

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

HCJ 9132/07

The Petitioners:

1. **Mr Ahmed Ahmed Gaber Al-Basyouni** _____
2. **Mr. Maher Najer** _____
3. **Adalah – The Legal Centre for Arab Minority Rights in Israel (R.C.)**
4. **Gisha: Legal Centre for Freedom of Movement (R.C.)**
5. **Hamoked – Centre for the Defence of the Individual founded by Dr. Lotte Salzberger (R.C.)**
6. **Al-Haq**
7. **Al-Mezan Centre for Human Rights**
8. **Physicians for Human Rights (R.C.)**
9. **Palestinian Centre for Human Rights**
10. **The Public Committee Against Torture in Israel (R.C.)**
11. **Gaza Centre for Mental Health**
12. **B'Tselem: The Israeli Information Centre for Human Rights in the Occupied Territories (R.C.)**

All through Advs. Sari Bashi and/or Noam Peleg and/or Prof. Kenneth Mann
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And also by

Their representatives Advs. Fatima Al-'Ajou and/or Hassan Jabareen and/or Souhad Bashara and/or
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- Versus -

The Respondents:

1. **The Prime Minister (Respondent 1)**
2. **The Minister of Defence (Respondent 2)**
c/o Office of the State Attorney
Salah A-Din 29, Jerusalem
Tel. 02-6466590 fax 02-6466655

Petition for an Order Nisi and an Urgent Request for an Injunction

The honourable Court is hereby requested to issue an order nisi directed at the Respondents, instructing them to appear and respond to the following:

- a. Why they should not refrain from disconnecting, reducing, restricting or in any way disrupting the supply of electricity to the Gaza Strip.
- b. Why they should not refrain from disconnecting, reducing, restricting or in any way disrupting the supply of fuel to the Gaza Strip.
- c. Why they should not invalidate the decision of the Security Cabinet of 19.9.2007, in as much as it regards imposing sanctions on the civilian population in the Gaza Strip.

In addition, the honourable Court is requested to charge the Respondents with the Petitioners' expenses in this petition, as well as lawyer's fees including VAT as provided by law.

Urgent Request for an Injunction

On 25.10.2007 Respondent 2 announced that he had approved the disruption of the supply of electricity and fuel to the Gaza Strip following the Security Cabinet decision taken on 19.9.2007.

According to media reports over the weekend, **the reduction of the supply of electricity and fuel is supposed to begin tonight (28.10.07) or tomorrow (29.10.07)**. These disruptions could endanger the functioning of hospitals, sewage and water systems, household medical devices, food and medicine refrigerators and other vital systems necessary for preserving safety, welfare and normality of life for the residents of the Gaza Strip. Realising the decision would cause **grave and irreversible harm to the health, safety and welfare of about 1.5 million men, women and children, including the Petitioners 1-2, as argued in this petition.**

A decision to impose indiscriminate punitive steps on the population of protected residents in the Gaza Strip, as a response to the firing of rockets by armed men, is manifestly illegal.

The residents of Gaza live in constant fear – that suddenly they will be disconnected from electricity or that the flow of fuel will stop, while the Respondents reserve the option of doing so at any moment.

Due to the limitations of time and the concern **that today already the supply of gas and electricity to the Gaza Strip will be limited**, the honourable court is requested to issue an injunction, preventing the Respondents immediately from reducing the fuel and electricity supply to the Gaza Strip, **even before a hearing of the request for a injunction takes place**. The issue of such an order will prevent severe and irreversible harm to the civilian population of Gaza – and does not cause genuine harm to the Respondents' interests.

The Petitioners will claim, that the Respondents will not be harmed in any way if the execution of the decision – which the Respondents themselves have delayed over a month since 19.9.2007 – will be delayed for another short period of time, in order to allow the honourable court to examine its legality.

A copy of this petition was sent by fax to the Respondents' representative immediately when it was signed and before it was submitted to the honourable court. Another copy will be provided to the state Attorney as by law, through a rapid courier, immediately after submitting the petition to the honourable court.

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1. Introduction

This petition is directed against a manifestly illegal decision, according to which there will be a reduction in the supply of electricity and fuel to civilian population in the Gaza Strip that has been suffering, for years, from harsh restrictions on part of the Respondents of its capability to exist and to conduct a normal and healthy life. For years the Respondents have been restricting the passage of goods to the Gaza Strip and from it, delaying the transfer of the tax money that is supposed to finance public services, and restricting movement into Gaza and from it, including frequent and complete closures of the borders. Throughout the years, the Respondents have defended these restrictions before the honourable court by claiming that they are necessary in order to neutralise a specific and concrete security threat. Throughout the years, the human rights community and in particular Israeli and Palestinian human rights organisations, have asked the honourable court to examine these restrictions, among other things due to the concern that the issue is not a specific security threat but the desire to exert pressure on the civilian population, as a response to the continued firing of Kassam missiles from the Strip into Israel – in contravention of the absolute prohibition on collective punishment. Throughout the years, the Respondents have denied this claim.

Now, for the first time, the Respondents decide and openly announce that they are not acting to neutralise a specific and concrete security threat, **but in order to punish the million and a half residents of the Gaza Strip, by intentionally** reducing their supply of fuel and electricity.

Petitioners 1-2 appear before the court to request that harm will not be done to the infrastructures necessary for operating medical services, the water and sewage systems, home appliances necessary for refrigerating food and other services necessary for preserving safety, health and normality of life for themselves and their families.

Petitioners 3-12, organisations acting to promote human rights in Israel and in the Palestinian territories, request the honourable court not to allow the Respondents to contravene one of the root principles of international and Israeli law – **the prohibition on collective punishment**. The Petitioners request that the honourable court forbid the Respondents from harming tens of thousands of men, women and children who have done nothing wrong except that they live in the Gaza Strip.

The view of the Respondents, as publicised in the media, is that the residents of the Gaza Strip will be harmed “only a little”, since according to them the supply of electricity will “only” be cut intermittently, this allegedly to avoid damage to the functioning of hospitals. Even if it were possible to control the level of damage caused by the disruption of the supply of electricity and fuel – the Petitioners will argue that it is impossible to control the results of such action, and therefore any intentional damage done to the civilian infrastructure in the Gaza strip is manifestly illegal – **the Respondents may not intentionally disrupt the flow of fuel and electricity to Gaza even for one minute.** International law does not permit punishing “only a little”. International law categorically forbids collective punishment.

2. The Parties to the Petition

The Petitioners

1. Petitioner 1 is a resident of Beit Hanoun, a farmer and father of nine children.
2. Petitioner 2 is the deputy director of the Coastal Municipalities Water Utility in the Gaza Strip, a company responsible for the functioning of the sewage and water system. Petitioner 2 is petitioning the honourable court in this capacity.
3. Petitioner 3 is an Israeli nonprofit organization whose purpose is to defend the rights of the Arab minority in Israel.
4. Petitioner 4 is an Israeli nonprofit organization, whose purpose is to promote human rights in Israel and in the territories under its control, including the right to freedom of movement.
5. Petitioner 5 is an Israeli human rights nonprofit organization defending the rights of Palestinians in the occupied territories.
6. Petitioner 6 is a Palestinian nonprofit organization working to defend the human rights of the residents of the West Bank and the Gaza Strip.
7. Petitioner 7 is a non-governmental, non-profit Palestinian nonprofit organization whose purpose is to defend human rights and especially social and economic rights. Its branches are located in the GZ, and it assists residents of Gaza, among them residents pushed to the margins of society.
8. Petitioner 8 is an Israeli nonprofit organization, uniting doctors and medical professionals in defence of human rights, whose purpose is to struggle for the dignity, bodily wholeness and right to health and medical assistance of any person in Israel and in the territories under its control.
9. Petitioner 9 is a Palestinian nonprofit organization whose purpose is to defend the rights of Palestinians in the Gaza Strip and the West Bank.
10. Petitioner 10 is an Israeli human rights nonprofit organization struggling against the use of torture and of cruel, humiliating or inhuman treatment of human beings, and acts to strengthen democracy and the rule of law by defending human civil and rights
11. Petitioner 11 is a non-governmental, non-profit Palestinian organization, established in 1990 to supply community mental health services to the population of the Gaza Strip. Its activities include, among others, treatment, trainings and research, including assistance with rehabilitation and re-inclusion of patients in community and family frameworks.
12. Petitioner 12 is an Israeli nonprofit organization acting to promote human rights in the West Bank and the Gaza Strip through documentation, research and public work.

The Respondents

13. Respondent 1 is the Prime Minister of Israel, who heads the ministerial security committee as by article 27 of the Basic Law: The Government.
14. Respondent 2 is the person holding the Gaza Strip under military occupation, and among other things controls the borders of the Gaza Strip, the transfer of Palestinian tax money collected by Israel and thereby the financing of its public services and the capability of the residents of Gaza to build themselves infrastructures. Respondent 2 controls the transfer of fuel to the Gaza strip through his control over the borders of the strip, including the fuel depot at Nahal Oz. Respondent 2 is responsible on behalf of the government of Israel for the Israeli Defence Forces, by force of the Basic Law: The Military.

3. The Factual Basis

a. The supply of electricity and fuel to the Gaza Strip

15. As with most societies in the 21st century, the existence and functioning of vital civilian institutions in the Gaza Strip is dependent on a regular supply of electricity and fuel. Electricity powers operating rooms, various medical appliances, water and sewage pumps, food and medicinal refrigerators, irrigation systems enabling the growth of fruit and vegetables and the refrigerators in hospital morgues. A regular supply of petrol and diesel to the Gaza Strip enables the functioning of ambulances, garbage trucks and generators backing up the central electricity system. It is impossible to enumerate all the needs which electricity and fuel supply – and the dependence on them for everyday life is obvious.
16. Petitioner 2, Deputy-Director of the Coastal Municipalities Water Utility (CMWU) in the Gaza Strip, provides in his affidavit an explanation about the supply and consumption of electricity in the Gaza Strip.

Affidavit on behalf of petitioner 2 is attached and marked a/1

17. The Gaza Strip needs, at peak periods, up to 240 megawatts of electricity. However, especially after the transformer station in the Gaza Strip was bombed in June 2006 by the Air Force, the Gaza Strip is supplied with 193 megawatts only, which causes frequent power shortages and uncertainty regarding supply.
18. About 63% of the electricity to the Gaza Strip is supplied by Israel (about 120 megawatts) and about 17 megawatts are supplied by Egypt. The transformer station, which has been partially repaired after its destruction, produces about 56 megawatts. See sections 11-12 of a/1.
19. Electricity is supplied to the Gaza Strip by Israel through the Israel Electric Company, which sends electricity to the strip in exchange for a payment transferred from the Palestinian Authority. The payment is deducted from the Palestinian tax money (tariffs and VAT) which Israel collects for the Palestinian Authority (as per the Paris economic protocol of 1994). The Israeli Electric Company sends electricity to the Gaza Strip through (among other things) a line serving the areas of Beit Hanoun, Beit Lahiya and Jebalia.
20. Fuel is transferred to the Gaza Strip through pipes located at the Nahal Oz passage. A private Israeli company sells the fuel to the Palestinian Authority, and receives payment partially from the Palestinian Authority's budget.

b. Danger of harm to the water, sewage and environmental systems in the coastal areas

21. The water and sewage system in the Gaza Strip functions on electricity and fuel. This is a very vulnerable system, subject to stress due to the shortage of replacement parts in the last year and a half, as a result of the restrictions on the entry of goods to the Gaza Strip from Israel imposed by the Respondents. There is no possibility of bringing replacements parts in through the sea, the air or the border with Egypt, due to the prohibition imposed by respondent 2. See the affidavit of petitioner 3:

“We are experiencing severe shortages of spare parts, pumps, metal pipes and other goods that must be obtained from outside Gaza but are delayed or are not permitted to enter at all, because of the Israeli military's restriction on the entry of goods. We always have a fear of flood from sewage draining stations, water shortages, and other problems, because we know that we don't have the materials needed to respond to urgent needs. We have not been unable to make necessary repairs to the system nor any preventive maintenance” (section 5 of a/1)

22. The water pumps and sewage treatment facilities operate on electricity, and the water and sewage system requires 20-25 megawatts. The Coastal Municipalities Water Utility has generators for emergencies, but these generators are no replacement for the regular supply of electricity.
23. The generators are not intended to work for long periods; the generators lack replacement parts, including the filters necessary for their operation; the cost of operating the generators for a long period of time is significantly high and is beyond the water company's budget. The generators are fed by diesel fuel transferred from Israel. See sections 8-10 of a/1.
24. The disruption of the supply of electricity and fuel may have severe consequences. Damage to the treatment facilities, due to a lack of electricity, may cause severe damage to the coast and the environment, especially in the upcoming winter:

Reducing our electricity and fuel supplies would create the potential for catastrophic events, especially in the wastewater pump stations and treatment plants. If we can't treat the sewage, we will have to pump it directly to the sea, because we won't have enough money to purchase fuel. This will damage the aquifer and marine life, and can also spread to the Egyptian and Israeli coastline.

Near the winter season, sewage pumps need to operate even more (24 hours per day) because of the rain, so interruptions in fuel and electricity would be particularly detrimental" (sections 13 and 14 of a/1)

25. If the pumps and the sewage treatment facilities cannot be operated, the sewage in Gaza could flood densely populated areas. This indeed happened about six months ago in Beit Lahiya, when sewage overflowed and five people drowned in the sewage that flooded the residents' homes

"The sewage treatment facility in Beit Lahiya is also vulnerable to interruptions in the electricity supplies. The treatment lagoons must be pumped regularly, or else the 10,000 people living in the area are in danger. Six months ago, when one of the lagoons over flood, five people died in the floods. Proper maintenance could have stopped the disaster, but we are limited by the lack of spare parts, fighting in the area that restricts our ability to access the lagoons, budgetary problems, and general difficulties planning light of uncertainties about supply" (section 15 of a/1)

26. Disruptions in the supply of electricity will prevent the water company from drawing drinking water out of wells and distributing it to residential buildings. It will also prevent the residents from drawing the water into the containers on the roofs of their homes. See section 16 of a/1.

Also, according to petitioner 1, a resident of Beit Hanoun, **"a disruption of the electricity supply will deny me and my family members access to clean drinking water."**

Affidavit by petitioner 1 is attached and marked a/2. (The quote is from section 3 of a/2).

27. The proper functioning of these systems, as needed by a civilian population, does not leave room for manoeuvre. It is impossible to control the results and consequences of even a "slight disruption" in the supply of electricity and fuel for the water company in Gaza and for the lives of the residents.

c. Harm to the health system

28. Hospitals in the Gaza Strip need electricity for operation rooms and oxygen devices, for refrigerating medication and for operating other vital systems.
29. In the area of Beit Hanoun and Beit Lahiya there are three governmental hospitals: (1) Beit Hanoun governmental hospital with 44 beds; (2) Kamal Idwan hospital with 100 beds and (3) Al Awda hospital with 55 beds. In addition, there are three clinics in Beit Lahiya, four clinics in Beit Hanoun and three clinics in Jebalia.
30. Dr. Jamil Muhammad Suliman Ali is the director of the Beit Hanoun governmental hospital.

Dr. Ali's affidavit is attached and marked a/3.

31. The BHG governmental hospital normally operates on electricity. The hospital's ability to operate generators is limited, because the generators are not built to substitute for the electricity grid for a long period of time, and because of the shortage of fuel for the generators. According to Dr. Ali:

"In the hospital, operations take place every day, where the functioning of the operation rooms depends on the availability of electricity...

The hospital is entirely dependent on electricity supplied by Israel" (sections 3-4 of a/3)

Already, disruptions of the electricity supply to the hospital have caused a state of affairs where doctors are postponing treatments which are not urgent – resulting in an accumulation of pending operations and treatments. See section 7 of a/3. Furthermore, the very uncertainty about the supply of electricity adversely affects treatment in the hospitals:

"This situation also adversely affects the patients going into an operation, since they are afraid that the electricity might be stopped in the middle of the operation" (section 6 of a/3)

Electricity is also necessary to operate household medical appliances, such as oxygen equipment, breathing apparatuses and appliances assisting disabled people, such as the nephew of Petitioner 1, to deal with various medical problems (see section 10 of a/2). Electricity is also necessary for cooling medication in hospitals and in private residences where there are no generators. See section 11 of a/3.

33. Electricity is also used by the hospitals to operate communications systems, which allow them to coordinate the activities of medical staff. See section 16 of a/3.
34. Also, obviously ambulances and other vehicles require fuel to operate and transport patients to treatment.

d. Harm to the food supply

36. Electricity is needed to operate refrigerators, which will keep food fresh and protect it from bacteria. This is especially important in areas such as Beit Hanoun, where the residents often cannot leave their houses for long periods of time due to the fighting and aerial attacks. See section 7 of a/2:

"In Beit Hanoun the IDF operates frequently. This means that we are in emergencies all the time, and have to conserve food products for longer than usual periods. Therefore the need for refrigerators connected to electricity is vital. The cessation of the supply of electricity will prevent our daily capability to feed ourselves".

37. Electricity is also needed to operate irrigation systems for agricultural areas, where residents of Gaza grow fruit and vegetables for sustenance and for sale. See for example section 9 of a/2.

e. Harm to work and education

38. Basic activities, such as children's use of computers at school and for homework – depend on the supply of electricity to the homes. See section 6 of a/2.

f. Harm to the dignity of the dead

39. Maintaining respect for the dead depends on the supply of electricity. Hospitals require electricity in order to refrigerate the bodies of the deceased until their loved ones can perform the burial rites. If the hospitals will only be operated on generators, the supply of electricity to the refrigerating rooms will be disrupted, and as a result the dignity of the bodies will be violated. See section 14 of a/3.

g. The vulnerable status of the civilian population in Gaza

40. The punitive steps which the Respondents would impose on a vulnerable population are added on to the enormous pressures and harsh conditions that prevail in the Strip these four months.
41. The surging poverty and economic plight all along the Gaza Strip are well known. According to a report by the UN Office for Coordination of Humanitarian Affairs (OCHA) of 20.6.07, 87% of the population in the Gaza Strip live under the poverty line, which is 2.4 US dollars a day.

See pages 1-2 of the report, which is attached and marked a/4.

42. The collapse of the economy in Gaza is the result of the closure of its borders and especially the closure of the Karni crossing, since 12.6.2007 and the prohibition on the import of commercial commodities (see the Gisha report "Commercial Closure: Deleting Gaza's Economy from the Map" of 4.7.07, available online at:

[http://www.gisha.org/UserFiles/File/publications%20/Gaza%20Economy%20Report%20-%20Heb\(1\).doc](http://www.gisha.org/UserFiles/File/publications%20/Gaza%20Economy%20Report%20-%20Heb(1).doc)

The Respondents do not allow regular export or import from the Gaza Strip. The factories in the Strip have been closed since they are unable to receive raw materials from outside the Strip. In a Red Cross report of 21.9.07 regarding the situation in the occupied territories the director of the International Red Cross Angelo Gnaedinger announced that "After three months of almost complete closure, the humanitarian situation in the Gaza Strip is critical." according to the report, the current plight has also harmed the water and sewage systems, the hospitals and the economic situation of the residents of Gaza. The report is available online at:

<http://icrc.org/web/eng/siteeng0.nsf/htmlall/palestine-israel-news-210907>

43. The residents of Gaza have a difficult time surviving as it is. Immense pressure is exerted on vital civilian institutions, which on the one hand are dealing with increasing physical and emotional problems among the population, and on the other hand suffer themselves from shortage and financial problems as a result of the closure of the borders.
44. In the current reality, **nobody can guarantee the results and consequences of even a "brief" disruption of the supply of electricity or fuel to the Gaza Strip.**

4. The decision to reduce the supply of electricity and fuel

45. On 5.9.07 the Political-Security Cabinet convened to discuss Israel's reaction to the firing of Kassam rockets from the Gaza Strip toward the town of Sderot and the settlements surrounding the Strip.
46. The cabinet decided that intensive military action would continue against those involved in terrorism and in launching the rockets. In addition, the government directed the security apparatus, in cooperation with the Foreign Ministry and the relevant juridical authorities, to prepare a program for harming the services supplied to the Gaza Strip from Israel as a response to the continued attacks on the population in Israel

A copy of the decision is attached and marked a/5

47. The very same day, Petitioner 3 sent an urgent letter to Respondents 1 and 2 and to the Attorney General, Mr. Meni Mazuz, in which it insisted on the illegality of these actions. This letter did not receive any reply.

The letter of 5.9.07 by Petitioner 3 is attached and marked a/6

48. Petitioner 4 also approached the Cabinet ministers asking them not to impose punitive measures against the civilian population in Gaza, and warned of the severe harm that this could cause.

A copy of the letter to Cabinet members by Petitioner 4 of 5.9.07 is attached and marked a/7

49. On 19.9.07 the Political-Security Cabinet convened for a further meeting. In the meeting it was determined, among other things, that **additional restrictions will be imposed on the Hamas regime such that the transfer of goods to the Gaza Strip will be restricted, the supply of fuel and electricity will be reduced, and a restriction will be imposed on the movement of people from the Strip and to it**.

A copy of the decision is attached and marked a/8

50. After the decision of the Cabinet was made public, Petitioner * approached Ms. Osnat Mandel, head of the HCJ department in the State Attorney's office, requesting to know whether the decision had undergone legal review and whether the Respondents do not intend to reconsider it in light of its illegality. The HCJ department was contacted many times, in writing and over the phone.

Copies of a letter of 20.9.2007 to Adv. Mandel and other written approaches are appended and marked a/9.

51. On 24.9.07 Adv. Avi Licht of the State Attorney's office announced that "the decision of the ministers' committee determined avenues of action in principle, but it was not decided, at this stage, to take new operative steps...beyond those taken so far". It was also communicated that the ministerial committee's decision determined that the restrictions would be imposed after undergo legal review – which has not yet been completed.

A copy of the letter from Adv. Licht of 24.9.07 is attached and marked a/10

52. In view of this notification the Petitioners, through the undersigned, approached Adv. Licht on 10.10.07 and asked to see the results of the legal review that he had mentioned in his response, before any operative steps were taken to implement the decision. This request was submitted in order to **allow the Petitioners to petition the honourable court on this matter, if necessary, and before any illegal restrictions were imposed on the residents of Gaza.**

A copy of the letter was also sent to the Attorney General, Mr. Meni Mazuz, to the director of the HCJ department, Adv. Osnat Mandel, and the Speaker of the Knesset, Dalia Itzik.

A copy of the letter of 10.10.07 is attached and marked a/11

53. This letter did not receive any response.

54. On 25.10.07, following publications in the media according to which Respondent 2 had decided to begin reducing the supply of fuel and electricity to Gaza, the undersigned again approached Adv. Licht in an urgent letter, in which they requested that no restriction be made on the supply of electricity and fuel and that the results of any legal review undertaken would be passed on to them.

A copy of the letter of 25.10.07 is attached and marked a/12.

55. Up to the signing of this petition, this letter remained unanswered.

56. On 28.10.2007, the media published an interview given by the deputy minister of defence Matan Vilna'i, in which he said that the restrictions on the supply of fuel and electricity to the Gaza Strip

would be imposed today (28.10.07) or tomorrow. The content of this interview was published in Ha'aretz and is available online here: www.haaretz.co.il/hasite/spages/917454.html

57. The attempts of the undersigned today (28.10.07) at noon, to receive a commitment by phone from Adv. Licht that the supply of fuel and electricity will not be restricted until the completion of the legal review and its transfer to the Petitioners – have been unsuccessful.

5. The Legal Argument

58. The Respondents' decision is an act of collective punishment through which the Respondents have chosen to inflict severe harm on civilian residents of the Gaza Strip, such as Petitioners 1 and 2 and their families, intentionally, and without it even being claimed that these people have done any wrong or acted against the Respondents or the residents of Israel. The Respondents' decision to reduce the supply of electricity and fuel to Gaza contravenes their duty to actively care for the needs of the civilian population in Gaza and to facilitate the functioning of its civilian institutions.
59. The purpose of reducing the supply – exerting pressure on Hamas or other armed groups, when the civilian population is the “lever for pressure” – is manifestly illegal. All the more, the restriction of fuel and electricity is illegal in view of the severe harm it can cause to the rights and the welfare of the residents of the Gaza Strip.

a. The Law Applying to the Actions of the Respondents

60. The Respondents, being of the executive branch of the State of Israel, are subject to constitutional law and local administrative law, including the Basic Law: Human Dignity and Liberty (Article 11). The Respondents should also obey the instructions of customary international law (HCJ 885/87 Afu vs. the Commander of IDF Forces in the West Bank, v. 42(2) 4, 10-11, 33-48), as long as there is no contradictory legislation, and to implement the dictates of human rights law.
61. The actions of the Respondents are subject to humanitarian law by force of the Regulations concerning the Laws and Customs of War on Land annexed to the Hague Convention of 1907, which apply directly in Israeli law, being part of customary law (heretofore: “the Hague Regulations”), as well as the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (heretofore: the Fourth Geneva Convention) (HCJ 393/82 Jamaiyat Iskan vs. the commander of IDF Forces, v. 37(4) 785, 792 (heretofore: the “Jamaiyat Iskan affair”); HCJ 4764/04 Physicians for Human Rights vs. the commander of IF forces in Gaza, v. 58(5) 385, 393 (heretofore: the Physicians for Human Rights Affair) and see also Orna Ben Naftali and Yuval Shani, International Law – Between Peace and War (Ramot 2006), p.243 (heretofore: Ben Naftali and Shani).

The basic instruction of humanitarian international law, starting with the commencement of warfare, is that the local residents “...are under all circumstances entitled to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof...” (Article 27 of the Fourth Geneva Convention. See also article 46 of the Hague Regulations). This general normative-humanitarian framework has been phrased thus by Gasser:

“Civilians who do not take part in hostilities shall be respected and protected. They are entitled to respect for their persons, their honour, their family rights, their religious convictions, and their manners and customs. Their property is also protected” (H.P. Gasser “Protection of the Civilian Population” [23], at p. 211).

At the foundation of this basic instruction stands the recognition of the value of the human being, of the sanctity of his life, and of his being free (compare article 1 of the Basic Law: Human Dignity and Liberty; see also *Commentary: IV Geneva Convention Relative To the Protection of Civilian Persons in Time of War* (ed. by J.S. Pictet), at p. 199 (heretofore: Pictet [22])). **His life or human dignity should not be harmed, and his human dignity should be protected.** This basic

duty is not absolute. It is subject to "...such measures of control and security in regard to protected persons as may be necessary as a result of the war" (end of Article 27). These means should not injure the core of these rights (See Pictet [22] p.207). The harm should be proportionate (Gasser [23] p.220).

The duty of the military commander according to the basic rule is double: first, he must avoid actions which harm the local residents. This is his "negative" duty; second, he has to take lawfully necessary actions which ensure that the local residents will not be harmed. This is his "positive" duty (**Gasser p.212**). **These two duties – which are separated only by a thin line – should be fulfilled reasonably and proportionately according to the needs of the time and place (Physicians for Human Rights Affair, pp. 393-394. emphasis added).**

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, ICJ Advisory Opinion, 2004, para.106.

62. The Respondents' control over the possibility of movement into the Gaza Strip and from it Imposes upon them a special duty to respect the rights of the Petitioners and to ease the functioning of vital institutions. This is a duty derived from human rights law and humanitarian law (the Jamaiyat Iskan Affair, p.810; HCJ 7957/04 Mar'abe vs. the Prime Minister (given 15.9.2005), paragraph 27; Ben Naftali and Shani 243).
63. Inasmuch as the honourable court will need to refer to the question of the legal status of the Gaza Strip, a question which is still being debated by a different panel of justices of this honourable court (HCJ 10265/05 Physicians for Human Rights vs. the Minister of Defence), in a proceeding to which Petitioners 4, 8 and 11 in this Petition are parties, and after the honourable (then) Chief Justice Barak directly instructed the parties to address the question of this status, **the Petitioners will ask to refer to the response of the Petitioners in HCJ 10265/05 of 30.4.2007**, especially sections 44-97 (the application of laws of occupation to the residents of Gaza), sections 98-120 (the application of human rights law to the residents of Gaza) and section 121 (the application of Israeli constitutional law to the residents of Gaza). At the request of the court or the Respondents, the Petitioners will submit this document.

b. The Respondents' control over the availability of electricity and fuel to the residents of Gaza

64. The State of Israel controls the majority of the supply of electricity to the Gaza Strip, as well as the resident's capability to generate their own electricity.
65. Most of the electricity in Gaza is supplied by the Respondents for payment, as part of their authority that derives from laws of occupation in international law, which allow the occupying power to collect taxes from the residents of the occupied territory, on condition that it uses these taxes for managing the territory and/or responding to the needs of the residents. See on this matter articles 48-49 of the Hague Regulations:

Art. 48. If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.

Art. 49. If, in addition to the taxes mentioned in the above article, the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question. (emphasis added)

66. The Respondents collect tariffs and VAT for the residents of Gaza and the West Bank and are supposed to transfer this money to the Palestinian Authority; this money constitutes half of its operational budget. Even in periods when Israel did not transfer the tax money (for example between March 2006 and July 2007), it allowed remittance of this money to cover expenses of electricity (to the Electric Company) and fuel (to private Israeli companies). For details of this mechanism, see a

report by Gisha "Disengaged Occupiers: The Legal Status of the Gaza", January 2007, pp.53-55 (heretofore: "Disconnected Occupiers"), available online at:

<http://gisha.org/UserFiles/File/Report%20for%20the%20website.pdf>

67. This mechanism did not change with the carrying-out of the disengagement plan (see article 1(7) or Annex A, Modified Disengagement Plan – Main Principles 2 (June 6 2004), available at www.pmo.gov.il (heretofore: "The Plan Principles")), according to which 'the move planned does not detract from the relevant agreements between the State of Israel and the Palestinians. The relevant extant arrangements will continue to obtain".
68. Even after the rise of Hamas to power in the Gaza Strip in June 2007, this arrangement has not changed. The Palestinian Authority, headed by Mahmoud Abbas, continues to pay for the fuel and electricity, as part of the public services covered by the tax money.
69. The Respondents also control the capability of the residents of Gaza to provide for their own electricity, among other things through their **control of the borders of Gaza**.

The territorial waters of the Gaza Strip are controlled by the Navy. Respondent 2 does not allow movement of civilian vessels in this area, including the entry of commodities or people via the sea.

The aerial space of the Gaza Strip is closed to flight for civilian aircraft, and respondent 2 does not permit the entry of equipment of people through the aerial space of the Gaza strip.

The land border of the Gaza Strip – the Gaza Strip borders two countries – Israel and Egypt. Respondent 2 forbids the entry of goods or whoever does not have a Palestinian identity card through the Rafah crossing, even when it is open, so that the only way to bring goods or foreigners into Gaza – is through the crossings directly controlled by Israel (whether the Erez crossing for people or the crossings used for goods) (see on this matter "Disengaged Occupiers", pp. 26-45).

70. The construction of a power station in Gaza, as well as its maintenance and operation, are dependant on the decision of Respondent 2 to allow the entrance of necessary equipment and experts. Respondent 2 also has the power to destroy the electricity generating station, as he did in June 2006, when the air force bombed the transformer station, which supplied about 43% of the Gaza Strip's electricity. See also the B'Tselem report "Act of Vengeance: Israel's Bombing of the Gaza Power Plant and its Effects". Available online at

http://www.btselem.org/Download/200609_Act_of_Vengeance_Eng.pdf

71. The transformer station has yet to return to full performance, and is currently able to supply only 29% of the electricity demands in Gaza.
72. Also, the possibility for Gaza residents to develop other energy sources, such as natural gas off the shores of Gaza, is controlled by the Respondents, who control Gaza's territorial waters.
73. The supply of electricity and fuel to the Gaza Strip does not take place as part of an agreement between states. This is an agreement that arranges the fulfilment of Israel's duties towards the residents of Gaza. In this context, the Respondents' claim quoted in the media, according to which the residents of Gaza should provide their own electricity, is odd. In more than 38 years of direct control of Gaza by the Respondents, which preceded the implementation of the disengagement plan, the Respondents allowed and saw to the construction of only a limited local electricity infrastructure (about 43% of the demand). A year after the implementation of the disengagement plan, the Respondents destroyed the station for production of local electricity, such that the residents of Gaza are still trying to regain the level of local supply that preceded the destruction. This behaviour places upon the Respondents increased duties towards the residents of Gaza- specifically in the area of electricity supply.
74. **It is the Respondents who have prevented and continue to prevent civil society in the Strip to supply its own electricity** and it is upon them that the duty lies to allow this society to exist until it reaches a supply capacity which is not dependent on the Respondents or controlled by them.

c. The Respondents policy constitutes collective punishment

75. On 19.9.2007 the Political-Security Cabinet of the Government of Israel decided as follows:

“ Hamas is a terrorist organization which has taken control of the Gaza Strip and turned it into hostile territory. This organization undertakes hostile activity against the State of Israel and its citizens and is the responsible address for this activity.

“ In view of this it has been decided to adopt the recommendations presented by the security apparatus, including the continuation of military and pre-emptive activity against the terrorist organizations. In addition, **further restrictions will be placed on the Hamas regime such that the passage of goods to the Gaza Strip will be limited, the supply of Fuel and Electricity will be reduced**, and a limitation will be imposed on the movement of people from the Strip and to it.

“ The restrictions will be implemented after a legal review while taking into consideration the humanitarian aspects of the situation in the Gaza Strip and out of the intention to avoid a humanitarian crisis” (emphasis added)

See a/8

76. In the decision two avenues of action were determined: first, Israel would continue military and “pre-emptive” action against the terrorist organisations.

77. Second, and in **addition** to the first route of action, the cabinet determined that the supply of fuel and electricity to the residents of Gaza would be reduced.

78. This component of the decision cannot be interpreted two ways. **It is a decision to reduce, indiscriminately, the supply of vital infrastructures used by a million and a half men, women and children, including the Petitioners, who are not involved in activity against the state of Israel and do not belong to Hamas.**

79. This is also the conclusion to be drawn from the statements of cabinet ministers in the media, according to which their intention in the decision was to cause suffering to the residents of Gaza, so as to exert “**civilian leverage**” on the Hamas regime in response to the continued firing of Kassam rockets from the Strip into Israel- a firing which is also against international law since it is directed against civilians.

80. **In the words of the cabinet members, this is the imposition of civilian-economic punitive steps against the residents of the Gaza Strip in reaction to the continued firing of the rockets towards the Western Negev.** The deputy Prime Minister, Haim Ramon, told Yedi'ot Aharonot on 4.9.07 that in his opinion Israel should take punitive steps such as disconnection of electricity and water. <http://news.walla.co.il/?w=/1/1170765>

Minister Itzhak Cohen (Shas) said in a meeting on 19.9.07 that Israel's actions should clarify that for every action on the Palestinian side, there will be an immediate Israeli response against the population. In his words, “Gaza's electricity switch should be attached to the rocket's tail”. <http://www.haaretz.co.il/hasite/spages/905214.html>

A copy of the news reports is attached and marked a/13i and a/13ii respectively

Foreign Minister Tzipi Livni, said that “we will reduce the amount of electricity that we supply to the Strip, and Hamas will have to decide whether to provide electricity to hospitals or to weapons manufacture”. See a/13

Therefore the government ministers are aware of the consequences of the decision for the life of the civilian population, and their intention was to influence the activity of armed groups – by punishing all the residents of Gaza.

81. The residents of Beit Hanoun, like all the residents of the Gaza Strip, have the right to use hospitals, to irrigate their fields, to refrigerate food, to treat themselves in their homes and to ride vehicles. The respondents may not disrupt this activity intentionally, to “punish” them for living in an area out of which rockets are fired. Such harm is **in blatant contravention of the basic principle of international law that forbids collective punishment**. This principle is explicitly consecrated in international humanitarian law, as article 50 of the Hague Regulations determines that

"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."

Article 33 of the Fourth Geneva Convention determines:

"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."

While article 75(2)(d) of the First Protocol Additional to the Geneva Conventions of 1977 (heretofore: The First Protocol) determines:

(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

82. Article 33 of the Fourth Geneva Convention effectively applies the well known rule, that punishment is not given other than according to law and according to the actions of the individual person – not due to the actions of others. The Red Cross phrases the matter thus:

"Responsibility is personal and it will no longer be possible to inflict penalties on persons who have themselves not committed the acts complained of" (Pictet, Commentary IV Geneva Convention (1958) 225)

These words were written in 1958 out of the expectation that sovereign powers have internalized the wrong in punishing an entire population of men, women and children who have not committed a crime or done any wrong.

"Collective punishment" is any sanction or nuisance, which can be expressed in administrative, police or other measures (Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (Y. Sandoz et al. eds., Geneva, 1987), 874). Indeed Israel is not a party to the First Protocol, but in HCJ 769/02 The Public Committee Against Torture vs. The Government of Israel (given on 14.12.2006) it was determined that article 3(51) of the First Protocol is in its entirety part of international customary law (section 30 of the verdict by (then) Chief Justice Barak). In addition, Ben Naftali and Shani note that the instructions of the protocols of 1977 need to be examined individually, in order to determine whether this is a custom or not (Ben Naftali and Shani, 133)

And indeed, some argue that article 75(2)(d) has customary status (G. von Glahn, Law Among Nations: An Introduction to Public International Law (Boston, 7th ed., 1996) p.622)

Taking actions that are within the scope of collective punishment constitutes a severe contravention of fundamental principles in humanitarian international law, and therefore their contravention has been recognized as a war crime. See section 8(2)(b) to the Rome Convention of the International Criminal Court of 1998. In our matter, the disruption of the supply of electricity and fuel out of the intention to punish the civilian population in Gaza and to exert pressures upon it could likely constitute a war crime which the Respondents may have to answer for.

83. The prohibition on collective punishment is an absolute prohibition, and it does not matter if it is a "light" or severe punishment. **Intentional disconnection of the supply of electricity or fuel – even for only one minute – is entirely banned.**

d. The reduction of electricity and fuel supply contravenes the principle of distinction and the principle of proportionality

84. According to the principle of **distinction**, **distinction** between fighters and civilians is required at all times. This principle forbids intentional or indiscriminate harm to civilians.
85. The instructions of humanitarian law places upon Israel the duty to avoid harming the civilian population in the Gaza Strip and the objects vital to its survival (see Article 27 of the Fourth Geneva Convention, articles 51(1) and (2) of the First Protocol as well as articles 52 and 54 of the same Protocol). See Rules 1 and 5 in: Jean-Marie Henckaerts; Louise Doswald-Beck, Customary International Humanitarian Law, Vol 1: Rules, p. 3, 17.
86. The prohibition on harming civilian targets necessarily arises from the aforementioned principle of discrimination. See articles 48 and 52(2) to the First Protocol and Rule 7 in Customary International Humanitarian Law, Vol 1: Rules, p. 25
87. The prohibition on harming the civilian population and civilian targets includes a prohibition on the use of means that cannot discriminate between military targets (i.e. legitimate targets), and civilian targets – such injury is prohibited. This is either because the harm caused by these means is not exact, or because of the wide impact of the harm which cannot be bounded. Since it is impossible to cut off electricity directly to the weapons manufacturing facilities while leaving the supply of electricity and fuel for civilian needs intact, the intentional harming of these objects is illegal. As may be recalled, according to article 51(5)(a) of the First Protocol, **there is a prohibition on treating a group of military and civilian targets as one target.**
88. Even if the true intention of the Respondents is to stop the firing of rockets, international law does not allow or permit a country – even one that is fulfilling its duty to try to protect its citizens – to do so in a way that inherently does not discriminate between a civilian and a fighter. The Respondents must find another way to do so, which will discriminate between the parties to combat and the absolute majority of the residents of Gaza, who enjoy the protection given to civilians by international law, both during warfare and in a situation of occupation (HCJ 2056/04 Surik Village Council vs. The Government of Israel, v. 58(5) 807; HCJ 3799/02 Adalah vs. The General of the Central Area Command (given on 6.10.2005)).
89. Let it be emphasised that only recently the honourable court again referred to the absolute nature of the prohibition against harming civilians and civilian targets. See paragraph 23 of HCJ 769/02 The Public Committee Against Torture in Israel and others vs. The Government of Israel and others of 14.12.2006. see also HCJ 3799/02 Adalah - The Legal Centre for Arab Minority Rights in Israel and others against the General of the Central Area Command in the IDF and others, in the verdict of (then) Chief Justice Barak, in paragraph 24:

“...in my opinion, the considerations that forbid the army to use a local resident have the upper hand. At the basis of this my point of view are several reasons of principle. **First, a basic principle which is threaded through the laws of military occupation is the prohibition on the use of protected residents as part of the military effort of the occupying army.** The civilian population is not to be used for the military needs of the occupying army (see Falk, p.218)...**Second** another principle of humanitarian law is that **every measure should be taken to separate between the civilian population and the military activity** (see Falk, p.169). The central way in which this rule obtains in the duty to move innocent local residents away from the area of hostile actions (see rule 24 of international humanitarian law)” (emphasis added)

These words speak for themselves.

90. Let it be emphasised, that even if the target is a legitimate military one, **international law forbids an act which might cause disproportionate harm to civilian targets**. In this case the harm to civilian targets is certain and intentional, and therefore cannot be considered proportionate.
91. Furthermore, international law requires warring parties to take precautions not to harm access to water, irrigation systems or the environment. On this see Article 22 of General Comment Number 15, Committee on Economic, Social and Cultural Rights (29th Session, Geneva, 11-29 Nov. 2002:

"The Committee notes that during armed conflicts, emergency situations and natural disasters, the right to water embraces those obligations by which States parties are bound under international humanitarian law. This includes protection of objects indispensable for survival of the civilian population, including drinking water installations and supplies and irrigation works, protection of the natural environment against widespread, long-term and severe damage and ensuring that civilians, internees and prisoners have access to adequate water."

Also in Article 31 of the aforementioned General Comment, **there is an explicit prohibition on the disruption of the water system, even indirectly, as a lever for exerting pressure:**

"States parties should refrain at all times from imposing embargoes or similar measures, that prevent the supply of water, as well as goods and services essential for securing the right to water. Water should never be used as an instrument of political and economic pressure".

V. Reducing the supply of fuel or electricity contravenes the principles of military need

92. A reduction in the supply of fuel or electricity, which feeds the entirety of systems in Gaza, contravenes the principle of military need. According to this principle, fighting forces may harm humanitarian interests only if the harm serves a vital and immediate military need-- such as weakening the enemy, subduing it or ending the battles. See Ben Naftali and Shani, p.147.
93. To demonstrate this argument, the honorable court is directed to the report of the Prosecutor's Office of the ICTY (International Criminal Tribunal in the former Yugoslavia), which examined the NATO bombings in Yugoslavia, and among other things the bombing of the television station in Belgrade. The report determined that inasmuch as the bombing was intended to sabotage the military communications infrastructure of Yugoslavia it stands the test of military need. The committee added that if it turned out that the purpose of the bombing had been only to damage the morale of the Yugoslav population and to weaken the support for the Milosevic regime it wouldn't have stood the test of military need:

"... Disrupting government propaganda may help to undermine the morale of the population and the armed forces, but justifying an attack on a civilian facility on such grounds alone may not meet the "effective contribution to military action" and "definite military advantage" criteria required by the Additional Protocols (see paragraphs 35-36, above). The ICRC Commentary on the Additional Protocols interprets the expression "definite military advantage anticipated" to exclude "an attack which only offers potential or indeterminate advantages" and interprets the expression "concrete and direct" as intended to show that the advantage concerned should be substantial and relatively close rather than hardly perceptible and likely to appear only in the long term (ICRC Commentary on the Additional Protocols of 8 June 1977, paragraph 2209). While stopping such propaganda may serve to demoralize the Yugoslav population and undermine the government's political support, it is unlikely that either of these purposes would offer the "concrete and direct" military advantage necessary to make them a legitimate military objective..."

section 76 of the report. For the complete report see:

http://kosova.org/de/allied_force/final_report/index.asp

A print-out of the relevant page is attached and marked a/14.

94. This prohibition, which is enshrined among other places in the Hague Regulations, has customary status and is therefore binding.

VI. The duty of the Respondents to facilitate the functioning of civilian institutions in Gaza and especially the functioning of the health system

95. The Respondents are not only prohibited from harming civilian infrastructure – they have the positive duty, by force of Article 43 of the Hague Regulations, to tend to the needs of the civilian population in Gaza and to facilitate the functioning of civilian institutions. See Article 43 of the Hague Regulations as well as the broad interpretation given it by the honorable court in H CJ 10356/02 Hess vs. the IDS Forces in the West Bank, v.58(3) 443:

“The duty of the commander to look after the normality of the living arrangements in the area is interpreted upon all aspects of life and goes beyond security matters and immediate survival needs. It applies to the diverse life needs of the residents, including welfare, sanitation, economy, education, society and similar needs which a person in a modern society requires” (p.461)

96. See also Articles 16-20 of the Fourth Geneva Convention.

97. According to Article 18 of the Geneva Convention,

“Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack but shall at all times be respected and protected by the Parties to the conflict.’

98. ()

99. ()

Articles 56-57 of the Geneva Convention determine that the occupying power carries the responsibility for the normal functioning of the health system and hospitals.

100. Article 21 of the Geneva Convention gives special protection to the functioning of ambulances and other vehicles used to evacuate the sick and injured – which operate on fuel.

101. Article 59 of the Geneva Convention obliges the Respondents to facilitate the supply of essential goods. The Petitioners will argue that in the reality of Gaza in the 21st century, fuel and electricity are goods that are essential for the civilian population, since without them it is impossible to maintain vital systems.

102. According to Article 5 of the Geneva Convention, the Respondents are obliged to allow the residents of Gaza a sufficient supply of food, which as mentioned, depends on the possibility of refrigerating it as well as operating irrigation systems and other equipment required for agriculture.

103. The duty to protect the rights of health, **access to clean water**, the dignity of the deceased, dignified existence and various other rights, of which the Petitioners would like to expand verbally, is enshrined in the Convention on Civil and Political Rights of 1966, in the Convention on Economic and Social Rights on 1966 and in the Basic Law: Human Dignity and Liberty.

104. This Petition is supported, among other things, by affidavits and powers of attorney forms from Petitioners 1-2, 6-7, 9 and 11, which have been signed before lawyers in the Gaza Strip and sent to the undersigned by fax, following coordination by phone. Due to the difficulty in conducting meetings between Israeli lawyers and residents of Gaza, the court is requested to receive these affidavits.

105. Due to the limitations of time, the honourable court is hereby requested to receive the power of attorney from Petitioners 5, 8, 10 and 12 which were sent to the undersigned by fax, after coordination by phone. The Petitioners commit to submit to the honourable court the original powers of attorney, lawfully signed, shortly.

106. Therefore, the honourable court is requested to issue an urgent injunction as requested, to issue an order nisi as requested, and after receiving the response of the respondent to make it absolute.

Sari Bashi, Adv.

Fatmeh Al-'Ajou

The Petitioners' Representatives

Today: 28 October 2007