

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

HCJ 1960/07

Concerning:

1. Al-Haq Organisation, Ramallah
2. Defense for Children International – Palestine Section, Ramallah
3. Mariam Ahmed Mahmoud al-Dir'awi, ID 904676020
4. Nidal Ahmed Abu-Sitta al-Dir'awi, ID 906282348
5. Abed Ali Hussein Atiyya, ID 943197350
6. Na'ima Sh'hade Muhammad Atiyya, ID 94340141
7. Marwan Abed Ali Atiyya , ID 852836386
8. Bilal Abed Ali Atiyya, ID 904092319
9. Radwan Abed Ali Atiyya, ID 921501482
10. Samah Abed Ali Atiyya, ID 971856919
11. Riad Abed Ali Atiyya, ID 907051171
12. Sanaa' Jamal Ali Atiyya, ID 904098977
13. Ali Ibrahim Abdullah al-Dir 'awi, ID 986967068
14. Nadia Muhammad Hussein Al-Dir'awi (Jerusalem ID ) , ID 080098346
15. Sharif Ali Al-Dir'awi (Jerusalem ID ) , ID 066842069
16. Sabrin Ali Al-Dir'awi (Jerusalem ID ) , ID 206046872
17. Abu-Sitta Ahmed Abu-Sitta al-Dir'awi, ID 9046167629
18. Mariam Hussein Sliman al-Dir'awi (Jerusalem ID ) , ID 038690129
19. Yousef Ahmad Abu-Sitta al-Dir'awi, ID 904676053
20. Hilwa Hussein Suleiman al-Dir'awi (Jerusalem ID ) , ID 080737570
21. Niveen Yousef Ahmad al-Dir'awi, ID 851812974
22. Muhammad Yusef Ahmad al-Dir'awi, ID 851299628
23. Ibrahim Abu-Sitta Suleiman al-Dir'awi, ID 995287828
24. Samiha Muhammad Salama al-Dir'awi, ID 411460272
25. Muhammad Ibrahim al-Dir'awi, ID 411318413
26. Shaima' Ibrahim al-Dir'awi , ID 411318421
27. Israa Ibrahim al-Dir'awi, ID 411318439
28. A'nas Ibrahim al-Dir'awi, ID 41131447
29. Samih Ahmad Abu-Sitta al-Dir'awi, ID 904616745
30. Ahmed Abu-Sitta Suleiman al-Dir'awi, ID 904676012
31. Rahmih Halaf Muhammad al-Dir'awi, ID 986965648
32. Khadir Ahmad Abu-Sitta al-Dir'awi, ID 9996190349
33. Ghasan Ahmad Abu-Sitta al-Dir'awi, ID 996750698
34. Fatima Muhammad Hader Shawara, ID 989932058
35. Muard Muhammad Ali Shawara, ID 9307719557
36. Kawthar Mahmoud Ali Shawara, ID 907657407
37. Sharifa Mahmoud Ali Shawara, ID 920660594
38. Sawsan Mahmoud Ali Shawara, ID 852831569
39. I'nshirah Mahmoud Ali Shawara, ID 859237935
40. Jamal Ali Hussein Shawara, ID 987418142
41. Mariam Halil Musa Shawara, ID 995287240

42. Ashraf Jamal Ali Shawara, ID 949793756
43. Wafaa Jamal Ali Shawara, ID 936117845
44. Shifa' Jamal Ali Shawara, ID 900386194
45. Muhammad Jamal Ali Shawara, ID 852703263
46. Da'oud Ali Hussein Shawara, ID 987918134
47. Yosra Ali Musa Shawara, ID 934165335
48. Ra'ed Da'oud Ali Shawara, ID 906490980
49. Rami Da'oud Ali Shawara, ID 941283798
50. Muhammad Da'oud Ali Shawara, ID 852498765
51. Siham Isa Muhammad Shawara, ID 920629698
52. Muhammad Muhammad Hussein Atiyya, ID 987418340
53. Ra'eda Da'oud Hussein Atiyya, ID 906193933
54. Mahmoud Muhammad Hussein Atiyya, ID 987418332
55. Huda Ahmad Abu-Sitta Atiyya, ID 964676046
56. Lubna Mahmoud Muhammad Atiyya, ID 910448783
57. Manal Mahmoud Muhammad Atiyya, ID 906413331
58. Sawsan Mahmoud Muhammad Atiyya, ID 950005660
59. I'yad Mahmoud Muhammad Atiyya, ID 911541613
60. Walid Mahmoud Muhammad Atiyya, ID 921502324
61. I'man Mahmoud Muhammad Atiyya, ID 906413323
62. Ashraf Ahmad Abu-Sitta al-Dir'awi, ID 920660545
63. Asmaa Muhammad Ali Awissat (Jerusalem ID ), ID 040996290
64. Mahmoud Ahmed Abu-Sitta al-Dir'awi, ID 04676061
65. Ei'tidal Elias Ibrahim al-Dir'awi, ID 96594640
66. Amir Ahmad Abu-Sitta al-Dir'awi, ID 964676038
67. Za'ila A'ish Abdullah al-Dir'awi, ID 985265255
68. Ayman Amr Ahmad al-Dir'awi, ID 9000434457
69. Munther Amr Ahmad al-Dir'awi, ID 913841881
70. Muhammad Suleiman Muhammad al-Dir'awi, ID 410470520
71. Bader Suleiman Muhammad al-Dir'awi, ID 907098081
72. Nawal Suleiman Muhammad al-Dir'awi, ID 991976929
73. Fatima Ahmed Ali al-Dir'awi, ID 991976929
74. Jamal Suleiman Muhammad al-Dir'awi, ID 991976994
75. I'tizat Sa'ed Ahmad al-Dir'awi, ID 914848437
76. Da'oud Sliman Muhammad al-Dir'awi, ID 942579822
77. Fatima Mufid Mahmoud Almwaket (Jerusalem ID ), ID 029845252

Through their representatives Adv. Labib Habib [of 3 Al Masaudi Street, Jerusalem  
Tel. 02-6274944 Fax: 02-6274955] and/or Leah Tzemel

**The Petitioners**

– Versus –

1. The Prime Minister
2. The Minister of Defense
3. The Commander of IDF Forces in the West Bank Area
4. The Minister of Interior
5. The Municipality of Jerusalem

Represented by the Office of the State Attorney, the Ministry of Justice, Salah-a-Din St., Jerusalem.

### **The Respondents**

### **Petition for the Issue of a Conditional Order and an Injunction**

Presented hereby is a petition for a conditional order, whereby the Honourable Court is moved to order the respondents to explain the following:

1. Why they will not dismantle the separation fence [Annexation Wall] in the area of the village of al-Nu'man (Mazmouriya); henceforth: the village; which separates the village, where the petitioners reside, from the rest of the West Bank;
2. Alternately, why they will not recognise the petitioners as permanent residents, as is their right being residents of the village since before 1967;
3. Why they will not make possible the free movement of the residents, with no hindrance, from and to the village;
4. In any event, why they will not supply the village with all municipal and planning services;

### **Petition for an Injunction**

As it will be expanded further in the body of the petition, since the fence was built in the vicinity of the village, separating the village from the rest of the West Bank, the lives of the residents of the village are no lives.

The only exit from the village is towards the West Bank, and passes, since the construction of the fence, through a gate manned by Israeli Border Police officers.

As detailed expansively in the body of the petition, the residents suffer daily harassment as they leave and return to the village.

In addition, the children of those petitioners who hold Jerusalem identity cards used to walk to their schools in Jerusalem (mainly in Sour Baher) through a narrow and meandering trail. This trail was recently blocked and dug up, so that the passage of the children to school has become almost impossible.

Despite the fact that the village is located inside the [Israeli-defined] Jerusalem Municipal borders, and despite the fact that a not insignificant number of its residents hold Jerusalem identity cards, authorities such as the Municipality of Jerusalem and the Israeli Ministry of Interior decline to supply vital services to the village. At the same time, in contrast, house demolitions in the village which are carried out diligently by these authorities.

Therefore, the petitioners request the Honourable Court to issue an injunction that requires the respondents:

- a. To afford the petitioners free passage, without any harassment, from the village to the rest of the West Bank;
- b. To remove the block from the access trail used by the village children holding Jerusalem identity cards, to reach their schools in Jerusalem;
- c. To avoid any act of complete or partial demolition of any existing building and/or home in the village

These reliefs are basic reliefs, which cannot solve the village's problems, but will make it possible to conduct a minimal course of life until the verdict in this petition is delivered.

### **Introduction:**

This petition requests the Honourable Court to allow a human solution to the inhuman conditions in which the residents of the village have been living since the fence was constructed next to it, which separates it from the rest of the West Bank, where the residents of the village conducted most of their social, cultural, family and commercial relations. Due to this separation, the lives of the residents have become hell, and the village has become a prison camp.

This petition moves against the route of the separation [Annexation] wall in the area of the village, which was previously annexed to Israeli in 1967 with the annexation of East Jerusalem, and which is located within the municipal boundaries of the Municipality of Jerusalem. The village touches on the south-eastern boundaries of the city of Jerusalem, and is located south-east of the neighbourhood [settlement] of Har Homa.

Add to this the mechanisms of control and conditions of imprisonment surrounding the village, from the existence of a physical barrier with a single gate as the only means of entering the village, to the outrageous but systematic behaviour of the Border Police personnel manning it, and you uncover an extremely gloomy picture of a village which has been turned from a quiet, simple, living and breathing village to a human cage, whose inhabitants are deprived of every basic right intended to secure existence with a minimal level of dignity.

Things should be said as they are: the continuation of this situation has only one possible end result – the expulsion of the residents of the village from their homes, by means of abrasion and coercion, so that its life will be silenced forever.

The petition to the Honourable Court comes as a last resort, after an earlier agreement with the State, which was given the authority of a verdict of this Honourable Court, was brutally violated by the respondents, and before the coming to pass of the final result of the demise of an entire village, not by sophisticated digging machines and not under the cover of the smoke of war, but by way of a permanent siege, degrading and cruel living conditions, unwritten regulations and instructions – all of which are killing, every day, the slim chance that this village will survive and continue to exist.

For the petitioners, the preferred solution is the dismantling of the fence so that it no longer separates them from the rest of the West Bank. Should this prove impossible under the circumstances of the matter, the residents of the village appeal to be recognised as holding the status of permanent residents, so that they can continue to conduct as normal a life as possible.

### **The Factual Background**

#### **The sides to the petition**

1. Petitioner no. 1 is a Palestinian organisation dedicated to the protection and promotion of human rights.
2. Petitioner no. 2 is the Palestinian branch of an international organisation engaged in the defence of children's rights.
3. The rest of the petitioners (henceforth: "the petitioners") are residents of the village of al-Nu'man. All are above the age of 16. All were born and live in the village, which has served as the centre of their lives since birth. Some were born in the village before its annexation to Jerusalem, and some were born in the village to parents who have lived there all their lives.

Some of the petitioners (nos. 14,15,16,18,20,63,77) hold Jerusalem identity cards, and are spouses or offspring of residents of the village who carry West Bank identity cards.

Respondents no. 1 and no. 2 are the Prime Minister of Israel and the Israeli Minister of Defence, who in June 2002 were authorised by the Israeli government to determine the route of the separation fence.

4. Respondent no. 3 is the Israeli military commander in the West Bank, who is responsible for both security and the civilian fabric of life in the Occupied Palestinian Territories, and who is authorised, to, *inter alia*, issue Palestinians with permits to enter and to remain in Israel.
5. Respondent no. 4, the Israeli Minister of Interior, is authorised to issue licences for permanent residence in Israel, and is also involved in planning the Eastern Ring Road, and in planning for the area in general, as well as in the execution of house demolitions in the village.

6. Respondent no. 5, the Municipality of Jerusalem, is responsible among other things for supplying municipal services, planning the Eastern Ring Road, and planning the area in general including issuing building permits, as well as for the execution of house demolitions inside the village.
7. This petition has been presented against all of the respondents since together they hold the key to solving the problems of the village. It is impossible to divide the topic of this petition into several petitions, according to any juridical authority of one of the respondents, since the petition seeks a comprehensive solution to the general problem of the village, in whose creation the respondents all participated together. The division of the petition would necessarily lead to partial solutions, which are not practical under these circumstances.

### **The Residents of the village al-Nu'man – Mazmouriya**

#### **Residence in the village before 1967:**

8. The petitioners are residents of the village of al-Nu'man, which existed before the creation of the State of Israel. North-west of al-Nu'man is the neighbourhood [settlement] of Har Homa. The village of al-Nu'man was annexed to Israel and is today located within the [Israeli-defined] borders of the Municipality of Jerusalem.
9. Today the village has approximately 200 residents, who reside in approximately 27 houses. Some of the buildings were built before 1967 and the rest afterwards, as part of the natural growth of the village.

In 1967 there were eleven houses in the village. Until 1977 another seven houses were added, and over the following ten years another four houses were added. This shows clearly that the village has had an independent and natural fabric of life. The residents have further evidence to show that the village is at the centre of their lives.

A copy of aerial photographs of the village from 1967, 1977 and 1987 is hereby attached and labelled a/1.

10. Between the residents of the village and the residents of other parts of the West Bank, especially the village of Ta'amra in the West Bank, there exist important commercial, cultural, family and social relations. Over the years, and especially as a result of the closures imposed on the West Bank area and the prevention of its residents from freely entering Israel [and occupied East Jerusalem], the rest of the West Bank became the main centre of affinity for the village. Then, as mentioned, the villagers developed their cultural, social and commercial relations with the rest of the West Bank.
11. The lands of the village were annexed to Israel immediately after 1967, when the village was included within the municipal jurisdiction of the Municipality of Jerusalem. The residents of the village did not participate in the census, despite their presence there, due to the negligence of the authorities who did

not register them, thus preventing the villagers from acquiring a permanent resident status in Jerusalem. This is the reason why today most of the villagers hold West Bank identity cards.

### **The Connection to Jerusalem:**

12. In practice, for an extended period, some of the residents of the village used some services provided by the Municipality of Jerusalem. For example, the village children used to go to school in Jerusalem. However, in 1995, the municipality informed them that it was forbidden for the children of non-Jerusalemites to study in schools in Jerusalem.

Since then, the village children whose parents hold a Jerusalem identity card have continued to study at schools in Jerusalem, using a dirt track to reach them.

Recently, works have begun for the construction of a road for Israeli settlers in the West Bank to access Jerusalem, but it has no connection to the village. The road passes next to the village and connects the nearby settlements to Jerusalem. The construction of the road has partially blocked the dirt track, making it very difficult for children to use it. The completion of the road will make it impossible for students to use this way to reach their schools in Jerusalem.

13. a. The residents of the village receive the essential services they need such as water, electricity, telephone line and public lighting, from the Palestinian Authority and the nearby Palestinian towns, despite the fact that the village is located within the boundaries of the Municipality of Jerusalem. The only "services" they have received from the Municipality of Jerusalem are house demolitions, as the municipality did not deem it necessary, neither before or now, to draw building plans for the village.

b. On 19 December 1993 the residents of the village approached the Municipality of Jerusalem demanding that they be supplied with municipal services. The municipality replied on 12 January 1994 stating that "the task is not easy and primarily it is not cheap".

A copy of the letter and the response of the Mayor's Advisor on the Arab Population are attached and labelled a/2 and a/3 respectively.

c. Following the receipt of this response, the residents, through their representative, further requested that their issues be dealt with, and as an interim measure they requested the suspension of the execution of the house demolition orders issued against villagers.

A copy of the response is attached and labelled a/4.

14. Prior to 1993, residents of the West Bank could enter Israel and closures were not placed on the Palestinian Territories. Only in 1991 was a military order issued imposing a closure on the Palestinian Territories and requiring

the residents of the West Bank to apply for a permit to enter into Israel. This military order was effectively enforced in 1993.

15. For a generation, from 1967 until 1993, the Israeli authorities did not inform the residents of any restriction on their presence in the village nor their access to education and health institutions or places of work in Jerusalem. Thus the villagers conducted their affairs accordingly.

#### **The Beginning of the Cutting off of the Residents from Jerusalem:**

16. As mentioned above, the situation then started to change, up to the point that the lives of the residents became unbearable due to the harsh living conditions created: this began with the prevention of their entry to Jerusalem in the middle of the 1990's, and continued with their arrest in their own houses in the dead of night in 2003, under the pretext of their being "illegally present".
17. Following the beginning of this change, in 1995 or thereabouts, the residents of the village petitioned to the High Court of Justice (HCJ 3746/95) requesting that they be recognised as residents of Jerusalem, and that the house demolition procedures already initiated be halted. The petition was withdrawn following an agreement between the sides according to which the Ministry of Interior would examine the residents' dwellings and issue its decision regarding their rights.
18. The Ministry of Interior issued its decision, laconically, in which it rejected the request of the residents since some of them were married to people of the Ta'amra tribe, who live in the West Bank, and therefore it claimed that those residents should have been considered as living beyond the pale.

A copy of the response of 11 May 2000 is attached and labelled a/5.

#### **The Construction of the Separation Fence [Annexation Wall]**

19. Until the beginning of 2000 the petitioners entered other parts of the West Bank, which had become the main centre of their lives, and returned to their homes freely, through a road that connected the village and the rest of the West Bank.
20. On 23 June 2002 the government approved the construction of the separation fence [Annexation Wall] in the "Jerusalem envelope" area. Soon thereafter, in 2004 the digging and construction works for the separation fence [Annexation Wall] began near the village.

#### **The Progression of the Process:**

##### ***HCJ 7218/03:***

21. On 7 August 2003 the petitioners addressed the Honourable Court in petition HJC 7218/03, against the Minister of Interior, the Minister of Defense, the Prime Minister and the Municipality of Jerusalem. In that petition, the

petitioners demanded that their expulsion from their houses be halted, and that the behaviour of the Israeli security forces, who would enter the village and arrest the men in the village claiming that they were illegally present in their homes, be stopped. In addition, the petitioners demanded that they be granted the status of permanent residents since they had been living in Jerusalem for generations.

In the same petition an injunction was requested in order to prevent the petitioners' arrest from their houses and expulsion from their homes. This injunction was granted on 26 August 2003 with the agreement of the State.

A copy of the petition is attached and labelled a/6.

22. In response to the above petition, the State claimed that since there is an alternative forum for the petition, namely the Court for Administrative Affairs, the petition should not be discussed before the Supreme Court. The attempt of the then legal representative of the villagers to correct the petition and to include a discussion on the issue of the separation fence [Annexation Wall], did not succeed. The petition was rejected but still the plaintiffs were given the possibility of presenting a new petition.

A copy of the response is attached and labelled a/7.

#### ***H CJ 6181/04***

23. Following the beginning of construction works for the separation fence [Annexation Wall] south-east of the village, and the prevention of the residents from entering Jerusalem, as it will be further explained below, an unbearable situation was created whereby the residents were cut off from the centre of their lives in other areas of the West Bank, as well as from Jerusalem. The difficulty was manifest in the heavy restriction of the residents' freedom of movement, and the restriction of their access to the rest of the West Bank, to education and health institutions, workplaces and so forth.
24. Following this, on 30 June 2004 the residents filed a new petition, H CJ 6181/04, in which they requested the following measures:
  - a. That the route of the fence be changed so that it would not cut the village off from the rest of the West Bank;
  - b. That the residents of the village be granted residence permits which would allow them access to Jerusalem, as an interim measure until the Ministry of Interior issues a final decision on the status of the villagers;
  - c. In addition, that the petitioners be granted free access to the West Bank until a decision was made regarding the route of the fence.

As an alternative to the removal of the fence, the petitioners requested in the aforementioned petition that they be issued residence permits, in consideration of the fact that their residence in the village dates back to

before 1967, and their alleged illegal presence in the area is due to an error of the authorities in failing to register the residents.

A copy of the aforementioned petition is attached and labelled a/8.

25. The respondents objected to the admission of the petition. They argued that the residents had not proven their right to live in Jerusalem, and therefore that their right to appeal against the fence was unfounded. On the substance of the claim itself, the respondents also objected to the petition, claiming that altering the route of the wall was impossible due to the need that such an action would entail to also change the planned route of the Eastern Ring Road and of the terminal that is planned east of the village.

26. Finally, an agreement was signed between the petitioners' previous representative and the representative of the state, which received the force of a verdict of this court on 22 March 2004 (henceforth: the agreement). It is to be noted that that the residents claimed that the agreement was made without their consent and against their opinion.

Copies of the agreement and the approving verdict are attached and labelled a/9.

27. The main points of the agreement are as follows:

- a. The respondents committed not to block the road connecting the village to the rest of the West Bank, and that the movement of the petitioners' vehicles from and to the village would not be restricted.
- b. The respondents committed to improve the safety of the road leading from the village to the rest of the West Bank, and to hand over, seven days in advance, the map of the planned road to the petitioners' representative, in order to allow their rejoinder.
- c. The petitioners were to individually approach a body to be designated by the respondents, and brought to the knowledge of the petitioners, to apply for residence status in Jerusalem (it should be noted that the petitioners have yet to receive a notice concerning the identity of that body).
- d. The respondents committed to refrain from harming the petitioners' regular course of life, including refraining from arresting them in their homes on counts of "illegal presence," and from evicting them from their homes.
- e. In addition, a declaration on behalf and with the support of the petitioners was appended to the agreement, according to which they insisted on their right to property, to freedom of movement, and to residence and a normal course of life in their village, and that these rights should not be harmed as a result of the construction of the fence. They insisted on their right to receive services from the

Jerusalem Municipality, including being issued permits for existing buildings and a removal of the ban on further constructions.

- f. The petitioners retained their right to petition the court again in the case that the decisions of the respondents on their request concerning their status in Jerusalem would prejudice their rights.
28. As it will be further explained below, this agreement was violated by the respondents in broad daylight:, starting with the violation of the explicit commitment in clause b. above, according to which the residents should have been informed of the route of the ring road before its construction, and the commitment to establish a body meant to examine the issue of residency. The body was never established, and the perpetuating facts on the ground culminated in a brutal and continuous violation of the basic obligations to preserve a normal course of life for the residents.

### **The Reality of the Residents' Lives after the Verdict of 22 March 2005:**

29. The basic assumption of the petitioners from the beginning was that the Israeli authorities covet their lands, and want to expel them by tightening the siege around their village, and increasing the daily harassment, with one goal – that the residents would leave their homes, as part of the prevailing discriminatory atmosphere.

No other explanation could justify the outrageous behavior of the security forces, who would arrest the residents from their homes and expel them claiming that they were "illegally present".

30. But even after and despite the agreement, which as mentioned the residents claim they did not agree to, this reality not only did not change, but even worsened until it became unbearable. The respondents have systematically and explicitly violated the agreement, its wording and spirit, and have caused the residents of the village daily distress. All these circumstances have made their lives unbearable, all as will be detailed extensively below.
31. The lines of this petition cannot convey the true picture of the severe distress endured by the residents of the village. Living in the village for a few days would be enough to convey the sense of frustration and siege under which they live. Listed below are examples of the daily suffering, degradation and humiliation that the residents of the village undergo:
- a. At the end of the May 2005 the residents of the village were surprised to discover that the works for paving and improving the route of the road from the village to the rest of the West Bank had begun without them being giving the required seven-day notice, **in contravention of the state's explicit commitment as stated in the agreement.** A letter on this matter was sent on 2 June 2005 to the respondents'

representative, adv. Yuval Roitman, of the State Attorney's office. Adv. Roitman responded that the works were not connected to the road but only to the fence, which turned out to be untrue during the tour that was conducted, as will be detailed below.

Copies of the letter and the reply are attached and labelled a/10 and a/11 respectively.

- b. The paving works continued for a long time, the existing road was blocked and damaged, so that the residents could not leave or enter the village in regular vehicles, but only with 4x4 off-road vehicles. The works compelled the village children to walk a few kilometres on ill-suited dirt roads in order to reach their schools outside the village. A letter on the matter was sent to adv. Roitman on 6 June 2006, in which it was underlined that the behaviour of the authorities was an explicit violation of the residents' right to a normal life, and to freedom of movement, as the agreement directs. The residents demanded an urgent meeting with the officials responsible for building the fence and paving the road, while retaining all their rights regarding the effects of these violations on part of the State.

A copy of the letter is attached and labelled a/12.

- c. Further, and in accordance with the demand of the residents, on 19 July 2005 the representative of the Attorney General Ruvi Tziegler, adv. Alon Yifrach of the Ministry of Defense, Alon Tzabari of the Ministry of Defense, Avner Barzilai of the Building Center, Azhar of the Civil Administration, Ilan of the Jerusalem Enveloping Border Police, and Nabil of the Civil Administration visited the village. During the visit, the parties discovered that **as the residents claimed, the works done were indeed the paving of the alternative road, which was done without prior notice to the residents, which the state had expressly committed to give in the agreement, and that the original road had been blocked, so that the residents were left without regular access, at that stage, from the rest of the West Bank.**

With many issues arising after this visit, it was agreed that the petitioners' representatives would turn to the Attorney General and raise the questions and clarifications requested by the petitioners. On 20 July 2006 the petitioners' representative sent a letter detailing the chain of events listed above and highlighted the relevant questions.

A copy of the letter is attached and labelled a/13.

On 22 August 2006 the Attorney General responded to the above mentioned letter. The response stated that the neighbourhood [settlement] of Har Homa D was planned to be built near the village on its western side. This plan was previously unknown to the petitioners.

A copy of the response is attached and labelled a/14.

- d. During the negotiations between the parties to the case, the petitioners' representative called for a meeting which took place on 24 August 2005 with the attendance of an architect and a planner on behalf of the petitioners, Mr. Shmuel Groag and Danny Tirza and others on behalf of the Israeli authorities. In the meeting the representatives of the Israeli army and the Ministry of Defense noted that the final route of the Eastern Ring Road had not yet been determined, and that the CBP was still pending. It was also noted that the route was to partially cut through the eastern side of the village, thereby requiring the demolition of the houses built on that portion of land.

Danny Tirza affirmed that moving the route of the fence west of the village could have been better from the point of view of the security forces. Indeed, suggestions in this sense had been discussed before the Municipality of Jerusalem, but were rejected by the Municipality because such a change would have required amending the plans for the Eastern Ring Road, as well as impairing the zoning plans for the expansion of the Har Homa D neighbourhood [settlement].

A copy of the minutes of the meeting taken by the petitioners' representative is attached and labelled a/15.

It is to be noted that the state's response to the petition in HCJ 6181/04 mentioned these contacts, which did not succeed only because of the need to change the route of the Eastern Ring Road. **The matter of harming the zoning plan of the Har Homa D neighbourhood [settlement] was not mentioned at all, and intentionally obscured.**

In the end the representatives of the army promised to provide the petitioners' representative a map that would include the route of the fence, the route of the road system as known to the security bodies, and the municipal border of Jerusalem.

Indeed, this map was given to the petitioners' representative. It provided a clear picture of the area after the completion of all the works. The result will be the **siege of the village and an immediate threat to its continued existence**, especially in light of the unabated policy of harassment that the security forces put into practice against the residents of the village. The main elements of the map were known to the petitioners beforehand, with the exception of the plan for Har Homa D. Still the new map including all the elements provided a real and grave threat to the continued existence of the village upon completion of the construction of the planned projects.

The fact that the neighbourhood [settlement] of Har Homa D is supposed to be built on the north-eastern side of the village, a plan

that was unknown to the residents beforehand, contributes to the completion of the siege: the village will be completely surrounded from every direction and dispossessed of its land. The outcome of the above listed facts will be the, most likely gradual, expulsion of all the residents of the village, who could not survive under such repressive conditions.

A copy of the map is attached and labelled a/16.

Following this, the petitioners approached the Municipality of Jerusalem, as will be further explained below.

- e. Meanwhile, harassment of the residents of the village did not stop: service providers arriving from other areas of the West Bank to the village were refused entry by the security forces, notably Border Police officers, who have set up a permanent barrier at the entrance to the village on the east. This happened to the vehicle supplying gas to the village, as well as to the vehicle delivering food for livestock.

Residents entering the village in their vehicles are often detained by the security forces, and sometimes their entry is arbitrarily denied.

At the end of September 2005, the members of a family holding Jerusalem identity cards arrived to the village in vehicles in order to attend a wedding party, and were detained in the village. Their exit was prevented by the security forces manning the gate. Only in the middle of the night could the family manage to leave the village in stealth.

In the same period, a resident of the village was required by the forces at the gate to undress as a precondition for entry into the village.

These facts were reported in a letter of complaint sent by the representative of the petitioners on 9 October 2005 to the region's Attorney General, demanding an immediate intervention to halt the harassment, as well as the completion of the works on the road connecting the village to the rest of the West Bank.

A copy of the complaint is attached and labelled a/17.

- f. With the arrival of winter, the route through the dirt road became impassable, yet the works to pave the road had been left uncompleted. Consequently, the petitioners addressed the region's Attorney General once more through their representative on 30 October 2005 and demanded the completion of the works.

A copy of the complaint is attached and labelled a/18.

- g. The harassment by the security forces stationed at the entrance to the village from its eastern side did not stop, and the Border Police officers continued to arbitrarily prevent the exit and/or entry of the

residents of the village to their village to/from the rest of the West Bank.

- h. On 3 December 2005 Israeli security forces entered the village at night and conducted a search inside the village homes, finding nothing "prohibited".

On 10 December 2005 a Border Police unit prevented residents of the village from exiting the village. The officers claimed that the residents of the village were illegally present in the village.

On 15 December 2005 a mounted force of Border Police officers entered the village and detained residents from the village for "illegal presence" inside their own houses and some of the residents were made to sign a "pledge", which constituted an explicit violation of the State's commitment to refrain from this shameful and unlawful action.

On 15 December 2005 a complaint concerning this incident was sent to advs. Yuval Roitman and Ruvy Tziegler, mentioning the fact that this conduct constituted an explicit violation of the agreement and of the verdict, as well as a violation of the residents' right to maintain their regular and normal course of life.

A copy of the complaint is attached and labelled a/19.

- i. Despite the complaints the harassment continued: on 20 December 2005 a Border Police unit on foot prevented the residents from exiting the village towards the rest of the West Bank, with no explanation or justification.

On 22 December 2005 a Border Police unit prevented the residents from exiting their village, with no justification.

Following these events, on 2 January 2006 the residents filed a new complaint, in which it was underlined that this harassment is part of an intentional policy directed against the residents, and asserted that if the harassment does not cease the appropriate legal procedures would be instituted.

A copy of the complaint is attached and labelled a/20.

The petitioners sent two reminders of the complaint letter, without receiving a meaningful response.

- j. On 9 June 2006 the petitioners, through their representatives, approached the representative of the respondents with a new complaint, following the increase in harassment: a Border Police force regularly stationed at the entrance to the village on the eastern side routinely harasses the residents of the village. The harassment includes a requirement of the residents who want to enter and exit the village, including schoolboys and girls, to take their clothes off, without

giving any justification. The soldiers threaten to shoot anyone who refuses to comply. The residents of the village are frequently detained for long periods and prevented from entering or exiting the village. The residents of the village attempting to enter the village in a taxi are stopped, held and subsequently required to continue their way to the village on foot. The residents of the village are often forbidden from bringing vegetables into the village. In addition, at the entrance to the village, near where the Border Police are stationed, a large gate has been installed. It is not locked, but the residents of the village are required to open and to close the gate every time they pass.

In addition, the children of the village going to their school in the nearby village of Al-Khas also suffer repeated harassment from the Border Police. This includes verbal abuse, refusal to let them pass to the school, a requirement of them to present a birth certificate, and intrusive searches including compelling the children to empty their schoolbags onto the dirt road.

**In one case the soldiers demanded that a 10-year-old girl lower her trousers. In another case, the children were forced to dance before they were allowed to pass.**

In addition, for the past three months the refuse collection vehicle has been prevented from arriving at the village and collecting the refuse from the village. The gas vehicle was also not allowed to enter, its driver forced to empty all the canisters, and was then required to leave.

Furthermore, the water pipe providing water to the village was replaced by the Israeli army with a pipe of smaller diameter, which was left exposed above the surface of the ground. This created problems in the supply of water to the village. The demands to replace the pipe were left unanswered.

About two weeks before the filing of the complaint, a contractor working for the army in the area knocked over the electricity pylon which was the source of the village's electricity, apparently because the pylon was obstructing his work. This left the entire village without electricity, and caused severe damage to electrical appliances in the houses. For about a week the Israeli army prevented the Palestinian electric company from arriving at the village and fixing the pylon.

The petitioners emphasise again that they have been cut off from their entire natural environment. They cannot receive guests in the village, whether in joyous or mournful occasions, and the village has become an isolated island suffering from continued harassment.

In the letter it was noted that this situation constituted severe harm to the course of life of the residents of the village, and appears to be intended to lead to their expulsion from there. The petitioners

demanded that the situation be remedied immediately, so that the residents of the village could continue with its daily routine in an acceptable manner.

Apart from a confirmation of the reception of the complaint, no response has yet been given to these complaints.

A copy of the complaint and of the confirmation of its receipt are attached and labelled a/21.

- k. In the month of October 2006, the residents of the village were ordered to hand over a list of the residents to the Border Police officers, on grounds that this would ease the entry of the residents and would ease their suffering. The residents complied and handed over the requested list.

But this compliance did not bring any result, and different excuses were constantly raised with the intention of making things difficult for the residents. On one occasion it was claimed by the Border Police that the list had been lost. Another time an officer at the gate did not bother to look at the list and arbitrarily rejected the entry of the residents. The children especially suffered since they do not hold identity cards and they were required to present identification papers and, at a minimum, to endure an examination of their bags and clothes.

- l. The siege was tightened, and the sense of domination by the Israeli authorities, and their representatives in the form of the Border Police, reached its peak on 28 October 2006, when the undersigned tried to enter the village in order to deal with the village's legal matters. His entry was prevented contemptuously and without basic courtesy. It seemed that the officers at the gate were like prison wardens guarding a cage. They have absolute control and are capable of preventing the entrance of anything, be it man or air. They do not even feel obliged to give reasons for their outrageous actions, as if they were cowboys in the Wild West.

It must be noted that during the presence of the undersigned at the gate, another resident of the village was by chance present at the gate, and his entry into the village was also forbidden. The Border Police woman standing at the gate refused to check his name on the list, in spite of his pleas. After being asked repeatedly, another officer consented to do so and "discovered" that his name was indeed on the list. Still, however, the entry of the resident into the village was refused on the grounds that he "hadn't spoken nicely to the policewoman".

A complaint concerning this incident was sent on 31 October 2006 to the respondents' representative, adv. Roitman, who confirmed its receipt in his letter of 5 November 2006.

A copy of the complaint and the letter of adv. Roitman is attached and labelled a/22.

In order not to risk a repeat of the above incident, the undersigned was forced to ask advance permission on 22 January 2007 from the Police Attorney General to be allowed to enter the village on 26 January 2007. On this date the undersigned was forced to stand at the gate for about an hour, after again be told that his entry into the village was forbidden, until the officer at the gate eventually received instructions to permit his entry.

A copy of the request to the Police Attorney General is attached and labelled a/23.

- m. Between the village and the East Jerusalem village of Sour Baher is a meandering footpath. It was used by some village children, namely the children of those residents holding a Jerusalem identity card, who study in Jerusalem, to get to their school in Sour Baher. About two months ago works started to pave a road connecting other areas of the West Bank to the neighbourhood [settlement] of Har Homa. This paving did damage to the footpath and today blocks the students' way to school. According to the planning, there is to be no connection at all between the village and this future road, which is apparently intended for Jewish citizens and settlers only.
  - n. The village cemetery is located a few hundred metres from the village and is located, like the village, on the Jerusalem side of the fence. Between the village and the cemetery there was an agricultural road. Now, anyone coming near the cemetery is driven away by the Border Police forces, and the residents' access to visit their deceased loved ones has also been denied.
  - o. The access to the olive grove which belongs to the residents and is near the cemetery is also prohibited, and anyone coming near it is driven away.
  - p. For about the last four months, Israeli settlers from the nearby settlements of Tko'a, Efrat and others have started conducting marches and demonstrations near the village on Fridays, in which a up to hundreds of settlers participate. As far as can be seen they are demanding to be allowed pass through the village as a short-cut to Jerusalem, and that a road be paved along this route. At these times, the exit and entry of the residents of the village from and to their village is forbidden. The residents are thus imprisoned in their homes until the storm passes. Approximately two months ago, settlers drove provocatively through the village in a convoy of vehicles.
32. Attached is a copy of eight affidavits from various residents of the village, which explain the daily harassment that the residents of the village go

through, and which speak for themselves. They are labelled a/24 through to a/31.

33. **Freedom of movement, the right to a livelihood, the right to health, the right to education, the right to family life, the freedom of worship and the most basic dignity – human dignity – all of these have been arbitrarily and abusively denied to the residents of al-Nu'man. The petitioners' routine of life has been completely trampled underfoot. The fence has sentenced them to life in a ghetto – in the full sense of the word – which is unbearable. The petitioners have no doubt that if this situation continues, it will lead to the extinction of the village and the expulsion of its residents. It appears that this is the very motive behind the behaviour of the authorities.**

#### **Contact with the Authorities and the Exhaustion of Procedures:**

34. As detailed expansively above, the petitioners approached the respondents with repeated complaints, and demanded that they honour the agreement, in word and in spirit, and that they cease the constant harassment and movement restrictions, to no avail. They warned several times that if this situation is not corrected, they will act to defend their rights through judicial procedures.
35. In a meeting on 24 August 2005 with the representatives of the army and the Ministry of Defense, it was reported that the reason preventing the relocation of the fence and the taking out of the village from the Jerusalem side was the objection of the Municipality of Jerusalem. Therefore, the petitioners' representatives were directed to the Municipality of Jerusalem. On 30 August 2005 the petitioners' representatives approached Mr. Yossi Habilio, the Attorney General of the Municipality of Jerusalem, presented the topic briefly, and requested an urgent meeting to discuss the issue.

A copy of the approach is attached and labelled a/32.

36. After several written and verbal reminders, a meeting took place between the petitioners' representatives and the Municipality's Attorney General. In that meeting the petitioners' representatives presented the problems of the village, and demanded the Municipality's agreement that the village be located on the other side of the route of the fence. Alternatively, if this was not possible, the petitioners requested that the Municipality undertake to perform its role in the village, supply all the services, as well as **granting the village building rights as would be given to the nearby neighbourhood [settlement] of Har Homa**, and to pave road connecting the village to Jerusalem.

In the meeting it was agreed among the sides that Mr. Habilio would approach the Mayor, the Director of the Municipality, the City Engineer and the Director of the Branch for City Planning.

A summarising letter on behalf of the petitioners to Mr. Habilio of 30 November 2005 is attached and labelled a/33.

A summarising letter on behalf of adv. Habilio of 23 November 2005 is attached and labelled a/34.

37. On 24 May 2006 a letter from the Municipality was received, where it was noted that the area of the village was included within the masterplan for the south-east of the city, the goal of which was to increase the supply of apartments for Jewish and Arab citizens. It was also noted that a detailed plan which would include the village would be prepared, in cooperation with the other authorised bodies.

A copy of the letter is attached and labelled a/35.

38. On 6 November 2006 a letter was sent on behalf of the Department for City Planning, requesting a map marking the jurisdiction boundaries of the city, the boundaries of the village and the route of the fence. On 27 February 2006 [sic] the requested map was sent.

Copies of the approach and the response are attached and labelled a/36 and a/37.

39. On 28 December 2005 [sic] after several reminders on behalf of the petitioners to the Attorney General of the Municipality, his answer was received according to which he had approached the authorised officials in the Municipality and requested their attention to the matter.

A copy of the response is attached and labelled a/38.

40. In spite of these approaches, the situation in the village has remained unchanged, and has even worsened, as detailed above. The Municipality has yet to consent to supply municipal services to the village, while the services coming from the Palestinian Authority have been almost entirely stopped due to the litany of harassment and abuse by the Israeli security forces manning the gate. Despite this, the planning authorities have not abandoned their relationship with the village: near the time of the correspondence with the Municipality, they arrived and demolished a home in the village.

### **The Legal Argument**

#### **Dismantling the fence [Annexation Wall] near the village:**

41. The petitioners will argue that the very construction of the separation [Annexation] Wall in the Occupied Palestinian Territories is an illegal action, which contravenes international law, and was implemented in excess of authority. They will draw attention in this matter to the advisory opinion of the International Court of Justice in The Hague: *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9<sup>th</sup> July 2004.*
42. Beyond this, and as detailed above, the existing route of the fence, in the given circumstances, is unjustified and disproportionate.

43. The agreement signed between the then representative of the petitioners and the state was not kept by the authorities, and brought no benefit to the village. On the contrary, under its protection the authorities carried out a suffocation and siege of the village, and made the residents' lives absolutely unbearable. This proved that any arrangement whose implementation depended on the goodwill of the authorities, and based on autonomous fulfillment of the commitments therein, is not sustainable.

The solution, then, must be clear, unequivocal and based on a recognised, accepted and formal arrangement, and not a black hole in which the petitioners will remain between two worlds: not enjoying the full status of West Bank residents, with all that this entails, while similarly not enjoying the status of Jerusalem residents, with all that this entails.

44. The present route of the separation fence [Annexation Wall] causes severe and continuous harm to the petitioners. The petitioners reside in a territory annexed to Israel with no status and no rights. Their access to the focal point of their lives in other parts of the West Bank has become almost impossible. The fence has turned their area of residence into a ghetto and imposed on them an undignified and unbearable life. These injuries are forbidden by international humanitarian law, international human rights law, as well as domestic Israeli law.
45. International law does not recognise the annexation of East Jerusalem by the State of Israel and sees East Jerusalem as occupied territory. Accordingly the laws of military occupation apply to the areas occupied and/or annexed by Israel, including the area of the village of al-Nu'man. The residents of the area are protected persons (on this at least there is no argument – the respondents see them as such as well). As protected persons the respondents have the duty to defend the rights of the petitioners due to both their individual duties, anchored in international humanitarian law, and by the general duty of the Occupying Power to preserve order and public life, anchored in Article 43 of the Annexes to the Hague Convention on the Laws and Customs of War on Land of 1907 (The Hague Regulations).

Previous verdicts have interpreted the positive duty of the Occupying Power as one that requires it to safeguard the rights and the quality of life of the residents of the occupied territory (see HJC 393/82 Al-Mualimun vs. Commander of IDF forces in Judea and Samaria, V.37(4) 785, 797-798; HJC 202/81 Tabib vs. Minister of Defense, V.36(2) 622,629; HCJ 3933/92 Barakat vs. General of the Central Command, V.46(5) 1, 6; HCJ 69/81 493 Abu Itta vs. Commander of Judea and Samaria V.37(2) 197, 309-301). As detailed expansively in the factual section, the route of the fence near the village of al-Nu'man, along with the rest of the projects planned in the area, violate and even deny the basic rights of the residents of the village, and cause severe injury to the normal course of life of the residents of the village.

46. The application of Israeli law in the area by the State of Israel does not reduce the defences afforded by international humanitarian law. In so far as

the State of Israel seeks to view the area and its residents as a part of Israel, it chooses to apply to the area and its residents further layers of normative defence, which are not subordinate in weight to international humanitarian law. Israeli law carries with it its own constitutional defences as well as the commitments of Israel according to the statutes of international human rights law. Therefore the application of Israeli law to the area, in so far as the State of Israel insists on its application to the area and to its residents, applies according to its own opinion the basic rights anchored in Israeli law and Israel's commitments according to international human rights law.

47. When there is no meaningful contradiction between the statutes of Israeli law and international law – humanitarian law and human rights law – one should act in a way that corresponds to international law (see: Yoram Dinstein, International Law and the State (Schoken and Tel Aviv University, 1971, 46); HCJ 7957/04 Marabe vs. the Prime Minister of Israel (judgment of 15 September 2005, paragraph 74 in the judgment of President Barak (henceforth: the matter of Marabe)). As we shall see below, Israeli law does not contain a duty or right that conflict with the statutes of international law, and which permit such a severe injury to the rights of the petitioners.
48. All systems of law which apply or are intended to apply in the area point to the fact that the suffering being inflicted on the petitioners is forbidden. The fence causes a severe injury to a series of rights accorded both by international law – humanitarian law and human rights law – and by Israeli constitutional law:
  - a. **The petitioners' freedom of movement** (see Article 13 of the Universal Declaration of Human Rights of 1948; Article 12 of the International Covenant on Civil and Political Rights of 1966; HJC 5016/96 Horev vs. Minister of Transport v.51(4) 1; HJC 2481/93 Dayan vs. Jerusalem District Commander v.48(2) 456, 472);
  - b. **Their right to a livelihood, and its corollary – the right to dignified existence** (see Article 39 of the Fourth Geneva Convention; Articles 6, 7, and 11 of the International Covenant on Economic Social and Cultural Rights of 1966; NCL 4191/97 Rekanat vs. the National Court of Labour, v.54(5) 330,381; PHA 4905/98 Gamzo vs. Yeshayahu v.55(3) 573, 630; HCJ 366/03 Mechuyavut Association for Peace and Social Justice vs. the Minister of Finance (not yet published);
  - c. **Their right to education** (see Article 50 of the Fourth Geneva Convention, Article 13 of the International Covenant on Economic, Social and Cultural Rights ; HCJ 4363/00 Poriyah Ilit Council vs. the Minister of Education, v.56(4) 203; HCJ 677/05 Abu Ghnem, vs. the Ministry of Education (not yet published, paragraph 6 of Judge Prokatchia's verdict); HCJ 7351/03 City Parent Association Rishon LeTzion vs. the Minister of Education, Culture and Sports (not yet published, paragraph 4 of Judge Beinish's verdict));

- d. **Their right to health** (see Article 41(1) of Additional Protocol I to the Geneva Conventions; Article 55 of the Fourth Geneva Convention; Article 25(1) of the Universal Declaration of Human Rights; Article 28 of the Convention on the Rights of the Child of 1989; Article 12 of the International Covenant on Economic Social and Cultural Rights; HCJ 332/87 Ben Shlomo vs. Minister of the Interior, v.43(3) 353, 356; Articles 2 and 4 of the Basic Law: Human Dignity and Freedom);
- e. **The right of the children in the village to a normal life, to family life, and to basic rights of education, health and movement** (see the Convention on the Rights of the Child)
- f. **Their right to family life and to contact with their family members in the rest of the occupied West Bank** (see Article 27 of the Fourth Geneva Convention; Article 46 of the Hague Regulations of 1907; The Convention on Children's Rights; Article 23 of the International Covenant on Civil and Political Rights; HCA 7155/96 John Doe vs. The Attorney General, v/51(1) 160, 175; HCJ 3648/97 Satmke vs. Minister of Interior v. 53(2) 728, 782);

On this matter it should be noted that the petitioners' standing has been left undefined, so that they can enjoy neither their residence inside Jerusalem – since entry into it is impossible and forbidden – nor their status as carriers of West Bank identity cards – since even if one ignores the harassment and abuse that accompany them daily on exiting and returning to the village, it is clear that their village is only used as a "leaving station", in the sense that friends, relatives, doctors, and other service suppliers cannot arrive in the village, it being defined by the Israeli authorities as an area of Jerusalem.

This reality could worsen soon, on account of factors other than the existing fence:

- a. the construction of the Mazmouriya trade terminal east of the village, a huge terminal that would absorb tens of dunums, and is planned to be a passage for goods and vehicles from West Bank settlements to Israel;

- b. the construction of the Eastern Ring Road which is planned to pass literally on top of the land on which some of the homes in the village currently stand, on the village's south-eastern side, as well as the security and safety envelope which will presumably accompany its construction;

- c. the Border Police base that is intended to be built on the southern side of the village, and which will also likely bring with it an array of prohibitions and movement restrictions;

- d. the neighbourhood [settlement] of Har Homa D which is zoned to be built on the north-western side of the village, and which by

itself will apparently be accompanied by its own fence, as is customary in the Occupied Palestinian Territories.

It appears, therefore, that the portrayal of a ghetto or a cage is an apt description for the reality that will be created in the village. The prognosis, according to which this reality will bring about the extinction of the village and the expulsion of its residents, is thus not overly pessimistic or exaggerated at all.

49. In constructing the fence along its present route and further engaging in behaviour as described above, the respondents completely ignored the rights of the petitioners and thus, in addition to the violation of their duties according to international law and constitutional law, they acted unreasonably:

**"...as part of the duty of the military commander to use his judgment reasonably, he should also bring within the fold of his considerations the interests and rights of the local population, including the need to minimize the extent of injury to its freedom of movement..."** (1890/03, The City of Bethlehem vs. the State of Israel, v.59(4), 736, 755)

50. Indeed, an examination of the route of the separation fence [Annexation Wall] in the area, as well as the overall picture of the likely living situation of the village after the completion of all of the planned projects, indicates that the respondents did not appropriately balance the military/security needs of the State of Israel with the welfare of the local population in the area. It seems that the respondents did not consider at all the injuries to the rights of the petitioners and did not even try to minimise the restrictions on their freedom of movement nor to the rest of their rights. In this the respondents offended not only their duty to act reasonably, but also their duty to act such that the injury to the rights of the petitioners would be proportional (see the matter of HCJ 795704 Zahran Marabe et. al. vs. the Prime Minister of Israel et. al., of 15 September 2004 (not yet published), paragraphs 110-116 (henceforth: "the matter of Marabe").
51. Even if we accept, that the route of the fence stands up to the first test of proportionality (the rational connection test), by creating a separation between south-east Jerusalem and the rest of the West Bank (although the route does not separate the petitioners – themselves Palestinians – and [Israeli-defined] Jerusalem), it certainly does not stand up to the second test of proportionality (the lesser injury test) or the third test (proportionality in its narrow sense).
52. Regarding the test of lesser injury – such a harsh injury to the petitioners could have been avoided by moving the route of the fence by merely tens of metres north-west of their homes. The security of the residents of Israel would not have been damaged, and the petitioners' normal course of life would have been preserved. The homes of the petitioners are very close to the fence and therefore this solution is still possible. Relevant to our matter are the words of the court in the matter of Marabe:

**"...it seems to us that the required effort was not made, and that no alternative route that could ensure security, while causing lesser injury to the residents of the village, was examined in detail. The respondents must reconsider the existing route. They should examine the possibility of taking the villages of the enclave, all or some of them, out of the 'Israeli' side of the fence. Of course, this change cannot be made in a day, since this requires dismantling the existing fence...[and the] building of a new fence..." (paragraph 114 of the verdict).**

53. As to the test of proportionality in its narrow sense (benefit vs. damage), the injury to the rights of the residents of the village, against the background of an alternative in the form of moving the fence some tens of meters, is higher than the benefit of the present route. Moreover, in the matter of Beit Surik it was judged that the separation fence [Annexation Wall] would be disproportionate, if there were presented an alternative route for the fence whose security advantages were lesser than that ensured by the route chosen by the respondents, while the damage caused by it was significantly lesser than by the original route (HCJ 0256/04 Beit Surik Village Council vs. The Government of Israel, v.58(5) 807, 841).

In the matter of Marabe it was further judged that it should be examined whether there is an alternative route which gives Israel the required level of security while its damage to the Palestinian fabric of life is smaller. That is, in a place where the addition to security achieved by the existing route is not balanced against the additional injury of the existing route, an alternative route should be chosen, where the injury is lesser (paragraphs 115 and 116 of the verdict). The route along which the fence was built is not the only route that gives Israel security. Moving the fence some tens of metres, and leaving the petitioners connected to the rest of the West Bank, will not harm the security of the residents of the State of Israel.

54. The fact that the authorities violated the agreement, its wording and its spirit, throughout the entire probation period, as detailed above, proves that in the present situation, even before the siege has been fully completed, the village's life is utterly impossible. This is true however one views the situation: either that the authorities are infected with extraneous motives and dishonesty, and therefore the residents' fear that the final goal is to expel them from there is confirmed; or that despite their ostensibly good intentions it is impossible to conduct a reasonable and normal course of life in the existing complex reality of the village.
55. Either way, regardless of motives and intentions, this reality must change, so that the residents of the village will regain their fundamental right to live a reasonable life in their village. This is the only solution that could prevent the otherwise inescapable result, the transfer of all the residents of the village from their homes due to the abrasive reality that the respondents have created in the environs of the village.

**Alternatively – the petitioners' status as permanent residents should be recognised:**

56. In 1967 Israel annexed the village *de jure*. The annexation had no meaning in practice. The residents of the village remained as they were, as *de facto* residents of the Palestinian Territories. The State authorities ignored them. Then came the separation fence [Annexation Wall] in the early 2000's and annexed the village *de facto*. The residents of the enclave were cut off from Bethlehem. The Israeli authorities still ignore them.
57. The respondents have imprisoned the petitioners in a ghetto and have rendered them "illegally present" in their own homes. Once the attempts failed to impose on the petitioners a regime of terror (that they would be forcibly expelled from their homes), they imposed on them a regime of harassment and abuse. The village is no longer a village, but a base for exiting and returning, while the petitioners cannot conduct a normal life, and are every day subjected to a declared siege that prevents others from entering their village, as well as their own exit to Jerusalem, and to a *de facto* siege which turns their movement outside the village into a veritable torment.
58. This is a phenomenon which is repeated in several areas on or close to Jerusalem's municipal border, a phenomenon which the respondents fail to address. In HCJ 1285/06 Jado vs. the Prime Minister the case of the residents of the Al-Wata enclave, which is located south of Gilo and near Bethlehem, was brought. The petitioners in the matter of Al-Wata, like the petitioners here, are Palestinians living south of Jerusalem, in an area annexed to Israel in 1967. The centre of the lives of the petitioners in Al-Wata is similarly in the Bethlehem area. Like the petitioners here, the petitioners in the Al-Wata case were cut off from this centre following the construction of the separation fence [Annexation Wall] and were *de facto* annexed to Israel, though they acquired no status therein. They reside in the enclave on the strength of temporary leave to remain, granted to them by the military authorities in Bethlehem. In order to enter/exit the rest of the West Bank, the residents of Al-Wata, just as those of al-Nu'man, are required to implore the soldier's at the gates of the new "Rachel's Tomb" border-style terminal on the outskirts of Bethlehem to allow them to do so. The difficulties they have been facing since the fence was constructed, and the critical erosion of their rights, are common to the residents of both enclaves.
59. Thus happened also in the village of Sawahra, only part of which is located within the municipal boundaries of Jerusalem. In the matter of Surkhi the members of a family from the village requested that they issued licences for permanent residence in Jerusalem. The petitioners on that matter wanted to prove that they were entitled to acquire licences for permanent residence, and their petition concerned the question of whether their house is within the municipal boundaries of Jerusalem and whether they were living within the municipal boundaries at the time of the census in 1967. The court rejected their petition on the verdict of the Administrative Affairs Court in this matter, and determined that they had not met the burden of proving their entitlement

according to these criteria. Nevertheless, at the end of his verdict President Barak noted:

**"In the appeal before us (and less strongly also before the previous court), the petitioners described the distresses of their lives due to the construction of the separation fence near their homes. Indeed, one gets the impression that the petitioners have found themselves in a difficult situation, where on the one hand their connection to their village was cut off from the east, and on the other had it was determined that they are not entitled to permanent residence in their present place of abode, west of the fence. The matter was not brought before us for judgment and we will not express any opinion concerning it. We only note that the respondent would do well to examine the situation of the petitioners and those like them, in order to find a humanitarian arrangement for the matter." (HAD 10811/04 Surhi vs. the Ministry of Interior (not yet published)).**

60. These words of the honourable President fell on deaf ears, however. The respondents have continued to construct ghettos, annexed and isolated islands, grey areas in which life is blacker than black, where protected Palestinian persons live in their own homes in a territory that Israel claims as its own. The respondents are not prepared to consider granting the petitioners a legal status of any kind. And they hope, it appears, that those petitioners' lives will become so unbearable that they will leave their homes and move to another part of the West Bank.
61. This result cannot withstand judicial review. In so far as it may be found that the respondents are not obliged to dismantle the fence, they are in that case obliged to go some way towards remedying the intolerable situation that they have created by giving licenses for permanent residence in Jerusalem. The normative determination, that the area is part of Jerusalem, [according to Israel] "a territory of the Land of Israel, in which the State's law, jurisdiction and administration are in force", carries with it the normative obligation to create "an integration of the area and its residents into the legal, judicial and administrative system of the State" (HCJ 282/88 Awad vs. the Prime Minister and the Minister of Interior, v.42(2) 424, 249 (henceforth: "the matter of Awad")). The residents of the area should be subjected to the instructions of the Law of Entry into Israel 5712-1952, and be given a permanent status in Jerusalem (the matter of Awad, 429-430).
62. It must be emphasised that this solution is a last resort alternative, a very bad solution as far as the petitioners are concerned, a solution of no other choice, and the lesser of two evils. All the petitioners ask is the return of their connection to the rest of the West Bank, which has long constituted the centre of their lives. However, if, and only if, it is found that there is no possibility of returning to the petitioners their course of life that the fence has usurped, it is mandatory to give them a permanent status in Jerusalem.

63. Without dismantling the fence and without a permanent status in Jerusalem, the petitioners lack any legal protection for all those rights that require, explicitly or implicitly, a social-political framework that would supply them. Practically, they are denied the most human rights, which assume such a framework for their realisation. Lacking a practical possibility of realising their rights in the Bethlehem area, the petitioners should be ensured freedom of movement in Jerusalem and Israel, the right to work therein, access to emergency services and social services therein, a right of permanent entry and immunity from expulsion therefrom (see Naama Karmi, Limitations on Immigration: Immigration Policy in the Liberal Theory of Justice, PhD dissertation (Tel-Aviv University, 1999), 9-11, 66-67).

64. This would be nothing but a recognition of the reality that the fence has imposed:

**"A licence for permanent residence – as opposed to naturalisation – is deficient. On one hand it has a constitutive nature which establishes the right to permanent residence, while on the other hand it has a declarative character, which expresses the reality of permanent residence...indeed 'permanent residence' by its very nature means a reality of life. The license, once given, comes to give a legal force to this reality".** (the matter of Awad, p. 426).

65. Beyond what is necessary it must also be noted that in so far as the State of Israel considers the construction of the separation fence [Annexation Wall] to be a national project "of special concern to the State" – and this is exactly how it sees the project – then the petitioners deserve to receive licences for permanent residence in spite of the instructions of the Law of Citizenship and Entry into Israel (temporary order), 5763 – 2003 (see article 3c of the law).

66. Attached are the affidavits of the members of the village committee supporting this petition.

For all of these reasons the Honourable Court is requested to grant a conditional order as requested, and after receiving the answer of the respondents to make such an order absolute. In addition the Honourable Court is requested to order the respondents to pay the expenses and lawyer's fees for this petition.

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Labib Habib, Adv.

For the Petitioners

[Note: Appendices not attached to this translation]