

Petitioners:

1. Ali Hussein Mahmoud Abu Safiya, Mayor of the Beit Sira Village Council
2. Nimer Yussef Nimer Flana, Mayor of the Saffa Village Council
3. Hassan Namar 'Abed Mafarja, Mayor of the Beit Liqya Village Council
4. Salah Sayid Mustafa 'Atiya, Mayor of the Kharbata al-Misbah Village Council
5. Naji Araf Naji Saliman, Mayor of the Beit Ur at-Tahta Village Council
6. Auda Araf 'Abed Alhamid Samara, Mayor of the Beit Ur al-Fauka Village Council
7. The Association for Civil Rights in Israel
8. Faruk Mahmoud Isma'il Ankau, resident of the village of Beit Sira
9. Mustafa Salama Jamil Abu Hashish, resident of the village of Beit Sira
10. Hilmi Akel Ahmad Abu Zefaya, resident of the village of Beit Sira
11. Ibrahim Mahmoud Auda Dar Haj, Beit Sira
12. Rashid Muhammad Hassan Hamdan, resident of the village of Beit Sira
13. Hussein Shehada 'Aasi, resident of the village of Beit Liqya
14. Jamil Mahmad Mahmud 'Aasi, resident of the village of Beit Liqya
15. Yussef 'Izat Mustafa 'Aasi, resident of the village of Beit Liqya
16. Ziyad Bakker Assad 'Aasi, resident of the village of Beit Liqya
17. Haled 'Abed Alkader Muhammad Shibli, resident of the village of Beit Liqya
18. Assad Yunis Mustafa Mussa, resident of the village of Beit Liqya
19. Saleh Sayid Mustafa 'Atiya, resident of the village of Kharbata al-Misbah
20. Mustafa Mahmad Sayid Darag, resident of the village of Kharbata al-Misbah
21. Awadi Saleh Awazi Harfush, resident of the village of Kharbata al-Misbah
22. Ibrahim Abdullah Ahmad Hamudeh, resident of the village of Kharbata al-Misbah
23. Shaker 'Abed Almeti 'Ali Masalah, resident of the village of Kharbata al-Misbah
24. Mahmud Samur Muhammad Masalah, resident of the village of Kharbata al-Misbah

25. Naji Araf Naji Saliman, resident of the village of Beit Ur at-Tahta

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V.

Respondents:

1. Minister of Defense
2. Commander of IDF Forces in Judea and Samaria
3. Commander of the Binyamin Brigade

Represented by the State Attorney, Ministry of Justice, Jerusalem

Petition for an Order Nisi

A petition is hereby submitted for an order nisi that instructs the Respondents to show cause as follows:

- A. Why they do not allow the free movement of Palestinians, either in vehicles or on foot, on Route 443 and the Beituniya-Ramallah road (on which the Beituniya roadblock was placed)?
- B. Why they do not remove the permanent roadblocks erected by the army on the access roads connecting the six villages – Beit Sira, Saffa, Beit Liqya, Kharbata al-Misbah, Beit Ur at-Tahta, Beit Ur al-Fauka (hereinafter “the villages”) – to Route 443, which block access from the villages to Route 443?

A map of the route and the blocked access roads of the six villages is attached and labeled **Appendix 1**.

Introduction and Request for an Urgent Hearing

This petition is in the matter of the directives and actions of the Respondents that violate the right of movement of Palestinian residents of the petitioning villages on Route 443, a major regional highway within the West Bank, while granting the use of this road to Israelis only. This violation is a direct result of directives from the Respondents to block the access roads connecting the petitioning villages to the highway, and from the imposition of various punitive measures in the past and present against Palestinians found traveling or walking on this highway.

This petition is also in the matter of the Respondents' practice of imposing and enforcing movement restrictions and prohibitions without legal authorization to do so. To date, no legal directives have been issued or published that authorize the military forces in the area to impede movement on this highway of Palestinian residents of the petitioning villages. Despite the absence of any legal order, the Respondents, unlawfully and exceeding their authority, are barring movement on this highway from the residents of the petitioning villages and in fact all Palestinian residents of the territories.

The Respondents' failure to sign and publish orders that would anchor and clarify the current situation appears to derive from the Respondents' own understanding that a black flag hovers over the actions that are the subject of this petition, actions that could bring disgrace to the State of Israel. **This is because this matter concerns actions and directives – the imposition of sweeping prohibitions on movement, barring use of a public road from members of the public, and the violation of fundamental human rights – that are imposed on one basis only: national origin.**

These actions and directives undermine principles that are accepted in the enlightened world and our legal system as well – that differential treatment based on national or ethnic origin constitutes intolerable, unlawful, and immoral discrimination.

Barring the movement of local Palestinians on Route 443, a major traffic artery in the region, severely violates basic rights and disrupts the fabric of life of the approximately 30,000 residents of the six petitioning villages. Ever since the highway was closed to local residents, what was once a fifteen-minute journey to Ramallah under comfortable and safe conditions has become a long, convoluted, and unsafe passage through congested village centers. Continuing this situation over a period of years has severely harmed the fabric of life of the village residents and their ability to maintain economic, social, and family ties.

The subject at hand therefore concerns one of the gravest and most harmful matters for which the Respondents are responsible: the egregious violation of the fundamental human rights of the residents of the occupied territory, and the expropriation and confiscation of essential public resources, without providing any alternative, for purposes of rendering these resources available for the exclusive use of Israelis.

The Respondents' actions in the matter of this petition constitute just one instance of **a process of institutionalized, systematic and deliberate discrimination against Palestinian residents of the West Bank vis-à-vis Israelis in the area.** Indeed, segregation in the West Bank on the basis of nationality is not a new practice of the Respondents. This segregation has already been imposed through application of a different legal regime on the settlers and settlements, and maintaining two parallel and separate criminal law systems. Indeed, this institutionalized discrimination has reached unprecedented legal and moral depths in recent years with creation of the legal regime that accompanied construction of the separation barrier¹ and the non-legal regime of "forbidden roads." Under the forbidden roads regime, a network of modern, rapid and convenient highways in the West Bank is designated for Israeli use only, while the Palestinian residents of the area, constituting the vast majority, are prohibited and/or prevented from using them. By prohibiting Palestinians from using the main highways, the Respondents have left them with the sole option of using old, narrow, rundown, and dangerous roads, which for years have not had the capacity to meet their transportation needs. This petition, as noted, concerns some of the systematic discrimination in this latter area.

¹ The legality of the "permit regime in the seam zone" is being deliberated in HCJ 639/04 and HCJ 9961/03, both petitions pending in this Honourable Court.

It should be noted that the primary issue – the question of the illegality of sweeping movement restrictions based on national origin – was raised in HCJ 3969/06 with regard to the prohibition of Palestinian movement on another road (the Beit ‘Awwa-Dura road), which is still pending before this Honorable Court.

Through creation of the unlawful “forbidden roads” regime and other movement restrictions imposed upon the Palestinian population, the Respondents have turned the right to freedom of movement in the West Bank into a right that is conditional on one's nationality. As a result, the Palestinian civilian population has been deprived of this basic right, even though this population is supposed to enjoy the status of protected persons in the occupied territory, where the military commander is obligated to protect them and their public life and order.

Despite repeated interventions from the Petitioners, no changes have been made to the Respondents’ actions or positions. Even as the Respondents deny the existence of travel prohibitions for Palestinians on the highway, they continue to prevent the movement of Palestinians on it.

Therefore, in light of the severe and ongoing violations of basic human rights, which are intensifying daily, this Honorable Court is asked to schedule an urgent hearing on this petition.

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Factual Background

A. Description and History of the Region

1. Route 443, which passes within the West Bank, is the main highway south of the Ramallah district and *the major traffic artery linking the petitioning villages with the city of Ramallah*. The section of road dealt with in this petition extends from Beit Sira in the west to Beituniya and Qalandia in the east.
2. Route 443 originated during the British Mandate era when the road ran from Ramallah and Beituniya, passing through the villages of Beit Ur al-Fauka, Beit Ur at-Tahta, Kharbata al-Misbah, and Beit Sira, and from there continued to Latrun and split in the directions of Lod and Ramla, to Gaza or Jerusalem.
3. Throughout the years since, during the period of Jordanian rule of the West Bank and the Israeli occupation until soon after the outbreak of the second Intifada, the highway served as the main road for the area residents, including the tens of thousands of people who live in the petitioning villages.
4. Movement on this highway is critical for the residents of the area. It is the access route to their agricultural lands located on both sides of the road, and their access route to the city of Ramallah on which they are dependent in many ways. Ramallah is a business and commercial capital on which village residents rely for their livelihood, various social services, including hospitals and other medical services, and it is home to many relatives of the villagers.

Access to Route 443, therefore, is vital to every aspect of life for the residents of the petitioning villages, and critical to their ability to maintain a normal life, earn a livelihood, get an education, and obtain necessary services.

It is emphasized that there is no alternative to Route 443 for the area residents, who have no other major road at their disposal.

5. **The Respondents should agree to this factual description, as they themselves argued, upon expropriating lands from the local residents in the 1980s in order to expand the road and slightly alter its route, that the highway filled an essential need for the residents of the area.**

The Respondents made this claim in response to a petition submitted in the early 1980s against the military commander's plan to expropriate the lands, which had been acquired by the petitioning association for constructing residential units for member teachers. See HCJ 393/82 *Jam'iyyat Iskan al-*

Mu'aliman Altauniya Almahduda Almasauliya vs. Commander of IDF Forces in Judea and Samaria, PD 37(4) 785 (hereinafter "*Jam'iyyat Iskan*").

The petition was lodged against the intent to expropriate the association's land and cancel its construction permits for purposes of implementing a road-building plan. The plan called for a junction between two highways planned for future construction in the West Bank. One of these roads, designed to link Ben Shemen with Atarot, is the highway now known as Route 443, the subject of this petition.

6. In response to the claims of the Petitioner, who challenged the authority of the military commander to expropriate land for establishing a highway system that would serve the citizens of the occupying power, the Respondents argued:

In factual terms ... the goal of the road plan is to serve the needs of the region. It will enable a fast link among the settlements of Judea and Samaria. It will serve the local population of Ramallah, Birnaballah, Gaira, Nabi Samuel, Beit Iksa, Beit Hanina, Biddu, Rafat and Bethlehem...*The Respondents emphasized that the roads in Judea and Samaria were outdated, and could no longer bear the large number of vehicles using them.* For example, in 1970 there were 5,000 cars and 7,000 drivers in the region, while in 1983 there were 30,000 cars and 35,000 drivers. This growth, according to the Respondents, necessitated the planning and construction of a new system of roads.

(Emphasis added - L.Y.)

Jam'iyyat Iskan, p. 790.

7. The Court accepted the Respondents' factual account and stated that it was satisfied that the considerations taken into account by the Respondents were regional considerations and not Israel's needs alone (*ibid.*, pp. 795-796).
8. In rejecting the petition, the Court ruled that it had no hesitation or doubt "that Israel's concerns and civil needs were not the basis of the road plan", and it upheld the authority of the military administration to invest in basic improvements and carry out long-term planning, so long as this is done for the benefit of the local population:

Under these circumstances, the military authority is authorized to invest in basic improvements and carry out long-term planning for the benefit of the local population... There is no problem with preparing a national road plan: The transportation needs of the local population are increasing; the state of the roads cannot be frozen in time. Therefore the military authority is authorized to prepare a road plan that takes into account current and future

developments. Of course, the roads will remain even after the military authority comes to an end, but this is of no significance. This plan in no way blurs the line between military and civil authority. The fact that this project will be implemented in cooperation with Israel in no way invalidates the plan, on condition that it is carried out for the benefit of the local population.

Jam'iyyat Iskan, p. 811.

9. In 1988, one year after the outbreak of the first Intifada, the Israeli authorities altered the route of the road in some sections and widened it with the aim of ensuring the security of Israelis traveling on it, to prevent them from passing through Arab villages. To that end, the route of the road was shifted in several places and distanced from the villages of Beit Ur al-Fauka, Beit Ur at-Tahta, and Beit Sira. At the time, the authorities claimed that the road, to be called "Route 443", would serve Israelis and Arabs alike.
10. To widen the road and alter its route, lands belonging to Palestinian residents of the petitioning villages were expropriated – a swathe of land ten kilometers long and 150 meters wide was taken, extending from the village of Tira to the village of Beit Sira, and thousands of olive trees were uprooted.
11. From then until the outbreak of the second Intifada, the road was used by both Palestinian and Jewish residents. **For the Palestinians, the road was the sole route of transportation to Ramallah and the nearby villages.**
12. Thus, even in the 1980s, the Respondents claimed that the existing West Bank road system did not adequately meet the needs of the inhabitants, and that the local population required a new system of highways. Hence, the Respondents cannot now claim in good faith that the narrow old highway that winds its way through the villages, which did not meet the needs of the local population in the early 1980s, meets their needs today, more than 20 years later and with traffic having increased manyfold.

B. Restrictions and Prohibitions on Palestinian Use of Route 443

13. In recent years the Respondents have prohibited the use of Route 443 to Palestinian movement – in vehicle and on foot.

The prohibition is general, and applies even in cases of medical and other emergencies. Likewise goods coming from Israel or elsewhere in the West Bank that are bound for Palestinian villages are not allowed passage on this road.

14. With the outbreak of the second Intifada, the army began to make it increasingly difficult for Palestinian residents to use Route 443. At first this was done by blocking the access roads of the villages, establishing manned roadblocks along the road, army patrols, and various punitive measures against Palestinians caught driving or walking on the highway.
15. In the early days of the movement prohibition, some residents of the villages continued to try to use Route 443. Since all access roads to the highway were blocked, they tried to reach the highway via dirt roads and steep hills. Residents who were caught were subjected to various punitive measures by the soldiers deployed in the area – from warnings and threats to detaining them extensively for no reason, confiscating their car keys, and even blows and more serious abuse. Palestinians who traveled on this highway also met with sanctions from the police, who cited them for traffic violations and imposed fines. The aim of these actions was to make clear to the Palestinian residents that traveling or walking on Route 443 was prohibited to them. Since 2002, prohibition on use of the highway by Palestinians has become absolute.

This is what happened a year ago to Mr. Firas Fahri Ankawi, aged 24, from the village of Beit Sira. Mr. Ankawi was detained in his car for hours on the allegation that he was driving on an Israeli road. He was released after six hours, but his driver's license was confiscated for a month. Similar punitive measures were taken against him on February 1, 2007 when he was driving on the highway again. Soldiers stopped him and then summoned the Border Police. Patrolmen who arrived bound his hands and took him to the Border Police base in Atarot. There he was detained for approximately five hours and then released, but his driver's license, vehicle registration, vehicle insurance, and car keys were all confiscated.

16. Over the years, the Palestinian prohibition on using the highway has become permanent. Roadblocks placed at the access roads to the villages have taken different forms, becoming more elaborate and permanent – mounds of dirt, boulders, gates, and concrete barriers.
17. Currently all the access roads that link the petitioning villages to Route 443 are blocked in a manner that completely bars the residents from making use of the highway:

- 17.1. *The village of Beit Sira* – the access road from the village to the highway is blocked by concrete barriers.
A photograph of the roadblock on the access road taken on March 5, 2007 is attached and labeled **Appendix 2-A**.
- 17.2. *The villages of Beit Liqya, Kharbata al-Misbah, Saffa, and Beit Ur at-Tahta* – all the access roads linking the villages to the highway are blocked by concrete barriers.
Photographs of the roadblocks on the access roads taken on March 5, 2007 are attached and labeled **Appendices 2B – 2-D**.
- 17.3. *The village of Beit Ur al-Fauka* – the access road from the village to the highway is blocked by concrete barriers.
A photograph of the roadblock on the access road taken on March 5, 2007 is attached and labeled **Appendix 2E**.
18. To dispel any doubt, we emphasize that we are referring to **de facto** movement prohibitions and restrictions that are enforced through a number of primary measures – physical roadblocks and patrols by security forces who are charged with keeping Palestinians off the highway. **The situation is de facto, as opposed to de jure, since the commands to prohibit and restrict Palestinian movement which have been enforced for years were never published in an order or other directive, as required by law.**
19. Thus, under discussion are unauthorized directives and actions that are causing severe violation of human rights.
20. It is not clear which party among the Respondents was the first to order that the highway be closed to Palestinian traffic. According to Col. Gal Hirsh, the Ramallah Brigade Commander at the time of the outbreak of the second Intifada, it was he who made the decision:

“I turned Route 443 into a highway for Israelis only,” he said with satisfaction, emphasizing that it was his decision. “I closed all the exits to the Palestinians.”

Quoted in R. Drucker and O. Shelah, *Boomerang: The Failure of Leadership in the Second Intifada* (Keter, 2005), p. 31.

A copy of the relevant pages from this book are attached and labeled **Appendix 3**.
21. Ever since, these exits remain closed, and the Respondents actively continue to block Route 443 to Palestinian traffic. Thus, even now, all parties in the

chain of command continue to issue the very same directives and act to prevent the village residents from using the highway.

C. Injury to the Population

22. The prohibition against Palestinian movement on Route 443 denies the local population use of the only major highway in the area. This roadway served them for decades as the main transportation route among the villages and to the regional capital of Ramallah.
23. Barring use of the highway means that the only route available to the Palestinian residents of the area is a poorly maintained and winding road that leads from the villages of Beit Sira and Beit Liqya through Kharbata al-Misbah, Beit Ur at-Tahta, Saffa, Bil'in, Kafr Ni'ma, 'Ein Arik, Beituniya, and from there to Ramallah. This journey is several times longer in distance and time and far more costly.
24. The quality of the alternative road is extremely poor: Along the entire road are many potholes and steep sections, and it is only 4-10 meters wide and becomes particularly narrow where it passes through the villages. The road has only one lane in each direction and no shoulders or sidewalks, guard rails, lighting, or drainage. The road is littered with obstacles and potholes, compelling very slow driving. There are no traffic signs or street lights.
25. Travel along this road is a difficult and arduous journey with severe jostling over bumps, which frequently leads to travel sickness among travelers. It is an especially difficult journey at times of emergency or transport of the ill. Travel under these circumstances can worsen one's physical condition, leading to premature births and even death.
26. In addition, temporary roadblocks are frequently erected along this alternative road near the villages of Bil'in, Ni'ma, and 'Ein Arik.
27. Because Route 443 is barred to Palestinian traffic, this secondary road has become the sole regional highway, serving all 35,000 residents of the area. Additional movement restrictions were imposed on the residents of the villages to the west and northwest of Jerusalem – Kharbata Bani Harith, Deir Qaddis, Ni'lin, Al-Midiya, Qibya, Shuqba, Budrus, Rantis, Qatanna, Biddu, Beit Surik, Beit Ijza, Beit Duqqu, A-Tayba Ghraib and Umm al-Lahim – adding greatly to the congestion on this alternate route.

28. Serious traffic accidents have become common on the alternate road. This road has taken the lives of dozens of people in fatal car accidents, and in recent years a number of accidents have involved children walking to schools located along the road.
29. As a result of the movement prohibition on Route 443, travel distance between the villages and Ramallah has doubled and sometimes tripled. The distance between Beit Ur al-Fauka and Ramallah, for example, has more than doubled. Instead of a 12-km journey on Route 443 under safe and comfortable conditions, residents must now make a 28-km journey on a narrow, rundown, and dangerous road. The journey takes three times more time: Instead of 15 minutes, the trip now takes 45 minutes under normal conditions, and one-two hours or more when the army places temporary roadblocks on the road.
30. These circumstances have caused a substantial rise in the cost of the journey. For example, the cost of traveling from the village of Beit Ur al-Fauka to Ramallah rose from NIS 2.50 to NIS 6.00 per passenger in a public minibus, while taxi fares rose from NIS 20 to NIS 70.
31. It is difficult to give a comprehensive portrait of the extent of the harm the closure of Route 443 has caused to the residents of the villages, their livelihoods, and the fabric of their lives. The type, extent, and severity of injury vary from person to person and time to time. Nevertheless, several common types of damage can be identified:
 - 31.1. The increased travel cost and travel time, and the difficulties of the journey, have caused many village residents to drastically reduce the frequency of their trips to Ramallah and the surrounding villages. This has major implications for all aspects of the daily lives of the residents.
 - 31.2. Access has been blocked to hundreds of dunam of agricultural land south of the road, land that is planted with thousands of fruit-bearing olive trees that can only be reached via circuitous and indirect routes. The significantly higher cost of reaching the farming plots and the difficulty in transporting produce from the villages to Ramallah have wrought serious financial damage to many village residents, especially those for whom farming is their sole livelihood.
 - 31.3. The highway blockades and concomitant transportation problems have led to the closing of many village businesses and encumbered the travel

of employees to their workplaces in Ramallah. As a result, there is a steep rise in unemployment in the villages.

- 31.4. Some village residents who studied at the Ramallah university have been forced to curtail their studies due to the high cost of getting there.
- 31.5. Many families who lived in the villages but had business in Ramallah were forced to move to the Ramallah district, where they live in rented homes.
- 31.6. Social visits and family gatherings among local people, formerly a daily occurrence, have now been reduced to a minimum. Family gatherings now take place mainly during holiday periods.
- 31.7. Because of the closure of Route 443 to Palestinian traffic, the six villages are now cut off from any medical center. Health services to residents of the villages are available in Ramallah. At times of emergency, this increases the risk to the sick and injured due to the long distance to the hospital. Consequently, unlike in the past, every emergency could result in complications or even death because of the long and arduous journey to Ramallah on the alternate road. As a result of the transportation difficulties and the increasing cost of travel to Ramallah, many chronically ill people who need ongoing treatment are forced to do without, in part or sometimes in full.
- 31.8. West of Beit Ur at-Tahta is a regional school. In past years, children from the villages of Ur al-Tahta, Saffa, Beit Sira and Kharbata al-Misbah also studied there. Around 60 children from each village are enrolled in the school. Due to the travel prohibition on Route 443, students from Beit Sira and Kharbata al-Misbah have difficulty getting to school. In the past they would walk half a kilometer to get to school. Now they are forced to use public transportation and walk 5 kilometers on foot. The cost of their travel is another financial burden on the children's families.
- 31.9. Barring the forbidden road to residents of the villages and Palestinians in general also makes it very difficult for the residents of the six villages to obtain basic necessities – both because of the high cost of transporting them on the rundown alternate road and because of the logistical complications.

32. ***In Summary:*** As a result of the movement prohibition on the use of Route 443 by local residents, they are forced to take the only alternate route – a narrow and rundown, rural, back road that winds through the villages and does not meet the needs of the population. The length of the journey, its duration, and cost have doubled if not tripled. Thus, instead of a drive of fewer than 15 minutes on a modern, quick, safe, multilane highway, the residents are channeled to an obstacle-ridden, tortuous, long, and winding route that passes through the local villages.

The Village of Beit Sira

33. Approximately 3,000 residents live in the village of Beit Sira.
34. Before Route 443 was blocked and its route changed, approximately 60 farmers from the village would sell their produce on the highway. Since the closing of the highway to Palestinians, they are prohibited from doing so. This has been a serious blow to the village farming industry. Other businesses situated along the highway – shops, workshops, and restaurants owned by village residents – were also forced to shut down.
35. The decrease in employment among village residents as a result of the highway closing is estimated at 80%. The increased unemployment has led to reduced income, a decline in the standard of living, and a rise in the poverty rate, currently about 60%.
36. The residents of the village are totally dependent on Ramallah for medical services. The village has no hospitals or medical centers other than a governmental clinic staffed by a general practitioner one day a week only. Barring use of the highway has reduced access to medical services for village residents, which could endanger lives. Since the highway was closed, for example, there have been several cases of premature births and deaths of residents en route to the hospital.
37. Other emergency services, such as firefighting, are also not located in the village or nearby. As a result, fire trucks from Ramallah using the alternate road can sometimes take several hours to arrive, as happened in 2005, for example, when a fire broke out in one of the village homes. The fire engine arrived two hours after it was summoned, allowing the fire to spread and entirely destroy the house. A similar event happened in 2006.

38. There are two schools in the village: a girls' high school with 450 students and 22 teachers, and a boys' middle school with 360 students and 17 teachers. There are many disruptions in the schools as a result of the highway being closed. Most teachers come from outside the village. Since movement was prohibited on the highway and roadblocks became frequent on the alternate route, the teachers do not get to work on time. Some teaching positions cannot be filled and there is a shortage of teachers in the village due, inter alia, to the length and arduousness of the journey on the alternate road.
39. The closing of the road has placed an additional financial burden on the high school students from this village who study at the Ittihad school in Safa, approximately 3 km away. This is in addition to the hardships experienced by the students due to frequent searches and inspection at the checkpoints. Some students have dropped out of school as a result of these difficulties.
40. The prohibition on use of the highway affects not only schoolchildren, but also students studying at the universities and colleges of Ramallah. Until the highway was blocked, the trip was short to these institutions of higher learning and the students were able to continue living at home in the village. Today, many have been forced to rent living quarters in Ramallah, since the expense and hardship of travel on the alternate road does not allow them to make the trip on a daily basis. Some twenty-eight students who are residents of the village currently have this problem.
41. The travel difficulties have negatively impacted the social fabric of village life and, in general, cut off residents from their relatives and friends. Mr. Ali Abu Safiya, Mayor of Beit Sira, testifies as follows:

My sister is married and lives in the village of Beit Surik. I used to visit her once every week or 10 days, but now I see her barely three times a year, usually on special occasions. She has a married daughter who lives in the village of Biddya, in the Salfit district. I hardly visit her at all, and only on special occasions. I used to participate in all the special occasions of my relatives and friends in the city, but now I am unable to do so. In many cases, I don't even hear about the passing of dear friends from the city. I remember when 20-30 weddings would be held in the village every year, but last year there were only five weddings due to the deterioration of the economic situation, which gives rise to many negative social phenomena, such as stealing...

The affidavit of Petitioner 1 is attached to this petition.

The Village of Saffa

42. Approximately 4,500 residents live in the village of Saffa.
43. The transportation difficulties created by the closing of Route 443 have led to their increasing isolation from the regional capital of Ramallah, on which they are dependent for various essential services, as well as commerce, education, and more. The damage to the village residents has been so severe that many have been forced to move their home base from the village to Ramallah.
44. The primary source of income for village residents is farming. To sell their produce, the residents must get to Ramallah or, alternatively, merchants from the big city must come to the village to purchase their goods. Blocking the highway has severely eroded their farming income due, inter alia, to the great difficulty of marketing their produce.
45. Most essential services, such as health and firefighting, are provided to the village from hospitals, clinics, and fire stations in Ramallah. Preventing use of the highway has seriously limited the access of villagers to medical services. Many chronically ill villagers who need ongoing medical treatment have been forced to do without because of the transportation difficulties and the significantly higher cost of traveling to Ramallah.

The affidavit of Petitioner 2 is attached to this petition.

The Village of Beit Liqya

46. Approximately 9,000 residents live in the village of Beit Liqya.
47. Residents of this village are also dependent on Ramallah in every aspect of their lives – for health, firefighting, and other essential services, for marketing their agricultural produce as a source of employment, and as a center of social and family life.
48. The closing of Route 443 to the village residents has seriously disrupted the daily lives of Beit Liqya residents. The damage has been so severe that many residents have moved their home bases from the village to Ramallah due to the hardship and suffering involved in traveling on the alternate road with its many roadblocks.
49. Due to the transportation difficulties, village residents have a hard time reaching places of work in Ramallah, and they waste a lot of time on the long

and arduous alternate route, which involves unpredictable delays on a daily basis.

50. Medical services for the village resident are available only in Ramallah. As a result of barring their use of the main highway and the difficulties of the journey, every emergency could become complicated and even end in death. For example, due to protracted delays en route to the hospital, a village boy, wounded during a protest against construction of the separation fence on village land, bled to death. The delay in arrival of the ambulance was a result of the long route it had to travel. Expert doctors noted that the boy's life could have been saved had he reached the hospital in time.

The affidavit of Petitioner 3 is attached to this petition.

The Village of Kharbata al-Misbah

51. Approximately 6,000 residents live in the village of Kharbata al-Misbah.
52. For these villagers, the closing of Route 443 means that the cost of travel to Ramallah has doubled.
53. As with the other villages in the area, here too the residents are dependent on Ramallah in many ways. First and foremost, medical services and institutions of higher education are located there, besides the fact that most families in this village have close relatives in Ramallah.
54. Barring them from the highway has harmed village residents in a range of areas, including problems accessing health services, erosion of social and family ties, and difficulties in reaching educational institutions.
55. The increased cost of travel has meant, for example, that chronically ill villagers cannot access the daily treatments they need. In addition, college students have been forced to leave their homes in the village and move to Ramallah. Others, unable to meet the cost of travel from the village or rent in Ramallah, dropped out of their studies.

The affidavit of Petitioner 4 is attached to this petition.

The Village of Beit Ur at-Tahta

56. Approximately 5,000 residents live in the village of Beit Ur at-Tahta.

57. Because the highway and access roads are blocked to them, village residents have started using alternate dirt roads, negotiable only by animals and foot traffic.
58. Although there are no official figures for the number of village businesses that have shut down since Route 443 was closed to village traffic, it is known that the owners of at least ten local businesses have lost significant amounts as a result. Examples include a marble-working factory owned by the Rabah al-Birawiya family; a factory owned by Ra'ed al-Birawiya; the Al-M'awri Flooring and Ceramics Company; a grocery store owned by Ibrahim Muhammad and Mussa Muhammad Mussa; and a bakery owned by Mr. Munir Aziz. Approximately twenty commercial warehouses in the village stand empty and unused now that the road is closed, since there is no convenient way to transport the goods to the warehouses or distribute them from there.
59. Some businesses have left the village, such as the al-Hawaja gas station, which obtained fuel directly from the Israeli importer for supply to the Palestinian consumer. The moving of the gas station caused other indirect losses to the village.
60. In the years since Route 443 was closed to the villagers, unemployment in the village has risen dramatically and is today approximately 55%. Income has dropped accordingly, and 60% of the village residents now live in poverty.
61. There are no firefighting services in the village and, when required, firefighters must be summoned from Ramallah. They take a long time arriving, since they cannot travel on Route 443. About a year ago, a plot on the eastern side of the village owned by the Habib family and planted with olive trees caught fire. The fire truck was detained en route and failed to reach the fire on time; forty fruit-producing olive trees were destroyed.
62. Village residents who used to go to Ramallah daily for various needs now go only when absolutely necessary, due to the difficulties of the journey. Social visits and contacts are minimal. Family gatherings now take place mainly during holiday periods.
63. The constraints on freedom of movement have led several village families to abandon their homes and move to Ramallah. Among those who left are the family of Walid 'Abed al-Karim (employed as a clerk in the Arab Bank), the family of Wajdi Fadel Ibrahim (employed as a surveyor in Ramallah), and the family of Rami Sliman Muhammad Sliman (employed as a clerk in Ramallah).

The affidavit of Petitioner 5 is attached to this petition.

The Village of Beit Ur al-Fauka

64. Approximately 1,300 residents live in the village of Beit Ur al-Fauka.
65. Farming is the primary source of livelihood for residents of this village, and hundreds of dunam of arable land owned by them are located south of Route 443. Access to these plots is via the highway. Because the road is closed to them, access has become difficult and complicated as the farmers are compelled to use indirect, winding, and rundown roads.
66. The closing of the highway doubles the distance to Ramallah and the journey now takes three or more times longer. The cost of the journey has more than doubled, from NIS 2.50 to NIS 6.00 today.
67. Travel difficulties have burdened all aspects of village life – the marketing of agricultural produce (several poultry farms in the village have closed down, for example) and getting to work. Travel problems have forced several families whose income depended on businesses in Ramallah to leave the village.

The affidavit of Petitioner 6 is attached to this petition.

D. Petitioners' Appeals to the Respondents

68. On May 23, 2006, the Association for Civil Rights in Israel (ACRI) approached the Respondents on behalf of the mayors of the petitioning villages, demanding the removal of the roadblocks on the access roads connecting the six villages to Route 443 and cancellation of the unlawful directives prohibiting and preventing Palestinian movement on the highway.

A copy of the Petitioners' request of May 23, 2006 is attached and labeled **Appendix 4**.

69. When no reply was received, the Petitioners again approached the Respondents on August 20, 2006.

A copy of the Petitioners' request of August 20, 2006 is attached and labeled **Appendix 5**.

70. On October 18, 2006, a response was received from Capt. Robbie Zigler, Consulting Officer in the Security and Criminal Department, on behalf of the Judea and Samaria District Attorney. In this letter it was claimed that "IDF

forces **do not prevent** the movement of Palestinians on the section of the highway located in Judea and Samaria, but merely limit access to Route 443 from the village areas at a number of exit junctions, where gates have been erected and IDF soldiers conduct security checks as required” (emphasis in the original - L.Y.). At the same time, the letter claimed that security dangers and threats to Israelis using the highway had obligated the military commander to adopt a variety of security measures, one of which was “to block a number of access roads that directly connect the village area to Route 443” either through “permanent physical roadblocks” or the erection of gates. These gates, it was claimed, are routinely open, and closed when warranted by the security situation.

A copy of Capt. Zigler’s letter to the Petitioners from October 18, 2006 is attached and labeled **Appendix 6**.

71. In light of the fact that the claims made in this letter were not consistent with the actions of the Respondents in the field and the actual situation in which all access roads from the petitioning villages to Route 443 are completely blocked, the Petitioners again contacted the Respondents on October 23, 2006. In this letter, addressed to Capt. Zigler, the Respondents were asked to identify the locations of those intersections where access to Route 443 was possible, according to their claim, and from there to Ramallah; as well as details of the roads that connect each of these villages in the region to these intersections. The letter made clear that this kind of detail was necessary in light of the fact that the factual claims included in Capt. Zigler’s letter contradict the actual situation on the ground.

A copy of the Petitioners' letter to Capt. Zigler of October 23, 2006 is attached and labeled **Appendix 7**.

72. As of the date of submission of this petition, no further response has been received from the Respondents.

The Legal Argument

Introduction

73. This petition is in the matter of the legality of the directives and actions of the Respondents, which deny people their rights to freedom of movement and the use of vital public property based solely and exclusively on their nationality. This appropriation of public property from the local population was carried out in order to designate these properties for Israelis and “bestow them” upon the citizens and residents of the occupying power.
74. This petition concerns the actions of the Respondents that prevent tens of thousands of people, including the 30,000 residents of the six villages, from making any use whatsoever of Route 443, which is the major traffic artery for the six petitioning villages and the region as a whole. These directives, which directly violate the human rights of tens of thousands of people, have been enforced for years without being anchored in any official order or directive as required by law. Since they were first issued some six years ago and until now, these directives have been passed along as orally transmitted orders.
75. On the one hand, the Respondents deny the fact that they are blocking Palestinian movement on Route 443 on the section of the highway within the West Bank. On the other hand, they claim that due to the risk to Israelis who make use of this highway, the military commander has had to impose various security measures, including closing off the access roads to the highway from the Palestinian villages in the area.
76. The prohibition on Palestinian residents from making any use of Route 443 is illegal for a number of reasons, each of which is sufficient to bring about its revocation:
 - 76.1. Because it constitutes wrongful discrimination based on ethnicity/nationality;
 - 76.2. Because it exceeds the authority of the military commander, which relates only to the needs of the occupied area itself, and breaches his obligation to safeguard the way of life and public order of the protected persons in the occupied territory;
 - 76.3. Because it is enforced without any valid legal authority that authorizes IDF forces to prevent the movement of residents within the territory;

76.4. Because it is imposed on tens of thousands people, the vast majority of whom are not suspected of posing any sort of security risk, and therefore constitutes a violation of the prohibition on collective punishment;

76.5. Because it is characterized by an extreme lack of reasonableness;

76.6. And because it disproportionately violates the human rights of the protected Palestinian residents.

A. The Military Commander's Powers and Obligations Regarding the Palestinian Civilian Population

77. The authority and obligations of the Respondents in the matter at hand are derived, first and foremost, from international humanitarian law: the Hague Convention on the Laws and Customs of War on Land, from 1907 (hereinafter "the Hague Convention") and the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, from August 12, 1949 (hereinafter "the Fourth Geneva Convention").

78. The Respondents also bear obligations under international human rights law (International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights).

79. In addition to the principles of international law, the basic principles of Israeli administrative law also apply to the Respondents (HCJ 5627/02 *Sayif v. Government Press Office* PD 58(5) 70, 75; HCJ 7957/04 *Mara'abe v. Prime Minister of Israel*, PD 58(3) 443, 455, hereinafter: "HCJ *Alfei Menashe*"), and the principles of Israeli constitutional law, primarily the Basic Law: Human Dignity and Liberty (HCJ 7862/04 *Abu Daher v. Commander of IDF Forces in Judea and Samaria* (unpublished), parag. 8).

80. Under international law as well as Israeli administrative and constitutional law, the Respondents are obligated to respect human rights and protect them, and to refrain from violating them and harming protected persons under their control.

81. Article 43 of the Hague Convention obligates the occupying power to ensure the welfare and security of the Palestinian inhabitants, who are the original residents of the territory. This obligation to maintain public order and life for the benefit of the protected persons of the occupied territory is the

fundamental obligation of the military commander. The military commander in the area bears responsibility for the lives of the inhabitants and their quality of life in all aspects of modern society. The military commander is required to fulfill this obligation with reasonableness and fairness (see HCJ 393/82 *Jam'iyyat Iskan al-Mu'aliman v. Commander of IDF Forces*, PD 37(4) 785, 797-798; HCJ 202/81 *Tabib et al. v. Minister of Defense et al.*, PD 36(2), 622, 629; HCJ 3933/92 *Barakat v. Commanding Officer, Central Command*, PD 46(5) 1, 6; HCJ 69/81, 493/81 *Abu Itta et al. v. Commander of Judea and Samaria et al.*, PD 37(2), 197, 309-310).

82. Concern for the constitutional and human rights of the protected persons must be the focus of considerations of the military commander in the framework of the responsibility to maintain public order and ensure the normal conduct of life of the local population in the area under his effective control (HCJ *Alfei Menashe*, *ibid*; HCJ 10356/02 *Hess v. Commander of IDF Forces in the West Bank, Commander of the Central Command*, PD 58(3) 443, 455 (hereinafter "HCJ Hess")).

B. Sweeping Violation of Basic Rights

83. As described in the Factual Background, blocking the access roads of the villages to the highway and preventing the residents from using the highway cause great hardship and limit the ability of the village residents to reach their places of work, farmlands, markets to sell their produce and purchase necessities, educational and health institutions, and friends and family. The movement restrictions make it difficult for them to access various services, including emergency services. As a result, the movement restrictions imposed on the residents of the petitioning villages, and on Palestinians in general, are injurious to their way of life in every respect. The basic human rights of the residents of the petitioning villages are being violated.

84. **Violation of Freedom of Movement** – The right to freedom of movement includes the right to leave the country and the right to move within the area.

As we have seen, the blockades and movement restrictions severely harm the freedom of movement of the civilian population in the region. Examination of the subtests established in court rulings to evaluate the degree of harm to this right indicates that the violations in the case at hand are particularly severe (see HCJ 1890/03 *Bethlehem Municipality v. State of Israel*

(unpublished), parag. 17, hereinafter “HCJ *Bethlehem Municipality*”) – because these are movement restrictions within the area, because the restrictions have continued over an extended period, and because they harm the ability of these people to realize additional rights and interests, many of them critical to their existence, including access to essential medical services and their ability to earn a livelihood.

85. Preventing Palestinians from using Route 443, which is the main highway for the entire population of the region and has no suitable alternative, as noted in the Factual Background of this petition, also entails violations of **the right to earn a livelihood and, in consequence, the right to live in dignity**. As has been seen, because of the prohibition against using Route 443 and the resulting difficulties of Palestinians in getting to Ramallah, their markets and dealers, and their farmland, many have lost their jobs or sources of livelihood.
86. Preventing Palestinians from using Route 443 also violates **their right to education** by limiting the opportunities for some to attend central educational institutions – high school and higher education – located in Ramallah or other villages. For some, the movement prohibitions have meant that they can no longer continue their studies; for others, continuing their studies has necessitated leaving their homes and families, and bearing a heavy additional financial burden.
87. The right to **family life and relationships with family members** has also been harmed. As has been seen, the movement restrictions have made it very hard to maintain family and social ties with those who live in nearby villages or in Ramallah.
88. The residents of the six villages have also been denied their right to **health and access to medical treatment**. We have seen that this has even led to loss of life in several cases. In other cases, residents have been prevented from receiving vital medical services due to the difficulty of traveling on the alternate route.

C. Unlawful Separation and Discrimination Based on Nationality

89. According to directives issued by the Respondents, the right of the petitioning village residents to use Route 443 located within the West Bank has been denied. This highway was built on their lands and hundreds of dunam of their farmland were expropriated to widen it.

90. While travel on the highway is forbidden to all Palestinians, whoever they may be, travel is permitted to all Israelis, whoever they may be.

It is clear that the Respondents' decision in this regard is tainted by wrongful discrimination based on nationality.

91. This decision contradicts fundamental legal concepts – both in international law and Israeli law – which establish non-discrimination as one of the fundamental principles of law:

91.1. **The Fourth Geneva Convention** states that one of the fundamental principles of the rules of warfare is the obligation of the military commander to treat the civilian population without discrimination:

...

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

Article 3 of the Fourth Geneva Convention. See also Article 27 of Part III of the Convention.

91.2. **The International Covenant on Civil and Political Rights** instructs states to ensure equality before the law for all inhabitants of their jurisdiction and prohibits discrimination on the basis of race or national origin, inter alia (Article 26 of the Covenant).

91.3. **The International Convention on the Elimination of all Forms of Racial Discrimination, 1966**, defines “racial discrimination” in **Article 1** as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

Article 3 of the Convention establishes that “States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.”

While **Article 5** of the convention states:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

...

d) Other civil rights, in particular:

(1) The right to freedom of movement and residence within the border of the State;...

92. The prohibition against discrimination on racial-national grounds is so critical to the corpus of international human rights law that it cannot be violated even in an emergency (see General Recommendation 30 of the ICERD Committee; also see Human Rights Committee, General Comment 29, States of Emergency (Article 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001)).
93. The importance and primacy of the principle of equality has been upheld by this Court in a long list of rulings:

Equality is a fundamental value of the State of Israel. Every authority in Israel – and above all the State of Israel, its agencies and employees – must act equally among the different individuals in the State ...

HCJ 6698/95 *Ka'adan v. Israel Lands Authority*, PD 54(1) 258, 273.

94. Violation of the principle of equality in the matter at hand is prima facie evident. We have seen that the movement restrictions in this matter have been imposed on people based solely and exclusively on their nationality. The Respondents have made a decision to permit the movement of every Israeli and every Israeli vehicle on Route 443, while prohibiting the movement of every Palestinian and every Palestinian vehicle on that highway. Under these circumstances, this is a matter of wrongful differentiation and discrimination:

Equality is a complex concept. Its scope is in dispute. *Nonetheless, all agree that equality prohibits differential treatment for reasons of religion or nationality.* This prohibition appears in international declarations and conventions (such as the Universal Declaration of Human Rights from 1948, the International Covenant on Civil and Political Rights from 1966, and the European Convention on Human Rights). It is accepted in most modern constitutions. It is given expression in our Declaration of Independence, which establishes that the State of Israel "...shall ensure complete equality of social and political

rights to all its inhabitants irrespective of religion, race or sex...” This Court also established – in the words of Justice Shamgar – that “the principle according to which one may not discriminate on the basis of...nationality... religion... is a basic constitutional principle, which is an essential and indispensable part of our fundamental legal perceptions and an integral part of them” (HCJ 114/78, motion 451/78 *Burkan v. Minister of Finance* PD 32(2) 800, 806).

HCJ *Ka'adan*, p. 275.

95. We expect that in response to this, the Respondents will claim that their decision does not intend to discriminate, but rather was based on other factors – safeguarding the security of Israelis who use the highway. Violation of the principle of equality, however, is not contingent upon the intent to discriminate. The very fact that the outcome of the directives or policies is discriminatory is sufficient, even if the motivation for the differentiation is not the desire to discriminate. The decision to apply differential treatment is unacceptable, not just when the motivating factor is the violation of equality, but also when the underlying reasons are different, but the practical outcome is a violation of equality:

The outcome (“effect”) of the policy of differentiation now in place is discriminatory, even if the motivation for differentiating is not the desire to discriminate. The existence of discrimination is determined, inter alia, by the effect of the decision or policies, and the outcome in the matter at hand is discriminatory...

HCJ *Ka'adan*, parag. 30 of Chief Justice Barak’s judgment.

The rulings of the Supreme Court have consistently upheld the perception that “discrimination is unacceptable even when it is not rooted in an intent to discriminate...” The question is not just “what is the motive of the decision-makers?” The question is “what is the result of the decision?” The decision is unacceptable not just when the motivation was to harm the principle of equality, but also when there were other motivations, but the effective result is a violation of equality (HCJ 953/87 *A. Poraz v. Shlomo Lahat, Mayor of Tel Aviv-Jaffa*, PD 42(2) 309, p. 333).

Parag. 51 of Chief Justice Barak’s judgment in the *Adalah* case.

96. Thus, for purposes of serving the interests of the “occupying power” and its inhabitants, the Respondents decided to critically harm the fundamental rights of the local population by preventing them from using their roads and moving around their locale.

97. We stated earlier that the closing of Route 443 to Palestinians is not an isolated decision concerning only one highway where a differentiation policy of this type is in effect. Throughout the West Bank, additional roads – main roads and key arteries – that have always served the local population have been expropriated from the local residents and designated for the sole use of Israelis. A case regarding another road that has been closed to local residents is pending before this Honorable Court in HCJ 3969/06 *Mayor of the Village of Deir Samit et al. v. Commander of IDF Forces in the West Bank*. See also the B'Tselem report on the forbidden roads regime (August 2004): <http://www.btselem.org/english/publications/index.asp?TF=05&image.x=30&image.y=11>
98. The introduction to Article 2 in the International Convention on the Suppression and Punishment of the Crime of Apartheid, of 1973, defines the activities therein listed as apartheid when they are carried out with the aim of establishing and maintaining the domination of one racial group over another by systematic oppression. Although an isolated incident of discrimination does not constitute a violation of the prohibition against apartheid, the accepted and systematic policies of differentiation and discrimination against the Palestinian population would clearly be considered apartheid as currently defined in the Convention on the Suppression of the Crime of Apartheid, the Statute of the International Criminal Court (ICC), and international customary law. This is of particular concern in light of the separation between Palestinians and Israelis in the West Bank territories in many other areas, and the maintenance of two separate legal systems for the two populations (see A. Rubinstein, “The Changing Status of the ‘Territories’ (West Bank and Gaza): From Escrow to Legal Mongrel,” *TAU Studies in Law*, 59 (1988) 63-67; Orna Ben-Naftali, Aeyal Gross & Keren Michaeli, “Illegal Occupation: The Framing of the Occupied Palestinian Territory,” 24 *Berkeley J. Int'l L.* (2005) 551, 584-587).

D. Exceeding Authority and Extraneous Considerations

99. In their replies to the Petitioners' requests, the Respondents claimed that the security measures that they imposed were designed to protect drivers on Route 443, which “constitutes a major traffic artery used by thousands of Israelis every day” (Capt. Zigler's letter of October 18, 2006, Appendix 6). The intent and purpose of the measures were, therefore, to ensure the safe

passage of thousands of Israelis on the said road. The problem is, however, that such considerations clearly exceed the appropriate and permissible concerns of a military commander in occupied territory. In such circumstances, these actions are marked by a fundamental lack of authority.

100. All the powers of a military commander of an occupied territory are derived from international laws of warfare. These laws revolve around two primary issues: First, safeguarding the legitimate security interests of those holding the territory under military occupation; and second, safeguarding the needs of the civilian population in this territory. What emerges from this is that **the military commander is not entitled or authorized to consider and promote the interests of his own state**. This was upheld by the Court in the *Jam'iyat Iskan* case:

We have seen that the considerations of the military commander are to ensure his security interests in the region and to ensure the interests of the civilian population in the region, both these focused on the region. The military commander is not authorized to weigh the national, economic, or social interests of his state, to the extent that they do not impinge on his security interest in the region or on the interest of the local population. Even military needs are military needs per se and not national security needs in the broad sense of the term (HCJ 390/79 *Dweikat v. Government of Israel* PD 34(1) 1, 17). A territory belligerently occupied is not an open arena for economic or other exploitation. For example, the military government is not authorized to impose taxes on the inhabitants of a territory belligerently occupied which are intended solely for the treasury of the state it represents (HCJ 69/81, 493 *Abu Itta v. Commander of Judea and Samaria; Kanzil v. Customs Director, Gaza Strip Regional Headquarters*, PD 37(2) 197, 271). Therefore the military government is not authorized to plan and construct a road system in an area belligerently occupied if the goal of this plan and construction is solely to constitute a 'service route' for his own state.

Jam'iyat Iskan, pp. 794-795.

101. In the matter at hand, the Respondents' actions – ensuring a convenient travel route for Israeli residents – belongs in neither category of what is “permissible”. They cannot be classified as security interests of the military commander of the occupied territory, nor, quite obviously, do they safeguard the interests of the local population.
102. Hence we are dealing in this matter with activities that fall outside the authority of the Respondents under international law, and with decisions that were based on extraneous considerations.

E. Violation of Human Rights without Legal Authority

103. The military commander has general authority to prohibit or limit the use of a road. This authority is anchored in parag. 88(a) of *The Order Pertaining to Security Directives (Judea and Samaria) (No. 378), 1970*.
104. However, even if the Respondents were allowed to exercise this authority in a discriminatory manner (which they are not, as noted), we have not found that the Respondents made use of this authority. To the best of the Petitioners' knowledge, no order has been presented or published to date that prohibits the movement of Palestinians or Palestinian vehicles on Route 443, which is located within the West Bank.
105. At no point did the Respondents present any other legal basis for their actions.
106. The lack of legal grounds is particularly serious in the circumstances of this petition. The significance of the Respondents' actions has been the creation and perpetuation of a regime maintained over several long years, which harms the fabric of life of the civilian population, numbering tens of thousands of people. Nonetheless, this policy has no legal grounding whatsoever.
107. Issuing directives that limit and constrain freedom of movement by oral commands contravenes the fundamental concepts of administrative law and undermines the basic principles of proper government. In the matter at hand, the Respondents are acting without a signed order that clearly and unequivocally delineates the source of authority from which the harmful directives were issued, their scope, the period of validity, and the identity and authority of the issuing party. This conduct by the Respondents paves the way for callous and flagrant violations of human rights, without the authorities maintaining any oversight ability and providing immunity from accountability. This is also an evasion of the obligation to publish in proper and normal channels any directives that change the legal status (and the guidelines of what is permissible and prohibited) and that violate human rights.
108. Just as the exercise of authority to declare an area a closed military zone must be done by the issuing of orders in writing (see HCJ 9593/04 *Murar v. Commander of IDF Forces in Judea and Samaria* (unpublished ruling from June 26, 2006), parag. 21), so too in the matter at hand, to exercise his

authority to close a road or restrict traffic upon it, the military commander is obligated to issue orders in writing.

F. Collective Punishment

109. The movement prohibitions, which apply to every Palestinian in the territories including the residents of the six villages, constitute a violation of the principle that forbids collective punishment, which is a fundamental principle in general jurisprudence, the laws of war and belligerent occupation, and international human rights law.

110. This principle is explicitly anchored in international humanitarian law. Article 50 of the Hague Convention stipulates:

No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.

111. Article 33 of the Fourth Geneva Convention states:

No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited.

112. Even Article 75(2)(d) of Protocol I of the Fourth Geneva Convention states:

(2) The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents...

(d) collective punishments;...

The Commentary to the Protocol clarifies that the term “collective punishment” includes any penalty or intimidation of any kind – criminal, administrative, police, etc. (*Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, C. Pilloud et al. eds., Geneva, 1987) p. 874). While Israel is not a party to this Protocol and even consistently opposes several of its articles, nonetheless Article 75(2)(d) of the Protocol has the status of customary law (G. von Glahn, *Law Among Nations: An Introduction to Public International Law* (Boston, 7th ed., 1996) p. 622).

113. The importance of the prohibition against collective punishment has also been expressed by the Human Rights Committee of the UN as a peremptory norm, one that must not be violated even in emergencies that fall under Article 4 of the International Covenant on Civil and Political Rights (Human Rights

Committee, General Comment 29, States of Emergency (Article 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001) para 11).

114. It is claimed that the prohibition on Palestinians traveling on Route 443 has been imposed in order to cope with the dangers of terrorism. However, the prohibitions have not been imposed on terrorists or those suspected of active involvement in terrorist activity, but rather directed against and imposed upon entire segments of the Palestinian population against whom there are no concrete suspicions, without distinguishing between individuals. Under these circumstances, the actions in the matter at hand constitute prohibited collective punishment.

G. Lack of Military Need for Barring the Highway to Palestinians

115. The blocking of intersections and prohibition of Palestinian movement on this highway are not required for any critical security need or even any real security reason.
116. In Capt. Zigler's response of October 18, 2006 (Appendix 6 to the petition), it was claimed that due to security risks and threats posed to Israelis driving on the highway, the military commander had to take various security measures to safeguard the drivers on the highway. Capt. Zigler's letter also confirms that these measures included "the blocking of a number of access roads directly linking the village areas to Route 443", thereby denying the claim that all access roads are blocked and that movement on the highway is prohibited to Palestinians. It was also claimed that on access roads where gates were built, the gates are usually opened, and closed only when warranted by an assessment of the security situation.
117. We stated above that these claims contradict the factual situation and actual activities of the Respondents (in addition to which, all the roadblocks on the access roads were replaced by concrete barriers since this was written.)
118. Nonetheless, the importance for this matter of **Capt. Zigler's letter on behalf of the Respondents is that it does not claim that a necessary security need exists that requires the closing of access roads to the villages, as is currently the case. This means, inter alia, that the Respondents are acting contrary to their own declarations.**

From this it can be inferred that even according to the Respondents themselves, there is no necessary security reason for closing the access roads to the villages and preventing the inhabitants from using the highway.

119. Moreover, it appears prima facie that no substantive, valid, or appropriate security reason exists for the ongoing presence of roadblocks and the absolute prohibition on movement that is enforced against the entire Palestinian population in the area. This conclusion is based on the following:

119.1. First, the movement prohibitions serve no purpose in defense of Israel or its inhabitants, since the goal of preventing the entry of potential terrorists from the West Bank into Israel proper is entirely achieved by the checkpoints at both ends of the road – where it enters the State of Israel and where the Jerusalem jurisdiction begins – where inspections are conducted of every vehicle that seeks to enter. In addition, the separation fence has already been completed in that area, preventing passage from the West Bank into Israel and Jerusalem.

119.2. Second, the Respondents have implemented a range of alternative measures to protect traffic on the highway. These include the construction of fences (“protective fences”) and sophisticated observation towers along the highway. These measures did not exist when the decision was first made in late 2000 to close the road, but they exist today. Despite this, the Respondents have not altered their activity of blocking Palestinian movement on the highway.

119.3. Third, the army secures hundreds of kilometers of roads throughout the West Bank that are traveled by both Palestinians and Israelis.

120. Until now, the Respondents have taken and continue to take the easiest option – the complete prohibition of Palestinian movement on the highway – and as a result they are causing severe injury to the protected Palestinian population in the area. In their reply, the Respondents did not make any mention of the existing security measures on the highway, but made do with general claims. The fact that alternative and less damaging security measures are available to the Respondents instead of the regime of movement restrictions that they have implemented in the area for years belies the legality of their actions. The severe and prolonged violation of the freedom of movement of the local Palestinian residents as a direct result of

the roadblocks and movement prohibitions contravenes the words of Chief Justice Barak who articulates the only conditions that could justify such violations:

Freedom of movement and the cluster of fundamental rights contingent upon it fall into the highest category of fundamental rights, and may be violated only in cases where this is the *one and only way* to meet a pressing social need.

(My emphasis – L.Y.)

HCJ *Horev*, pp. 53a-b.

H. Respondents' Actions Reflect Extreme Lack of Reasonableness

121. When exercising the discretion he is given, the military commander is obligated to balance military considerations against considerations concerning possible injury to the population of protected persons. Another criterion of the legality of harming the rights of the local population is that the injury be proportionate (HCJ 2056/04 *Beit Surik Council v. Government of Israel*, PD 58(5) 807, 836; HCJ *Alfei Menashe*, parag. 30).
122. It is unacceptable to justify the imposition of movement restrictions – sometimes severe restrictions that paralyze the lives of the Palestinians in the area and isolate them from their social-familial networks, agricultural lands, markets, sources of livelihood, educational institutions, and health services – based on the claim that this is an appropriate balance for achieving security.
123. The Respondents did not take into consideration the severe daily violation of human rights resulting from the prohibition of movement on the highway. Considering that the movement prohibition on the highway has been in force for years and as part of the balance that the Respondents were obligated to strike between their claimed military needs and their obligation to protect and promote the welfare of the protected population, it was incumbent upon them to give due consideration to the welfare of the protected population and it was their obligation to avoid harming the fabric of their lives.
124. Moreover, in the context of the balance the military commander must strike, it was incumbent upon him to evaluate the primacy and standing of the various rights hanging in the balance (HCJ 7862/04 *Abu Daher v. Commander of IDF Forces in the West Bank*, parag. 10). In the matter at hand, the Respondents' desire to allow Israelis to use a road outside the borders of the state must be

weighed against the freedom of movement and overall fabric of life of tens of thousands of people who are protected persons.

125. Under such circumstances, the Respondents may not disregard or ignore the fact that the rights of a civilian population of protected persons are being violated in order to ensure that residents of the occupying power can make use of the resources located within the occupied territory – a use that cannot be shared and that is not a right to which they are entitled.
126. The breach of an appropriate balance in the matter at hand – movement restrictions over a prolonged period – appears unequivocal. It is clear in this situation that the injury to the welfare of the population is unreasonable and disproportionate (see HCJ 5820/91 *Fanus v. Danny Yatom et al.*, 92(1), 270; HCJ 660/88 *In'ash al-Usra Society et al. v. Commander of IDF Forces in Judea and Samaria*, PD 43(3) 673, 677-678).
127. From the conduct of the Respondents, it is clear that they did not give due consideration in the calculation of factors to the severe harm that would be inflicted on the civilian population.

I. Disproportionate Violation of Human Rights

128. As noted, the Petitioners are of the opinion that the Respondents' actions and directives lack authority and reflect extreme unreasonableness, as these actions and directives flagrantly discriminate between people based on their nationality and ethnicity, and exceed the authority of the military commander. Under these circumstances, the Petitioners are of the view that there is no need to assess whether the violations of the Petitioners' rights are disproportionate. Nevertheless, and alternatively only, the Petitioners will claim that the Respondents' actions and directives are unacceptable because they are disproportionate.
129. As we have seen that the Respondents' actions severely and seriously injure rights of fundamental primacy, the burden falls upon the Respondents – who claim that the violation is necessary for security reasons – to prove using facts and figures that the measures they chose are proportionate (see Justice Dorner's opinion in HCJ 4541/91 *Miller v. Minister of Defense* PD 49(4) 94, 136; Justice Levi's opinion in HCJ 366/03 *Commitment to Peace and Social Justice Association v. Minister of Finance* (unpublished, 2005), paras. 10-12,

18-19 (minority opinion); A. Barak *Constitutional Interpretation* (1994) 477 [Hebrew]).

130. In the matter at hand, the Respondents' decisions and actions do not pass even one of the tests of proportionality, as demonstrated below:

The First Condition of Proportionality

131. As noted, the movement prohibitions have been applied indiscriminately against all Palestinians, by virtue of their being Palestinian, without singling out those suspected of some involvement in terrorist activity or harboring the intention of harming travelers on the highway.
132. The first subtest of proportionately requires that a rational connection exist between the means taken and the desired objective. The Respondents have hitherto claimed only that the security risks and threats to the thousands of Israelis traveling on the highway necessitated the adoption of various security measures. However, the Respondents have not clarified the connection between this objective and the means – preventing the movement of tens of thousands of people who are not suspects and not a threat to anyone's security. Their movement on the highway is prohibited only because they belong to a particular national-ethnic group – Palestinian.
133. It has already been ruled that “the test of rational means is not a test merely of a technical causal connection between the means and the end. Even when use of a particular measure may lead to attainment of a desired goal, this still does not imply that there is a rational connection between the means and the objective, or that the means are appropriate for achieving the ends. The emphasis in the test of rational means is on the existence of a rational connection. This means, inter alia, that arbitrary, unfair, and irrational measures must not be taken” (*Murar*, parag. 25 of judgment).

The Second Condition of Proportionality

134. The second subtest of proportionality requires that the least injurious means be employed. The Respondents, however, have alternative means at their disposal to achieve the desired goal. We cited some of these in Section 7 above (and it should be noted that as a result of some of the other measures taken by the Respondents, the local Palestinian population's rights were severely undermined – for purposes of erecting the separation fence, the

protective fences, and more). As long as there are still real threats that have not been resolved by these measures, the Respondents can decide on additional measures that do not harm the local population.

135. It is certainly possible that even if the Respondents adopt all these and other measures, they will not fully achieve their desired goal – full security for Israelis driving on Route 443. However, the reality of life is that full security is not achievable. Even when use is made of the extreme measure of sweeping movement prohibitions, the goal in its entirety is not achieved and full security is not ensured. In every case, therefore, a rational and balanced decision is required on what risks may be taken, including those needed to safeguard human rights. (Then) Justice Beinisch insisted on this when she noted:

9. Unfortunately, it seems that the clash between the value of security and the extent that human rights may be infringed in the pursuit of security will be with us for many years. It is precisely for this reason that we must strictly uphold proper and proportionate balances in all matters relating to the violation of rights for the sake of security. A system of governance based on the values of democracy cannot allow itself to take measures that will give the citizens of the state absolute security. Absolute security does not exist in Israel or any other country. Therefore, a rational and balanced decision is required with regard to the state's ability to take risks in order to safeguard human rights.

Adalah, *ibid.*, parag. 9 of Justice Beinisch's judgment.

136. The question is, therefore, not whether the goal can be fully achieved via alternate means, but rather whether alternate means at the disposal of the Respondents – which do not entail the harm of a sweeping denial of freedom of movement – achieve most of the objectives set by the Respondents (see M. Cohen-Eliya "Separation of Powers and Proportionality", *Mishpat Umimshal* 9 (2006) 297, 317-318 (Hebrew)). The burden of proof in this matter falls upon the Respondents.

The Third Condition of Proportionality

137. The matter at hand concerns severe violations of rights having the highest constitutional primacy and significance, violations that have seriously harmed the vital interests of the individual and community. These have continued for a long period, and are imposed on tens of thousands of people, causing severe disruption of all aspects of the fabric of their lives.

138. Even on the assumption that the alternate means cannot deliver the same “security benefit” ostensibly achieved by absolute closure of the highway to the local population, in light of the other measures that have been taken, the gap is not large, and perhaps even negligible. Therefore, even if some security benefit is derived from a sweeping movement prohibition on the highway and absolute closing off of access roads to the villages, which cannot be accomplished through any others means, this is still a case of a security benefit that does not stand in reasonable and proportionate relationship to the human rights violations that result (HCJ 2056/04 *Beit Surik Council v. Government of Israel*, PD 58(5), 840, 850-852).

Therefore, this Honorable Court is respectfully requested to issue an order nisi as requested at the beginning of this Petition, and after receipt of the reply from the Respondents, to make the order absolute.

Today, March 7, 2007

Limor Yehuda, Adv.
Representing the Petitioners