requisition orders relate is owned by hundreds of families living in the Occupied Territories. Almost all the land is farmland, on which fruit trees of various kinds have been planted for generations, and is a source of income, sustenance, and livelihood for thousands of persons. The landowners invested their resources and efforts, and continue to work the land in the manner of their fathers and grandfathers.
39. Furthermore, the said requisition of land, and construction of the separation fence on it, harms landowners situated outside the fence – whether they are between the Green Line and the separation fence or are situated east of fence, as in the present case – in another way. The fence will detach these landowners from their land, which is their property, the source of livelihood and sustenance of thousands of Palestinian residents, and cause thousands of dunams of West Bank land lying between the separation wall and the Green Line to “be annexed” de facto illegally to Israel and/or to the nearby Israeli settlements.
40. Construction of the fence along the planned route will divide and enclose dozens of Palestinian towns and villages. Entry and exit will be dependent on obtaining permits from the occupying army. These villages will be severed from their natural and/or regular commercial, financial, social, and educational life and from their livelihood, and their residents will be imprisoned in fence-enclosed ghettos and camps.
41. Worst of all, in the present case, unlike many other cases, the separation fence will enclose the Palestinian communities from almost all directions, and turn them into enclaves. The fence will not form a barrier separating, as alleged, Palestinian villagers from the State of Israel, but will separate the villagers from their fellow Palestinians, and from their land. The fence as planned in the area of these villages will turn the residents into unwilling prisoners on demarcated land enclosed by a fence. In the blink of an eye, the villagers' birthplace will become their prison.

The law

42. Judicial review of Respondent 2's actions in the Occupied Territories is based on two principal normative sources: The first source is the rules of administrative law as developed in Israeli common law – “The court examines the legality of an action and its validity in accordance with the principles of Israeli administrative law, to determine whether the official, who is carrying out military administrative powers acts, does so properly as regards the norms binding on Israeli public officials.”² In exercising governmental powers, Respondent 2 must act in accordance with the norms of acceptable conduct in Israel, also when exercising powers outside the borders of the state. The second normative source is international humanitarian law dealing with the conduct of the military administration in occupied territory.³
43. The Petitioners will argue, as described below, that the construction of the separation fence, which would encircle the petitioners' villages from the west, south, and east, and which is almost entirely situated within occupied territory, i.e., within the West Bank, east of the Green Line, such that it protrudes onto occupied territory and steals thousands of dunams of West Bank land, breaches both Israeli administrative law and international humanitarian law, is unconstitutional, causes harm to an extent greater than necessary to Palestinians living in the occupied territory, and is intended for an improper purpose.

Lack of authority

44. The Petitioners will argue that Petitioner 2 did not have the authority to issue the requisition orders. The requisition orders will bring about change in the borders of the West Bank without explicit statutory sanction, and will greatly infringe fundamental constitutional rights of the Petitioners, of the landowners, and of residents of the area in which the separation fence is built.
45. The common law provides that an administrative authority, which includes the government, is forbidden to act in violation of law and in a manner that infringes rights of the individual. On this point, the comments of the Honorable Justice Dorner in *Kiryat Gat* are appropriate:

Our constitutional system protects the individual from arbitrary action by the government. This principle requires that the rules established by courts as regards individual rights in Israel be considered “law” in the matter of Article 29 of the Basic Law: The Government... Thus, the reservation in

² HCJ 96/81, *Abu Atiya v. Commander of the Judea and Samaria Region*, *Piskei Din* 37 (2) 197, 231.

³ Amnon Rubinstein, *The Constitutional Law of the State of Israel*, 1175.

Article 29 of the Basic Law: The Government, which subjects the general powers of the government to law, would prevent it not only from acting in a manner inconsistent with statute, but also prohibits it from infringing the rights of the individual... The same result can be reached by the rule that states – as a matter of interpretation – that an administrative authority is not allowed to infringe rights of the individual, therefore, *the article should not be construed such that the competence of the government to carry out in the name of the state “any act the doing of which is not lawfully imposed on another authority” relates also to acts that infringe human rights.*⁴ (emphases added)

46. President Barak ruled similarly in *The Public Committee Against Torture in Israel*, where he expressly stated:

There are to be no infringements on an individual's liberty against interrogation *absent statutory provisions which successfully pass constitutional muster.* The government's general administrative powers do not fulfill these requirements. Indeed, when the legislature sought to endow the GSS with the power to infringe individual liberties, it anchored these powers in specific legislation.⁵ (emphasis added)

47. According to Israeli law, if an administrative decision is given without explicit authority by statute and/or infringes fundamental constitutional rights of the individual to an extent that is inconsistent with the limitations clause, the action should be voided.

Due process

48. The building of the fence along the planned route on the Petitioners' land will drastically change the life of the villages and their residents, will sever families, and will divide the Palestinian community in the Occupied Territories. This far-reaching, even incomprehensible, change is made under the cloak of the requisition orders issued by Respondent 2, in the absence of any public debate, without the minimal

⁴ HCJ 2918/93, *Kiryat Gat Municipality v. the State of Israel and Nine Others*, *Piskei Din* 47 (5) 832, 847-848.

⁵ HCJ 5100/94, 4054/95, *Public Committee Against Torture in Israel v. The State of Israel and the General Security Service.*, *Piskei Din* 53 (4) 817, 833-834.

semblance of due process, without involving the residents affected by the action, without announcing that objections could be filed, without giving the residents an opportunity to be heard, or present experts on their behalf. The action was taken in haste and urgency without giving proper consideration to the rights of residents who have been living in the area for generations, and without giving proper consideration to the tragedy it would bring upon the villages and their residents. The great change in the life of the villages and villagers is being carried out at lightning pace and at great danger to them.

49. In this context, it should be mentioned that, although Respondent 2 and the military authorities have been discussing the building of the separation fence and the route of the fence for almost two years, the residents have not been involved during any of the planning stages. The plan was presented to the residents as a done deal.
50. In light of the above, the Petitioners will argue that the procedure on issuing the requisition orders was defective, unfair, and unreasonable. The requisition orders were not properly published, and the persons affected were not given the right to be heard before the orders were issued, despite the severe violation of the constitutional rights of a large, undefined population.
51. The decisions made by Petitioner 2 and the requisition orders that he issued are made in a statutory context, and must therefore be published. This was not done, and the orders therefore are without legal effect. The Honorable Court has stated the importance of this principle in a long line of decisions. In *Klein*, for example, the Court held:

The principle of publication of legislation lays among the very foundations of the rule of law. This is so in the matter of the rule of law in its formal and primary meaning, if you will: the rule of law in the constitutional sense. However, it seems that the element of publication of the legislative enactment also penetrates deep into the realm of the rule of law in its substantive –continual and normative – meaning: it is the rule of law that is submerged in the fundamental values of society and the individual.

The principle draws power from the nature of the proper social order, which is the openness of governance and its proper administrative actions –openly rather than in concealment. Proper governance takes place in the light of day, in the open,

**thus exposing itself to continuing review and, consequently,
also to reform of distorted methods of operation.⁶**

On this matter, see also:

HCJ 6741/99, *Ornan Yekutieli et al. v. Minister of the Interior et al.*, *Takdin Elyon* 2001 (2) 253, 265; Y. Zamir, *Administrative Authority*, 923 ff.; B. Bracha, *Administrative Law* (Vol. 1, 5747 [1986]) 249 ff.

52. Furthermore, it should be mentioned that the aforementioned requisition orders, which are military orders issued by Petitioner 2, generally grant a very short time (a period of seven days) for the filing of objections to the legal advisor. As described above, in that landowners are often not aware that the requisition orders have been issued and are unaware of the tour made of the land, the period is extremely short and does not accomplish its purpose. The said time period is unreasonable and disproportionate; it harms the fundamental rights of the affected residents and landowners more than necessary, and is intended simply to meet a requirement and to thwart every genuine attempt to oppose the orders most effectively. Moreover, all that is done even when the construction of the fence will clearly generate far-reaching effects of tragic proportion.
53. Furthermore, Petitioner 2 invited the residents to object and requested that they present documents proving ownership of the land that is the subject of the requisition orders. Presentation of ownership documents requires the residents to go to the Civil Administration's office to obtain land abstracts. This procedure itself takes more than seven days. In the case of the petitioner villages, the residents submitted numerous requests for land abstracts (through the District Coordinating Office), but most have not yet been received. Thus, Petitioner 2 and/or a person on his behalf demands that the residents provide documents of ownership to support their objections, while at the same time delaying the issuance of land abstracts that prove ownership.
54. The Petitioners will further argue that the delivery of the requisition orders issued by Respondent 2 to the Palestinian DCL in the Ramallah sector and/or the posting of the orders on a few trees in the area in which the land referred to in the orders is situated is not deemed compliance with the requirements of the law regarding publication of administrative decisions, primarily because of the gravity of the right infringed. Respondent 2 should have served the requisition orders on the affected landowners directly at their addresses, and also should have published the orders in the daily newspapers published in the area in which the relevant land is situated. In failing to

⁶ PermCrimA 1127/93, *the State of Israel v. Yossi Klein*, *Piskei Din* 48 (3) 485, 515, 516.

do this, his decisions on the requisition of the land are unlawful and of no legal effect, and should, therefore, be voided.

Infringement of constitutional rights

Severe and disproportionate infringement of the right to property

55. The Petitioners will argue that Petitioner 2's decision to requisition the land and build the fence infringes their right to property. The infringement is of great magnitude. The direct and most serious violation of this right results from the requisition of the specific land mentioned in the order for the purpose of building the fence. Yet, the order also violates the property rights of residents by blocking their current free access to thousands of dunams of land situated on the other side of the fence – either west of the fence on the west, south of the fence on the south, or east of the fence on the east – that encircles the petitioner villages.
56. The Petitioners will argue that Petitioner 2's decisions must comply with the conditions of the limitations clause of the Basic Law: Human Dignity and Liberty. The Petitioners will argue that the said Respondent's decisions on building the separation fence and requisitioning the land for that purpose fail to meet the requirements of the limitations clause and/or are disproportionate. The Petitioners will argue that the means taken by Respondent 2 harms more than necessary the property rights of the Petitioners, and that, in any event, the means selected by the Respondent 2 is not the least drastic.
57. The Petitioners will further argue that exercise of Respondent 2's authority to requisition the land is done in the guise of a temporary seizure of land, whereas in effect, the requisition of the land is preliminary to expropriating the land; according to all reports, the plan is to establish a kind of border or permanent barrier. Therefore, it is clear that the use of this means is intended to sweeten the bitter pill, and bring about construction of a permanent barrier through gradual means, first requisition and then expropriation. Thus, the Petitioners will argue that the means used is not appropriate for the purpose, and the orders should be voided.
58. It should be noted that, in the past, Petitioner 2 unequivocally notified the Petitioners' counsel, in a similar context, regarding requisition orders issued pursuant to the Arrangement of Emergency Requisition of Land Law, 5710 – 1949, the validity of which was limited to three years, did not mean that in some case, at the end of the three-year period, another means, pursuant to another law, would not be used to expropriate the land on which the fence would be built. Therefore, the means taken should be examined with this understanding as a deposit toward future expropriation,

as is evident from the nature of the fence and the publicly-announced plans regarding it, and also based on past experience, in which temporary seizure of land was the first step toward subsequent expropriation.

As noted above, the said requisition of land and building of the fence on it, in accordance with the orders issued by Respondent 2, will lead to extremely grave violations of the landowners' property rights. This right is a paramount constitutional right, which has been reinforced by the Basic Law: Human Dignity and Liberty (hereinafter: the Basic Law), which requires the administrative authority to respect and protect the rights enshrined in the Basic Law.

59. The Honorable Justice D. Levin spoke of the paramount status of the right to property, primarily following enactment of the Basic Law: Human Dignity and Liberty, which right is incorporated in it. The Honorable Justice voided the decision to expropriate property, and held that:

The right to property is a fundamental human right in Israel.

This has been a firmly established and accepted principle for some time, and this court gave it clear expression in its decisions time and again over the years.

This was the court's ruling, for example, in H CJ 274/88, *Amitai v. Local Planning and Building Committee, Central District, Piskei Din 42 (4) 89, 93:*

*The right to property is among the fundamental human rights in Israel, and therefore may not be infringed except pursuant to explicit provision in law.*⁷ (emphases added)

Infringement of the right to freedom of movement

60. It goes without saying that many villages will be imprisoned between the walls of the enormous fence, and individuals will be allowed to enter or leave the villages only with the army's permission. The fence will sever the landowners from their land situated on the other side of the fence, land that they inherited from their fathers and grandfathers. If the fence goes up on the land referred to in the orders, the freedom of movement of thousands of residents will be restricted. For example, they will not be able to visit their relatives, reach their land, or schools and other educational institutions, and places of worship that are located outside their villages. The freedom

⁷ H CJ 5091/91, *Mazen Hassan Zaki Nusseibeh and Two Others v. Minister of Finance, Takdin Elyon* 94 (3) 1765, 1767.

of movement will be drastically reduced, and they will be imprisoned by a rigid physical barrier. The harm to freedom of movement following construction of the fence along the planned rout will be severe and disproportionate.

61. The Petitioners will argue that the right to freedom of movement, too, is incorporated in the Basic Law: Human Dignity and Liberty, and is recognized in numerous court rulings as a fundamental right that must be protected and respected.⁸

Harm to gaining a living and freedom of occupation

62. According to the information already gathered, the barrier will be rigid, in the manner of a border, and even more than that. Thus, it will greatly affect the ability of the residents to gain a living and will violate their freedom of occupation. Many village residents cultivate their land, which provides their livelihood. These residents will no longer be able to work the land that they have cultivated for dozens of years. Nor will they find salvation in the promised gates that would enable them to cross at fixed times, based on permits they would be given, to work their land. Experience shows that the procedure involved is long, complicated, and exhausting. Obtaining permits is not always possible, and gates are not staffed all the time. Even when the gates are staffed, and the residents have obtained permits, it is not always possible, or is very hard, to reach the farmland because of the great distance from the gate to the town or village in which the farmers live and to the farmland. Whereas the farmers can now reach their land in a few minutes, the fence will cause them much travail, a result of the necessity of obtaining permits, waiting at the gate, and traveling long distances to reach their farmland.
63. Furthermore, some of the villagers who will be imprisoned between the walls of the enormous fence work in other locations outside their village. If the fence is built along the planned route, thousands of residents will be prevented from reaching their workplace, which will gravely and irreversibly affect the livelihood of thousands of families, thus infringing their right to freedom of occupation, a right that was given further sanction with the enactment of the Basic Law: Freedom of Occupation.

Infringement of the right to education

64. Furthermore, the fence as planned will block access of many pupils to their schools in the cities or in nearby villages, and of many students and teachers from reaching academic institutions in which they study and teach. As a result, the residents will be denied their right to education and free access to schools and universities. The right to

⁸ HCJ 5016/96, *Horev v. Minister of Transportation*, *Piskei Din* 51 (4) 1, 49.

education is a paramount right under the common law. On the importance of this right, the Honorable Justice Theodore Or wrote:

Education is a social tool whose importance cannot be exaggerated. It is one of the most important functions of the government and the state. Education is vital for the existence of a free, living, and functioning democratic regime. It is necessary for the self-realization of every individual. It is necessary for the success and prosperity of each and every person. It is necessary for the existence of society, in which people live and operate who improve their well-being and contribute, as such, to the welfare of the whole community.⁹

65. The Honorable Justice D. Dorner also pointed out the paramount nature of the right to education, holding that violation of the right to education is liable to be perceived as humiliation of the individual, in violation of the Basic Law: Human Dignity and Liberty, when the violation is committed against a group. In her words:

The right to education has long been recognized as a basic human right. The right is anchored in the Universal Declaration of Human Rights of 1948. Article 26 of this Declaration provides that every person has the right to education and that education must be free, at least in the elementary and fundamental stages. The International Covenant on Economic, Social and Cultural Rights of 1966 was also ratified by Israel in 1991. It declared in article 13 that education should be directed to the full development of the human personality, and that it should strengthen the respect for human rights and fundamental freedoms. It also determined that elementary education should be compulsory and freely available. See XXXI Treaties of Israel 1037, at 205. The right to education is also anchored in articles 28 and 29 of the Convention on the Rights of the Child, 1989. See XXXI Treaties of Israel 1038, at 221... *Discrimination in the exercise of the right to education, if occasioned on the basis of group affiliation, may indeed be*

*regarded as degradation that violates the right to human dignity. Compare HCJ 4541/94 Miller v. Minister of Defence, [2] at 131-32.*¹⁰ (emphases added)

Bisecting the villages and upsetting community life

66. Residents of the villages that are scheduled for imprisonment by the fence have always maintained a traditional lifestyle of a society and/or community with the other towns and villages in the West Bank. The decision to enclose the petitioner villages by means of the fence and turn them into enclaves, if implemented, would be tragic for the residents and the surrounding area. Construction of the fence will severely violate the residents' rights. It will violate their right to maintain normal living conditions, it will upset their way of life, and will violate almost every fundamental right existing in a democratic regime.
67. Construction of the fence will upset the tranquil life existing in the villages. It will create a sense of life inherent in a ghetto or prison setting. Worst of all, it will harm the social fabric of the residents. It will take a community that has worked cooperatively and suddenly bisect it into two detached communities. A segment of the residents will remain on one side of the fence, while the others in the village will find themselves on the other side. It will detach families, and create absurd situations in the daily lives of the residents, so that a bride and groom from neighboring villages will now have to have two weddings, one on each side of the fence.
68. The Petitioners will argue that the fence as planned will detach them from their relatives living in nearby towns and villages, and thus impair family relations, and cause families to break up and sever ties.
69. Israeli law recognizes the right to family life as a paramount right. This right has been expressed in numerous decision of court. The comments of the Honorable Justice Beinisch in *Jon Doe v. Attorney General* are appropriate:

**In our times, when "human dignity" is a fundamental right,
we must respect an individual's desire to actualize himself.
For this reason, we should honor his wishes regarding the
family unit to which he wishes to belong... a person's parents**

⁹ HCJ 7715, 1554/95, *Shoharey GILAT Association v. Minister of Education and Culture, Piskei Din* 50 (2) 3, 24.

¹⁰ HCJ 2599/00, *Yated et al. v. Ministry of Education et al., Piskei Din* 56 (5) 834, 842-845.

and children are part of his personality and social identity...¹¹ (emphasis added)

Danger to human life

70. Furthermore, the fence as planned by Petitioner 2 will pass close to neighborhoods, at times gardens, and yards of houses, or land cultivated by local residents. This proximity is liable to threaten the very existence of the houses, the right of the residents to life and tranquility, and the right to work their lands in calm and safety. Construction of the fence near the residents' homes will endanger their lives. It is easy to depict the danger to which the children living and playing near the fence will be subject. Will a child who runs to get a ball that was thrown near the fence still be considered an innocent child, as he truly is, or perhaps a suspected dangerous infiltrator who should be "eliminated"? Is land very close to the fence to be perceived as it is – the source of livelihood of many residents – or should it be perceived as a "refuge for infiltrators," requiring the "stripping" and "clearing" of the land and the uprooting of trees along the route of the fence?
71. More than that, according to comments made by the Respondents' representatives at prior proceedings, army patrols will be conducted along the fence's route, as is customary alongside every separation fence. In the past, Respondents' representatives confirmed that they anticipated exchanges of gunfire near the fence. Gunfire will threaten greatly the lives of residents living peacefully in their homes and the lives of innocent farmers whose only concern is to provide a livelihood for their families.
72. The Petitioners will argue that the right to life and to bodily integrity is a fundamental constitutional right also incorporated in the Basic Law: Human Dignity and liberty, and that the administrative branch must refrain from infringing these human rights.

Threat of demolition of houses

73. The Petitioners will further argue that, in building the fence very close to villages and at times close to many houses and land under cultivation, a fear arises that, if shooting in the said populated areas is aimed at army patrols, the army will take what is known as "clearing" actions. The army has done this in the past in many areas in the Occupied Territories following incidents of gunfire. As a result, many houses and much farmland of the Palestinian residents have been destroyed.
74. It should be noted that the prospective gunfire is not dependent on the Petitioners or other residents of the villages, nor can they prevent it. The villagers are ordinary,

¹¹ CA 7155/96, *John Doe v. Attorney General*, *Piskei Din* 51 (1) 160.

innocent civilians, who do not have the power to prevent or thwart gunfire from populated areas or from farmland. Slowly, then, the fence, which has not yet been built, will become a permanent feature, and the houses and farmland that have existed for dozens of years, will become temporary and moveable, and subject to demolition.

75. The Petitioners will further argue that the fence will turn the petitioner villages through which, or alongside which, the fence is planned, into fence-enclosed enclaves, thus preventing the natural growth of the villages and prevent the development of their residents.

Obtaining permits in accordance with the Planning and Building Law

76. The Petitioners will argue that the excavation, paving of roads, and construction that will take place along the fence's route require building permits properly granted in accordance with the Planning and Building Law. To the best of the Petitioners' knowledge, building permits, unlike requisition orders, have not been issued for the purpose of doing the excavation, paving, and construction work. Thus, any work done by Respondent 2 or anyone on his behalf, in the absence of such building permits, would be in violation of the law.

Proportionality

77. The Petitioners will argue that construction of the fence along the route set in the requisition orders, and the requisition of thousands of dunams of land, violate the limitations clause set forth in Article 8 of the Basic Law: Human Dignity and Liberty and Article 4 of the Basic Law: Freedom of Occupation. In any event, these decisions are disproportionate and violate human rights more than necessary.
78. The Petitioners will argue that the decision of Respondent 2 relating to the requisition of the land delineated in the requisition orders is arbitrary, unreasonable, lacks substantive criteria, and harms more than necessary the rights of the landowners and residents of the area in which the fence will be built.
79. The common law provides that an administrative authority must act in a proportionate manner, while making a proper and reasonable choice of means and purpose. The Petitioners will argue that the decision on running the separation fence along hundreds of dunams of land, in a manner that imprisons the residents of the enclave villages, will cause the landowners and local residents severe harm to a greater extent than necessary, and the fence's route should, therefore, be voided. The Honorable Justice Cheshin ruled on the matter of proportionality in *Stemkeh*, as follows:

The test of proportionality concentrates on the means to achieve an objective. *The basic assumption is that the objective – in and of itself – is proper, and the question deals only with whether the means for achieving the objective is proper. In applying the grounds of proportionality, we should further remember that the intensity of our concern that the authority acts proportionately should match the intensity of the right infringed or the intensity of the violation of a right.*¹² (emphases added)

80. Furthermore, the infringement of fundamental rights must meet the test of proportionality also in the sense of “the means that causes the least harm necessary.” The Honorable Justice Dorner held this position in *Tenufa Manpower Services*, where she ruled:

As regards the test of selecting the means that infringes a right to the minimal degree required, which, as stated, is not an absolute test, the choice of means will be affected by the right infringed. *When a fundamental right is involved, it is especially important to show greater care in choosing a means that infringes the right to the minimal degree, even if the cost of the means is substantial.*¹³ (emphasis added)

81. In *Bar Ilan Street*, the Honorable President Barak emphasized that the means used by a governmental authority is subject to the test of proportionality. The Honorable President stated as follows:

In Israel as in foreign law, the proportionality test is three-pronged. *See* H CJ 3477/95 *supra*. [51], at 12; *Bank Mizrahi supra*. [28], at 436. The first prong requires a rational connection between the means and objective. Thus, the means employed must be precisely “cut out” to fulfill the desired goal and rationally lead to its fulfillment—“the rational connection test.” The second prong prescribes that the means in question infringe on the individual as little as possible. This is to say that the means are said to be proper only if it is not possible to achieve the objective in a different

¹² H CJ 3648/97, *Israel Stenkeh v. Minister of the Interior*, *Piskei Din* 53 (2) 728.

**fashion, whereby the infringement would be minimized—
“the least restrictive means test.” The third prong provides
that the means selected are inappropriate if the
infringement on individual rights is not related to the
benefits said to flow from the desired objective—the
“restricted proportionality test.”¹⁴**

“The security fence”: security need versus infringement of human rights?

82. On numerous occasions, Petitioner 2 claimed that the separation fence is intended to prevent the uncontrolled penetration of Palestinians from the West Bank into the territory of the State of Israel, and to safeguard the people living in Israel and settlers living in the West Bank.
83. Without taking a position on the building and establishment of the settlements in the Occupied Territories, the Petitioners will argue that the considerations taken into account by the Respondents relating to constructing the fence and its route are extraneous, and that these considerations do not justify such extensive harm to the Palestinian population under occupation, as is apparent from the severe violations of constitutional human rights, on the one hand, and the absurd results that will occur by establishing the fence along the planned route, on the other hand.
84. According to the common law, administrative authority acting pursuant to governmental authority may take into account relevant considerations, and only relevant considerations, and is forbidden to base its decisions on extraneous reasons.¹⁵
85. The Petitioners will argue that the Respondents’ contention that public safety and state security underlay the decision on building the fence along the planned route is a smokescreen and a misleading description of the situation, made in an attempt to justify the fence and justify, in effect, grave human rights violations. The considerations underlying Petitioner 2’s decision are political and, under the circumstances, are extraneous and irrelevant.
86. Regrettably, “public safety,” which is an important interest that the state has the duty to protect, at times becomes a cover for justifying human rights violations, primarily when it involves the Occupied Territories and the Palestinians living there.

¹³ H CJ 450/97, *Tenufa Manpower and Maintenance Services Ltd. v. Eli Yishai, Minister of Labor and Social Welfare*, *Piskei Din* 52 (2) 433.

¹⁴ H CJ 5016/96, *Horev et al. v. The Minister of Transportation et al.*, *Piskei Din* 51 (4) 1, 53-54.

¹⁵ *Ibid.*, at pp. 35-36; H CJ 953/87, *Poraz v. Mayor of Tel Aviv-Yafo*, *Piskei Din* 42 (2) 309, 324.

87. The Honorable Supreme Court, being the protector of the individual's right not to be subject to arbitrary governmental action, is required to take especial care in cases involving human rights violations in the Occupied Territories, and must apply a clear and present danger test when examining the Respondents' claims regarding the security need and the means that causes lesser harm to the civilian population. The Supreme Court must do this in light of the serious harm that will be caused to the civilian population if the Respondents' plans are realized.
88. The actual considerations underlying the building of the fence along the planned route can be found in the lecture given by Mr. Shmuel Groag, architect and city planner, of Bimkom [a non-profit association], titled "Planning in East Jerusalem and the West Bank as a Political Tool for Spatial Control," which is attached hereto as Appendix E, and p. 23 of the position paper of B'Tselem, attached hereto as Appendix F.
89. In light of the above, it is clear that the considerations underlying the building of the separation fence along the planned route were extraneous, and the violation of the fundamental rights of the Petitioners is severe and disproportionate, is greater than necessary, and the Respondents failed to use the means that would cause a lesser degree of harm, as required.
90. The Petitioners will argue that, if the Respondents wish to build a separation fence to prevent the uncontrolled penetration of Palestinians from the West Bank into the State of Israel, the best and most efficient way to do this, by the least drastic means, is by building the fence on the Green Line, and not by imprisoning the petitioner villages inside an enclave enclosed by fences on all sides.
91. The Petitioners will argue that the Respondents failed to make the proper balance, under the circumstances, between the security interest and the rights of the Petitioners and the rest of the Palestinian population.
92. According to the common law, the Respondents must protect the interests of the Palestinian population in the Occupied Territories, and are not allowed to take into account extraneous considerations, such as political or national reasons. In *Jimm 'at Askan Almu 'almun*, the Honorable Justice Barak (as his title was at the time) held:

The considerations of the military commander are ensuring his security interests in the region, on the one hand, and ensuring the interests of the civilian population in the region, on the other hand. Both have to do with the region.
The military commander is not allowed to consider the national, economic, social interests of his state, insofar as they

do not affect his security interest in the region or the interest of the local population. Even military needs are military needs and not national security needs in its broad meaning (HCJ 390/79, at p. 17). An area held under belligerent occupation is not territory to be exploited economically or in another way... The military administration is not permitted to plan and build a system of roads in area held under belligerent occupation, if the purpose of the plan and the purpose of its execution are to be a “service road” for his state... Planning and building of a road system may be done on grounds that it benefits the local population. This planning and execution cannot be done in order to serve the occupying state. Therefore, if the petitioner is right, that the purpose of the planning is not to serve the needs of the region (military or civilian) but for the needs of Israel, then they are right also in the legal position that they hold, that this purpose is extraneous to the considerations of the military commander...¹⁶ (emphases added)

The obligation to maintain normal living conditions in the Occupied Territories

93. The common law states that governmental authorities must maintain normal living conditions in territory under its control. The military administration has the duty to ensure the safety and welfare of the civilian population, including provision of proper protection against danger.¹⁷
94. The Petitioners will argue that the rules of international public law that deal with belligerent occupation must be met, as must the principles of Israeli administrative law, as regards the use of governmental authority of a public official. The Honorable Court held in *Jimm'at Askan Almu'almun*, that:

This is not a sufficient condition, for even in a case of local governmental authority, it is not sufficient, in exercising this authority, that it be done in accordance with the domestic law, but it must be consistent with the rules of Israeli administrative law and with the rules of international law that

¹⁶ HCJ 393/82, *Jimm'at Askan Almu'almun v. Commander or IDF Forces, Piskei Din* 37 (4) 785, 795.

¹⁷ Therefore, the military authorities were required to supply gas masks to residents of the Occupied Territories during the Gulf War (HCJ 168/91, *Murkus v. Minister of Defence, Piskei Din* 48 (1) 467).

deal with belligerent occupation (HCJ 61/80, cited above, HCJ 351/80, (Motion 764/80)¹⁸ (emphasis added)

On this matter, see also M. Shamgar, “Legal Concepts and Problems of the Israeli Military Government – The Initial Stage, 1967-1980,” *Military Government in the Territories Administered by Israel, 1967-1980*, Ed. by M. Shamgar (Jerusalem, 1982).

95. The provisions of international law that regulate the administration of occupied territory by the occupying power are set forth in the [Regulations Attached to the] Fourth Hague Convention (1907) and the [Fourth] Geneva Convention (1949). Article 43 of the Hague Regulations, whose provisions are customary law and thus apply to Israel, states:

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure as far as possible public order [ordre publique] and safety, while respecting, unless absolutely prevented, the laws in force in the country.
(emphasis added)

The Hebrew text of Article 43, as adopted in HCJ 202/81, *Sa'id Mahmud Tabib and Eleven Others v. Minister of Defence, Piskei Din 37 (2) 622, 629*, states as follows:

[The Hebrew translation of Article 43, presented above.]

96. In *Jimm'at Askan Almu'almun*, cited above, the Court states:

The Hague Regulations revolve about two main pivots: one – ensuring the legitimate security interest of those holding the land by belligerent occupation, and the other – ensuring the needs of the civilian population in the territory subject to belligerent occupation (HCJ 256/22, at p. 138; HCJ 69, 493/81, cited above, at pl. 271) Between these two pivots, the Hague Regulations come and set a specific balance, where in certain matters the emphasis is on military necessity, while in other matters, the emphasis is on the needs of the civilian population: “The laws of war generally create a delicate balance between two magnetic poles: military necessity, on the one hand, and humanitarian considerations, on the other hand” (Y. Dinstein, “Legislative Authority in the

¹⁸ *Jimm'at Askan Almu'almun*, cited above, pp. 790-791.

Occupied Territories,” 2 *Iyunev Mishpat* (5732-5733 [1972-1973]) 505, 509).

97. In addition to the general provisions on preserving order and safety, as set forth in Article 43 above, Article 46 of the Hague Regulations expressly states that the occupying power must preserve and protect the rights of the population under occupation, including, among other things, its property rights, and to refrain from any violation thereof. The text of Article 46 states:

Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

98. Although superfluous, we wish to point out that Article 47 of the Fourth Geneva Convention sets forth the same policy of protecting the rights of the population under occupation, as follows:

Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.

99. Furthermore, Article 2 of the Universal Declaration of Human Rights sets forth a similar provision, as follows:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

100. We see from the above that the Respondents are required to act in accordance with the law of occupation in the Occupied Territories in a manner that protects the fundamental rights of the Palestinian civilian population. Building a fence in a manner that turns the whole population – a population living in villages that have been their home for dozens of years – into prisoners gravely infringes the rights of the

local population in occupied territory, and contradicts and violates international law, primarily the Hague Regulations, whose provisions are, as stated, accepted by the Supreme Court as customary law and thus part of Israeli law. Building the fence as stated impairs public order and safety, flagrantly violates the property rights of Palestinians living in the Occupied Territories, as well as their dignity, lives, and other protected rights, without justification, in violation of Israeli administrative law and domestic law.

For the above reasons, the Honorable Court is requested to issue the Order Nisi and temporary injunction as requested in the beginning of this petition, and to hold an urgent hearing on the petition, and after receiving the Respondent's response, make the Order Nisi absolute.

Jerusalem, today, 26 February 2004

Mu'ayyed Miari, Attorney
Muhammad Dahleh and Co.
Counsel for Petitioners

Muhammad Dahleh, Attorney
Muhammad Dahleh and Co.
Counsel for Petitioners