

**Supreme Court of Israel
Sitting as the High Court of Justice**

Petitioners represented by: **The Association for Civil Rights in Israel**

Vs.

- 1) Government Water & Sewage Authority
- 2) Minister for National Infrastructure, Energy and Water Resources
- 3) Hagihon Corporation Inc.
- 4) Jerusalem Municipality

Application for Interim Order and Immediate Scheduling of Hearing

The Petitioners hereby apply for an interim order instructing Hagihon to restore the supply of water to all homes in the neighborhoods of Ras Hamis, Ras Shahada, Dahyat a-Salam, and the Shu'afat Refugee Camp (henceforth: the Neighborhoods), for all hours of the day, until such time as a ruling is issued on this petition.

Alternately, if it is proven that it is not possible due to technical reasons to restore the water supply to all of the homes in the Neighborhoods during all hours, the Petitioners request an interim order instructing the Respondents to act to immediately and reasonably restore the supply water to all residents of the Neighborhoods.

As will be detailed extensively below, the Neighborhoods, containing tens of thousands of residents including infants, senior citizens, pregnant women and ill persons, have suffered from severe disruptions in the water supply for three weeks. The water shortage affects both the consumption of drinking water and the consumption of water for other uses such as washing, toilet flushing, laundry, cleaning, etc.

In light of the shortage and the ensuing distress, the residents are forced to purchase bottled drinking water or tap water in portable containers of questionable quality. The cost of purchasing water for all family members on a daily basis is extremely high and places a heavy financial burden on the residents who are already in a precarious financial condition. It is clear that should the interruption of the water supply continue, the cost of purchasing bottles will rise and the number of residents who can continue to purchase water in this manner will decrease. In addition, carrying water containers to be filled for family needs is a physical burden that not everyone can manage, while the purchase of water bottles cannot meet all of the water needs of the residents, such that the crisis is becoming more and more severe each day.

A decision not to issue an interim order would severely harm the basic rights of thousands of families who have been cut off from the water supply for weeks. Moreover, the absence of an interim order will prolong the infringement of the right to water, which is recognized in Israeli case law as a constitutional and basic right. In addition, the constitutional right to live in dignity, which requires ensuring basic conditions for subsistence for all persons, including water and food, would be undermined. The right to

health would also be infringed upon as being cut off from the water supply constitutes a substantial disruption in the ability of the consumers to live hygienic lives and deal with illness, as well as a disruption in the lives of sick residents who require running water due to their illness. Children whose families have been cut off from water will suffer particular harm, which also severely and immediately undermines their physical and emotional health and safety, as well as their basic rights.

Under the circumstances, the deficient conduct of the Respondents and the high probability of the petition's affirmation, as well as the balance of convenience, clearly supports the issuance of the requested order.

Regarding the deficient conduct of the Respondents, Hagihon has aware of the interruption to the water supply to these neighborhoods since it was first reported, but has not done enough to prevent it, to restore the regular water supply, or to provide a temporary alternate solution to meet the basic water needs of the residents. Respondents 1, 2, and 4 have done nothing, or have not done enough, to oversee Hagihon's work and compel Hagihon to restore the regular water supply to the Neighborhoods or to provide an alternate solution until the water supply is returned to the homes.

Even worse: Hagihon Corporation, as well as the Jerusalem Municipality, were aware throughout recent years of the sharp rise in the number of residents in the area, but did nothing to adapt the water infrastructure to the size of the population. In practice, the authorities stood aside watching this humanitarian crisis emerging in front of their eyes and did nothing to prevent it in advance. Thus, Hagihon admits today that the area's water infrastructure is appropriate for a population of some 15,000 people, while current estimates of the area indicate that it contains some 80,000 residents.

As for the high probability of this petition being affirmed, the issue raised in the petition is a humanitarian concern of the first degree, and includes the basic right to running water – a right recognized both by international law and by the State of Israel, as shall be detailed below. Correspondence between the parties prior to the filing of the petition indicated that there is no argument as to the basic right of the residents of the Neighborhoods to a connection to running water in their homes.

Considering the balance of convenience between the parties, the need to safeguard the basic rights of Jerusalem residents possesses greater weight. The interim order would prevent the continued disregard for the situation of the residents of these Neighborhoods – which are already the most neglected neighborhoods in Jerusalem, and whose plight is completely ignored, especially in this matter. On the other hand, the interim order would not cause any irreversible harm to the interests of the Respondents and does not involve any substantial damage. The damage that would be caused to thousands of families - who have no access to running water, and no possibility of acting to restore their access to water - by a failure to issue the interim order vastly exceeds the damage that might be caused, if any, to the Respondents. Therefore, the balance of convenience in this matter clearly leans in the direction of issuing the interim order.

Considering the extensive and ongoing violation of basic rights, with no acceptable explanation and no ability for the residents to independently restore service to their homes, and considering the severity of the subversion of the rights of the consumers and the vast number of injured parties, the Court is requested to hand down a ruling as soon as possible and schedule an early hearing on this petition.

Introduction

This petition concerns the severe and continued infringement of the basic right to water, right to live in dignity and right to health of tens of thousands of Palestinian residents of East Jerusalem living in the neighborhoods of Ras Hamis, Ras Shahada, Dahyat a-Salam, and the Shu'afat Refugee Camp, to the east of the separation barrier.

For reasons unclear to the Petitioners, the water supply to these neighborhoods was completely interrupted some three weeks ago and still today has not been completely restored. As of today, tens of thousands of residents of the Jerusalem Municipality with blue ID cards have been living without running water in their homes and neighborhoods for weeks. This is a humanitarian crisis of the first degree, and infringes on the right to water, dignity and health, especially of children and infants, the elderly, the sick and persons with disabilities.

Meanwhile, all the authorities connected to this issue – the Respondents to the petition – failed to prevent the interruption to the water supply ahead of time, to oversee the work of Respondent 3 – Hagihon Corporation, or to deal with the crisis from the moment it began.

In addition, and in further expression of the complete disregard by the Respondents for the needs of the residents, no alternate solution to meet the basic water needs of the residents has been offered by any of the Respondents which would allow the residents to meet their basic needs until the crisis is resolved.

The Court is requested to instruct the Respondents to immediately end this water crisis, to restore running water to the homes in the Neighborhoods and to significantly improve the water infrastructure in the Neighborhoods in order to prevent the recurrence of similar crises in the future.

[...]

Factual background

A. Introduction: The Neighborhoods in the Area of the Shu'afat Refugee Camp

21. The neighborhoods Ras Hamis, Ras Shahada, Dahyat a-Salam, and the Shu'afat Refugee Camp (henceforth: "the Neighborhoods") are located in northeast Jerusalem and surrounded by the French Hill neighborhood to the south, the Shu'afat neighborhood to the west and the Pisgat Ze'ev neighborhood to the north.
22. Despite the fact that the Neighborhoods are located within the municipal boundaries of Jerusalem, they are located on the Palestinian side of the separation barrier. The separation barrier, which separates the Neighborhoods from the rest of the neighborhoods of Jerusalem, was completed in this area in 2008. As part of the construction, the Shu'afat Refugee Camp Checkpoint was also built, which as of today is the only checkpoint that can be used for crossing between the Neighborhoods and the rest of Jerusalem.

[Annex 1] Copy of aerial photograph indicating the division of neighborhoods in the Shu'afat Refugee Camp area, attached to this petition as **A/1**.

23. Though the exact number is not known due to the lack of any precise assessment on the part of the relevant authorities, tens of thousands of people live in these Neighborhoods. Various estimates place the number of persons in the Neighborhoods between 60,000 and 80,000. Most of the residents of the Neighborhoods are residents of Jerusalem and have blue identification cards, but due to the lack of any barrier between the Neighborhoods and Palestinian Authority areas, some of the persons living in the Neighborhoods are residents of the PA. In this matter as well, there is of course no precise data available.
24. The Neighborhoods suffer from severe neglect by various government agencies. For example, the education system in the Neighborhoods is particularly inadequate, and the vast majority of the population relies on private schools or recognized but unofficial educational institutions. Some of the neighborhood children are made to study in educational institutions in Jerusalem neighborhoods on the other side of the barrier, necessitating children of all ages – from kindergarten to high school, including special needs students – to cross the checkpoints on a daily basis. Public transportation is substandard, with only two bus lines covering limited areas and which do not meet the needs of the population. Healthcare services in the Neighborhoods are also lacking and residents are forced to primarily utilize hospitals on the western side of the barrier or services provided by international aid organizations.
25. The condition of city services in the area is of low quality, with no comparable situation in any other Jerusalem neighborhood. For example, garbage collection is almost non-existent, and mountains of garbage and filth line the streets. From time to time, municipal workers burn piles of garbage as an alternative to regular collection, which creates an awful odor and smoke hazards throughout the area. The quality of infrastructure and roads is very low, with many roads unpaved, and on those that are paved, a large number of potholes have opened up that do not receive any attention from the Municipality. Sidewalks do not exist; neither do streetlamps or street signs. Welfare services are provided only intermittently. In some areas of the Neighborhoods sewage flows in the

streets, attracting mosquitoes, and causing severe odor and hygiene problems. The Jerusalem Municipality has failed to develop a master plan for the Neighborhoods, and lacking a valid master plan, building permits cannot be acquired for new construction or to authorize the dozens of buildings constructed in recent years. There are no playgrounds or open public spaces for the benefit of the residents. There are no street names or house numbers and the Municipality has announced that none are planned, despite the fact that in other East Jerusalem neighborhoods, the allocation of street names and numbers has recently begun.

26. The Israel Police is also pulling out of the Neighborhoods, with law-enforcement simply nonexistent. As a consequence of this, for example, a drug market has been operating unimpeded for years, directly under the nose of the soldiers, as a result of the proximity of the Neighborhoods to territory under the jurisdiction of Palestinian Authority and the lack of enforcement activity by the Israeli police. The Neighborhoods are also known as a hub for smuggling persons without residency permits and for selling weapons. Crime is rampant and the lives of the residents are in constant danger. Residents of the Neighborhoods have repeatedly contacted the Israel Police requesting that it do its job and enforce the law in the area, but nothing has been done.
27. As stated above, due to the complete failure of the Jerusalem Municipality to prepare a master plan for the Neighborhoods, there is no valid master plan for the area. As indicated by the aerial photograph attached to the petition (A/1), there are only a few specific plans, including a very limited number of buildings in the entire area. As far as the Petitioners are aware, there is no plan for the Neighborhoods currently being designed by the relevant authorities, and without such a plan it is not possible to grant approval to the massive construction which has been completed in the area in recent years.

For a summary of the needs of the neighborhoods beyond the barrier (both the Neighborhoods in the area of the Shu'afat Refugee Camp and the neighborhoods in the area of Kfar Aqab, located across the Qalandiya Checkpoint and not included in this petition), prepared by the Jerusalem Suburbs Community Center on March 4, 2014, see Appendix B of the Affidavit by Colin Hames, Director of the Jerusalem Suburbs Community Center, attached to this petition labeled A/12.

In addition, see Petitioner 2's letter to the Mayor of Jerusalem dated December 20, 2013, attached as Appendix B to this petitioner's affidavit, labeled A/1, in which Petitioner 2 details some of the services which are lacking in the Neighborhoods.

28. The dearth of possibilities for legal construction in all East Jerusalem neighborhoods, which has led to a steep rise in real estate prices, has turned the Neighborhoods in the area of the Refugee Camp – in which it is still possible to purchase or rent housing at relatively reasonable prices – into an alternative for many families in East Jerusalem. This alternative draws families with limited means who are willing to “absorb” the inconvenience involved in living in neglected areas on the other side of the separation barrier in exchange for a housing solution at an affordable price. As a result, massive construction has begun in the area in recent years, which has led to an increase both in the number of homes in the area and in the number of residents.
29. **To summarize this section: the area of the Shu'afat Refugee Camp has in recent years turned into a lawless region, with no state authority taking responsibility or**

taking an interest in the wellbeing of its residents. The result of this destructive policy is severe neglect, which has accumulated into a genuine humanitarian disaster impacting the lives of tens of thousands of residents. This is taking place within the municipal boundaries of Jerusalem within view of the well-tended neighborhoods of French Hill and Pisgat Ze'ev.

B. Hagihon Services in the Neighborhoods

30. In accordance with the general conduct described above, Hagihon also fails to provide water or sewage services that it is obligated to supply to the Neighborhoods' residents, and the other Respondents, who are responsible for supervising the water supply in Jerusalem, do not exercise their powers to obligate the company to do so.
 31. With respect to sewage, we will briefly note that the Neighborhoods in this area lack appropriate sewerage infrastructure, and the existing infrastructure is also of an extremely poor standard and is not properly maintained by Hagihon. The result is an ongoing hazard that harms the residents' health and quality of life.
 32. Regarding water, the Neighborhoods' water infrastructure is extremely poor, and is not capable of meeting the growing water needs of all the area's residents.
 33. According to Hagihon, the existing water and sewage infrastructure in the Neighborhoods, which was established by Hagihon prior to the construction of the separation barrier, is suitable for a population of 15,000 people. Since the construction of this infrastructure, no upgrades have been performed and no additional infrastructure has been added, making clear that the existing infrastructure is simply incapable of providing for the needs of all of the Neighborhoods' residents.
- [Annex 2]** Copy of Hagihon CEO's letter to MK Adi Kol, Chairperson of the Public Petitions Committee, from 16 March 2014, attached to this petition and labeled **A/2**.
34. Concurrent to the ongoing increase in the number of residents of the Neighborhoods, and due to the absence of master plans for the Neighborhoods, no legal arrangements have been made for connecting the Neighborhoods' homes to the water and sewage systems. This is because Section 157 (a) of the Planning and Building Law, 5725-1965 prohibits the connecting of buildings to water if they were built without a building permit.
 35. All of the Neighborhoods' residents' attempts over the years to legally arrange for the connection to water and sewerage systems were unsuccessful. In this context the court is directed to Petitioner 2's affidavit, and to the letters attached to it as appendices 1-5(a). In his affidavit, attached to this petition and labeled Aff/1, this petitioner details and includes **various correspondences initiated by the residents over more than ten years to Hagihon and the Jerusalem Municipality, requesting an improvement in Hagihon's services in the Neighborhoods.**
 36. As a result, and in order to fulfill their basic needs and lead normal lives, the residents were forced to initiate pirated connections to different water sources. Concurrently, and following frequent disruptions to the Neighborhoods water supply, the vast majority of residents purchased large water tanks to save water, which they installed on rooftops, and purchased water pumps to draw water from the underground piping beneath the

buildings. However, it should be noted that these water tanks cannot serve as a replacement for Hagihon's services, as the volume of water that they are able to store is limited, and it is not possible to store water in them for an extended period due to health reasons. Furthermore, as long as there is no water in the pipes it will of course not be possible to fill these tanks. See on this matter Petitioner 5's affidavit, labeled A/3, and also Petitioner 4's affidavit, labeled A/2, which include the following statements:

“7. Since there is no water for the residents, we are forced to purchase bottled drinking water, to buy water tanks, to assemble water pumps, and to install water containers on the roofs. This situation has caused many problems between neighbors. For example, fights break out because the area of the roof is insufficient for the tanks of all of the families. Additionally, if one family possesses a particularly powerful pump that draws a large volume of water, it is likely to harm the neighbors' ability to get a decent water flow, which leads to problems and serious violence between the residents. After all, water matters; water is a synonym for life.”

37. About a year ago, Hagihon initiated a procedure for installing water meters in the Neighborhoods. The water meters were intended, as the name suggests, to measure the water consumption of each consumer separately, and to enable the collection of payments for the costs of water from the consumers. In this context, representatives from the Neighborhoods met with the CEO of Hagihon and other company employees, and received forms that the residents needed to fill out in order to receive the water meters. See also: Section 5 of Petitioner 2's affidavit, Appendix Aff/1 of the petition, and also the affidavit of Mr. Colin Hames, Director of Petitioner 15, Appendix 13 of the petition.
38. Despite this, for reasons that are unclear to the Petitioners, this process was ceased by Hagihon, and so far no water meters have been installed in the Neighborhoods.
39. Nevertheless, **according to Hagihon there are currently only 300 water meters installed in the Neighborhoods.** See also: Letter from Hagihon Appendix A/2 above.
40. The significance of these matters is that Hagihon is not capable of collecting payments for water consumption in the Neighborhoods, and according to Hagihon, the cost of supplying water to the Neighborhoods is NIS 10 million a year, which is not covered by the residents. See also: Letter from the CEO of Hagihon, Appendix A/2 above.
41. Let it be noted that the significance of the non-installation of water meters by Hagihon is not limited to the severe harm it causes to Hagihon's income, but it also causes harm to the owners of the water meters themselves. In some cases the water meters are not connected near the customer's home but at a distance from it, and thus the pirated connections on the same water line greatly increase the listed water consumption of the customer. As a result, the customer is forced to bear higher costs due to water consumption that is not his own. See also in this regard Petitioner 5's affidavit, attached to this petition and labeled Aff/3. In other cases, the water meter measures the total water consumption of an entire building, in a way that makes the division of the payment among different families for the water consumption of each difficult. See in this regard the affidavit of Petitioner 6, attached to this petition and labeled Aff/4, and also the affidavit of Petitioner 7, attached to this petition and labeled Aff/5.

42. However, it is clear that even if water meters were to be installed for all of the Neighborhoods' consumers without upgrading the inferior water infrastructure in the area, this would be insufficient to resolve the water issue and to achieve standards of water services in the Neighborhoods comparable to those in other neighborhoods in the city.
43. We also wish to clarify, that based on all of the details described above, it has emerged that over the years Hagihon operated in one sphere alone: attempting to deal with the difficulty of collecting payments for water usage by the residents of the Neighborhoods, including by way of water meters. The Petitioners do not know of any action taken by Hagihon in recent years with the goal of improving and upgrading the water infrastructure in the Neighborhoods, in order to adapt them to growing demand. However, Hagihon, like the Jerusalem Municipality, knew about the significant increase in the number of residents in the area and the unsuitability of the existing water infrastructure to the size of the population. In fact, it can be said that Hagihon could have foreseen the existence of the current crisis, but did not take the necessary action to prevent it.

C. The Water Crisis in the Neighborhoods in the Past Month

44. As previously stated, water services in the Neighborhoods are particularly poor. In the past there have even been days-long disruptions to the water supply. The Petitioners are unaware of the reason for these disruptions or actions taken by Hagihon to repair them, but it is clear that some action was taken in these instances to restore the continued water supply – albeit to an insufficient degree – to the homes in the Neighborhoods.

[A\3.] Copy of the letter from Petitioner 16 from 8 July 2012, which deals with disruptions to the water in the Neighborhoods which took place in the same period, attached to the petition and labeled A\3.
45. A similar problem also arose approximately one year ago, regarding frequent disruptions to the water flow in the Neighborhoods. In this instance, the problem was resolved after representatives of the residents and the Community Center met with Hagihon. See also on this matter: Petitioner 4's affidavit, attached to this petition and labeled Aff/2.
46. The onset of the recent deterioration, leading up to the current crisis, began several months ago when the disruptions to the water supply in the Neighborhoods became more frequent and the water pressure decreased.
47. Approximately three weeks ago, there was a sudden and enduring disruption to the water supply in the Neighborhoods in the area. The disruption lasted for several days, following which a weak water supply resumed in some of the homes in the area. Still today, this is the prevailing situation.
48. In the absence of an in-depth examination of the state of the water supply to all of the homes in the area by one of the Respondents, it is not possible to properly assess the extent of the crisis and the number of people affected by the water disruption. However, based on conversations with residents of the affected areas, the Petitioners estimate that a

vast majority of homes in the Neighborhoods have been affected.

49. The consequences are severe, and it can be said without reservation that in the entire area (which forms, as stated above, a part of the municipal area of the City of Jerusalem, and which is largely populated by Jerusalem residents) there is a severe humanitarian crisis, which indiscriminately harms children, the sick, the elderly, the disabled, pregnant women, and more.
50. It is clear that a lack of water contributes to a drastic reduction in water consumption in homes. Some of the residents have reduced the number of showers that they and their children take to just one per week (see: Petitioner 9's affidavit, labeled Aff/7, Petitioner 10's affidavit, labeled Aff/8, Petitioner 12's affidavit, labeled Aff/10, and Petitioner 13's affidavit, labeled Aff/11) and reduce the amount of times they wash laundry and clean their homes (see also: Petitioner 9's affidavit, labeled Aff/7, and Petitioner 10's affidavit, labeled Aff/8).

This, for instance, is how Petitioner 9, Akhram Mahmoud Shaheen, a resident of the Shu'afat Refugee Camp, describes the situation in his affidavit labeled A/7:

“3. Because I don't have water at home and my family is blessed with children, I must buy water once a week. The water that I buy comes from various water contractors, including from Bedouin residents of the Occupied Territories. This issue costs me a lot of money and hassle.

4. Due to the water crisis, my wife is forced to reduce her water usage, so my young children shower only once a week or twice a week at most. The situation at home is simply unbearable. At home we face many problems due to the lack of water, including the problem of washing clothes, cooking, cleaning the house, personal hygiene of family members and more.”

51. Due to the severe hardships, the residents purchase expensive bottled water, or fill water containers with tap water that they buy in areas under the jurisdiction of the Palestinian Authority without knowing the source of the water, how the water has been treated, and whether it is fit for consumption. Instead of water flowing from the faucets, the residents' homes become filled with bottles which they must use for all of their needs. See also: Petitioner 2's affidavit, labeled Aff/1, and also the affidavits from Petitioners 8-14, labeled Aff/6-12.

This is how Petitioner 8, Bassem Ramadan Mesek, a resident of the Shu'afat Refugee Camp, describes matters in his affidavit labeled Aff/6:

“2. We are in very serious distress due to the lack of water. For some reason the water was disconnected in the camp and people don't know how to cope with the new reality.

3. The people in the Shu'afat Refugee Camp come from a very difficult socio-economic background and they don't have sources of income. Residents are forced to buy bottles of drinking water and water containers from 'water contractors'. This water is unclean and there is even a concern that it is full of bacteria, and so I prefer to buy bottled water so as to ensure the health and safety of my two young children.”

52. Petitioner 10, Ibrahim Rabahi Dwik, is a Ras Shehadeh resident. He is wheelchair bound and is recognized by the National Insurance Institute as having a 75% degree of disability. In his affidavit, labeled A/8, he describes the daily difficulties with which he contends:

“3. Lately, the water supply in my home and in the Neighborhood overall has stopped almost completely. After the disconnection of the water and the disruption of the supply to the neighborhood, I have been forced to buy water from ‘water contractors’ who circulate in the neighborhood, I pay between NIS 250 and NIS 300 for every tank of water. I try to share this cost with my neighbor who has three children with special needs. The water, that I am forced to buy and carry to my home approximately once every two weeks, serves only the basic needs of the family, including showering and laundry...

6. Sometimes I am forced in the absence of other options to load two small water tanks on my wheelchair and begin looking for various donors, who are prepared to give me water for my children. To my great regret, this happens from time to time, but I have no other choice.”

53. As emerges from Petitioner 13’s affidavit, labeled Aff/11, educational institutions also suffer from the water disruption. However, the Petitioners are aware that educational institutions run by UNRWA that operate in the Neighborhoods do continue to receive a regular water supply.

[...]

The Legal Claim

A. East Jerusalem - Applicable Law

68. As is known, in 1967 Israel conquered East Jerusalem, the remainder of the West Bank and the Gaza Strip. Though Israel claimed that it never intended to annex the territories of the West Bank and Gaza, the Israeli Government decided to add 70 square kilometers to the municipal boundaries of Jerusalem from the conquered areas surrounding Jerusalem to north, south and east, and applied the “law, jurisdiction and administration of the State” to the area. This area is known today as East Jerusalem. The expansion of the city’s boundaries and the application of Israeli law to East Jerusalem were carried out through legal amendments, orders and proclamations. The residents of East Jerusalem were given permanent residency permits under the Entry into Israel Law, 5712-1952.
69. The consequence of the annexation of East Jerusalem was, according to domestic Israeli law, the application of Israeli law within the area of East Jerusalem. However, “the question of annexation of any place on land is not subject to the arbitrary treatment of any one state... international law is what determines when a state can annex territory, and no legal annexation can be carried out except according to [international law]” (Yoram Dinstein, “Zion will be Redeemed in International Law,” *Hapraklit* 27 (1971) 5, 7), because “a state’s territory, or its sovereign domain, is a matter determined by international law,” and not according to the domestic law of a state (Amnon Rubinstein

and Barak Medina, *Constitutional Law of the State of Israel* (6th version, 2005), Vol. 2, 924).

70. As long as the State of Israel wishes to see East Jerusalem and its residents as part of Israel, it is thereby obliged to apply to East Jerusalem and its residents the normative human rights protection granted by Israeli law. Israeli law includes both constitutional protections and obligations bestowed by the provisions of international human rights law.

B. Protecting the Rights of the Neighborhood's Residents Following the Construction of the Separation Barrier

71. As aforementioned, the concrete barrier which was built in the area of the Neighborhoods separates and divides the Neighborhoods from the rest of Jerusalem. The route of the barrier was approved in the High Court of Justice's ruling H CJ 6193/05 Residents' Council of Ras Khamis v. The Competent Authority under the Emergency Land Requisition (Regulation) Law, (unpublished, decision rendered on 25 November 2008).
72. As indicated in the above ruling, the petitioners (residents' councils in the Neighborhoods along with many other residents) requested that the planned route of the barrier be diverted further east, in a manner that would not separate them from the city of Jerusalem. In response, representatives from the authorities argued that the basis for the determination of the route of the barrier was security considerations, due to the existence of terrorist infrastructure in the Neighborhoods. As said, the court approved the route of the barrier as requested by the authorities, on the basis of, *inter alia*, the following consideration, in section 24 of the ruling:

“The fence is likely to significantly impact the reality of the lives of the permanent residents who live in the neighborhoods of the Shu’afat ridge, and to hinder the execution of basic day-to-day activities. However, in consideration of the State’s obligations, foremost of which being the obligation to establish a crossing terminal in the area, it appears possible -- and therefore compulsory-- to minimize most of these violations to a level that will allow for an ongoing daily routine in the neighborhoods of the Shu’afat ridge after the construction of the security fence.”

73. Prior to handing down the above ruling, the government approved decision #3873 on 10 July, 2005, entitled “Government Ministries Assessment Regarding ‘Jerusalem Outskirts’ and Treatment of the Population of the Jerusalem Region as a Result of the Construction of the Fence.” The decision specifies the various authorities' obligations prior to the fence being ‘closed’ around the Neighborhoods, after which they would be separated from the rest of Jerusalem. Even though the decision does not explicitly relate to the issue of water (or to many other issues, which are either clearly obligations of the municipal authority, such as waste collection, constructing and maintaining infrastructure and roads, etc.), it is clear to all that this decision reaffirms the obligation of various government authorities and the Jerusalem Municipality to guarantee the needs of the Neighborhoods’ residents, despite their separation from Jerusalem via the separation barrier, as well as showing that it is prepared to bear the financial costs necessary to do so.

[A/9.] Copy of Government Decision #3873 from 10 July 2005, attached to this petition and labeled A/9.

74. Owing to the decision to construct the separation barrier in a way that would separate the Neighborhoods from the rest of Jerusalem, it is incumbent upon the State and the Municipality to fulfill their obligations under law towards the residents of the Neighborhoods, despite the special costs and difficulties involved in doing so due to the establishment of the barrier.
75. Moreover: Basing the route of the barrier upon security considerations connected to the existence of “terrorist infrastructure” in the Neighborhoods (in the words of the State presented in section 11 of the ruling), assumes from the outset that it will be within the capabilities of the various service providers to overcome the same security risk that exists according to the State’s position, and to continue to provide the Neighborhoods’ residents with the services to which they are entitled. Therefore, a claim cannot now be accepted that the existence of a security obstacle prevents the fulfillment of the basic rights of the Neighborhoods’ residents.