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At the Supreme Court
Sitting as the High Court of Justice

HCJ 7945/23
HCJ 8112/23

1. _____ **Ghanem**
2. _____ **Jaber**
3. _____ **Kabha**
4. _____ **Kabha**
5. _____ **Kabha**
6. _____ **Kabha**
7. _____ **Kabha**
8. _____ **Ashkar**
9. _____ **Ashkar**
10. _____ **Amar**
11. _____ **Amar**
12. _____ **Amar**

13. HaMoked - Center for the Defence of the Individual

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The Petitioners in HCJ 7945/23

1. _____ **Radwan**
2. _____ **A-Zakla**
3. _____ **A-Zakla**
4. _____ **Gashash**
5. _____ **Gashash**
6. _____ **Gashash**
7. _____ **Zeid**
8. _____ **Zeid**
9. _____ **Zeid**

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The Petitioners in HCJ 8112/23

v.

Military Commander of the West Bank Area

Represented by the State Attorney's Office,
29 Salah-a-Din Street, Jerusalem

The Respondent

Preliminary Response on behalf of the Respondent

According to the decisions of the Honorable Justice Grosskopf dated November 16, 2023 and November 27, 2023, a joint preliminary response is hereby submitted to the above captioned petitions on behalf of the Respondent.

Preface

1. As of October 7, 2023, a war takes place between the State of Israel and terrorist organizations, following a brutal attack which was launched against Israel on that day, on *Simchat Torah* holiday. In view of the above, the IDF has also intensified its activity in the Judea and Samaria areas to thwart terror and protect the security in the area. It should be noted that the scope of the forces' activity in the area has also been changed in view of the general war conducted within the borders of the state. As part of these activities, and to prevent terror attacks within the territory of the state of Israel, it was also decided to restrict entry into the seam area.
2. The Petitions at hand concern the restrictions which were imposed on the access of holders of entry permits into the seam zone following the outbreak of the war on October 7, 2023. Accordingly, the petition in H CJ 7945/23 **Ghanem v. The Military Commander of the West Bank Area** concerns the restrictions imposed on the entry of holders of "permanent seam zone resident" permits and "commerce in the seam zone area" permits; and the petition in H CJ 8112/23 **Radwan v. The Military Commander of the West Bank Area** concerns the restrictions imposed on the entry of holders of entry permits into the seam zone for agricultural purposes – all through different crossings located in the security fence, following the outbreak of the war on October 7, 2023.
3. As specified below, Respondent's position is that given the full factual infrastructure of the matter, the petitions show no cause for the honorable court's intervention in the manner in which the crossings in the security fence are operated, including the types of permits whose entry was allowed, in these difficult days.
4. It should be emphasized that the restrictions which are currently imposed on the entry into the seam zone result directly from the exceptional security situation, and derive from complex security, operational and logistical considerations, which are decided at the discretion of the bodies entrusted with the responsibility for protecting the security of the area.
5. This complex factual picture, which dictated the changes made following the war, is examined on a daily basis by the security officials in charge of the matter, with the intention to return to the usual routine as soon as possible.

6. **It should already be noted that with respect to the permits for agricultural purposes, on November 17, 2023 a decision was made by the military commander for the coordination of harvest work in the seam zone in the Jenin and Ephraim region. Respondent's officials have informed that these days and commencing from November 26, 2023, Respondent's officials allow the passage of holders of farmer permits subject to coordination with them, in a gradual manner and in a format which complies with the security needs and the entire set of relevant considerations, all as detailed below.**

In view of the aforesaid, the Respondent will argue that the Petition which concerns the holders of farmer permits (HCJ 8112/23) should be dismissed in view of the change in the factual infrastructure which was underlying the Petition when submitted.

The Relevant Background

"Iron Swords" War

7. On October 7, 2023, on Saturday morning and *Simchat Torah* holiday, a murderous terror attack was launched from the Gaza Strip in which thousands of activists of Hamas, the Islamic Jihad and other bodies infiltrated the territory of Israel by land, air and sea and entered communities near the Gaza border and in southern Israel. Upon entering Israel, the above terrorists committed inconceivable acts of murder and atrocities, shot at vehicles which were driving down the main roads, massacred men, women, the elderly and infants and abducted numerous hostages. At the same time, massive firing of rockets and mortar bombs was carried out by these terror organizations, at the cities of Israel.
8. Until this moment, the full scope of the disaster and number of casualties, missing and hostages amounting to more than 1,300 victims (including citizens, soldiers and members of the security and rescue forces) is not yet unknown and keeps growing. In the framework of the terror attack, about 240 individuals were abducted and taken into the Gaza Strip, including children and infants, women, men and the elderly – and their fate is unknown.
9. Due to the war which was imposed on Israel, the Ministerial Committee on National Security Affairs decided to take a series of substantial military actions by virtue of the power vested in it under Sections 40(a) and 40(a1) of the Basic Law: the Government. In addition, a special situation on the home front was declared by the Minister of Defense, by virtue of the power vested in him according to Section 9C(b) of the Civil Defense Law, 1951.
10. Since October 7, 2023, the state of Israel conducts a difficult war against the terror organizations in the Gaza Strip, while in the background war is also conducted in the northern part of Israel, from which the inhabitants of numerous communities located near the border have been evacuated.

This exact same matter was referred to by the honorable court in several judgments – see paragraph 8 of the judgment given in HCJ 7439/23 **Alwahidi v. Israel Security**

Forces (October 31, 2023): "In these terrible days, the state of Israel conducts a difficult war against those seeking to destroy it, members of the Hamas organization controlling the Gaza Strip, which sent its murderers, along with a bloodthirsty mob, on the morning of October 7, 2023 (*Simchat Torah* holiday) - to destroy, kill and massacre the young and the elderly, babies and women." See also paragraph 14 of the judgment in HCJ 7287/23 **Ghidan v. The Military Commander of the West Bank Area** (October 11, 2023). See also: HCJ 7650/23 **Association for Civil Rights in Israel v. Minister of National Security** (October 30, 2023).

11. Following the outbreak of the war substantial changes have occurred in the security situation assessment and in the deployment of the forces in the Judea and Samaria area (hereinafter: the **Area**), all as broadly specified below.

The Seam Zone: General

12. Following acts of terror and attacks committed by Palestinians in the State of Israel and in the Israeli settlements located in the Judea and Samaria area after the surge of violent incidents in September 2000, the Government of Israel decided in the beginning of 2002 to build a security fence along the seam line between Israel and the Judea and Samaria area, to prevent the free passage of Judea and Samaria residents to Israeli territories located west of the fence.
13. The route of the security fence was determined based on a wide array of considerations, primarily security. Considering the above, the route of the security fence and the border line of the Judea and Samaria area do not completely overlap, and in several areas the security fence was built inside the Judea and Samaria area, in a manner which caused some Judea and Samaria areas to remain beyond the fence, between the security fence and the border line of the area. These areas are referred to as the "seam zone".
14. Since there is no physical barrier preventing entry into Israel from the area located in the "seam zone", and in view of the security risk inherent in the passage of terrorists from the seam zone into the territory of the State of Israel, the Respondent exercised the power vested in him according to section 318 of the Order on Security Directives [Consolidated Version] (Judea and Samaria)(No. 1651), 2009 (hereinafter: the **Order on Security Directives**), and declared the seam zone areas a closed military zone. According to the Order, entry into and exit from this area are prohibited without a permit.
15. The assumption underlying the declaration of the seam zone as a closed military area is that a security risk is inherent in a situation allowing free entry and exit from the Judea and Samaria area into the seam zone and therefrom to Israel, with no further scrutiny. Passage without a permit may be exploited for activity against the security of the State of Israel and its citizens or enable the entry of individuals with a criminal preclusion. The security need which requires, at this time, to prevent the uncontrolled entry of Palestinian residents into the seam zone, for the above reasons, was recognized by the honorable court on several occasions (see, for instance, HCJ 8172/02 **Ibrahim v. Commander of IDF Forces in the Judea and Samaria Area** (reported in the Judicial Authority Website, October 14, 2002); HCJ 6896/18 **Ta'ame v. The Military**

Commander (reported in the Judicial Authority Website, March 6, 2022), paragraph 59 of the judgment of the Honorable Justice D. Barak-Erez, paragraphs 2-4 of the judgment of the Honorable President E. Hayut; HCJ 3066/20 *Zeid v. The Military Commander* (reported in the Judicial Authority Website, July 12, 2021), paragraphs 10-11; HCJ 3571/20 **Khasib v. The Prime Minister of Israel** (reported in the Judicial Authority Website, May 1, 2022), the judgment of the Honorable President Hayut).

16. The lawfulness and reasonableness of the seam zone declaration and the "permit regime" regulating the unique arrangements pursuant to which individual entry permits into the seam zone are granted - were examined by this Honorable Court in the framework of principled petitions which had been filed in that regard. See for instance HCJ 9961/03 **HaMoked Center for the Defence of the Individual founded by Dr. Lotte Salzberger v. Government of Israel** (reported in the Judicial Authority Website, April 5, 2011) (hereinafter: the **Permit Regime Case**), one of whose Petitioners – HaMoked – is Petitioner 13 in HCJ 7945/23 and Petitioner 10 in HCJ 8112/23.

See paragraph 13 of the judgment of the Honorable President Beinisch in that regard:

"All of the above clearly indicates that over the years a real connection was created in our judgments between the security fence issue (and the judgments rendered in that regard) and the seam zone issue. This connection clearly stems from said judgments, but it is also mandated by the logic of things and the main purpose of the security fence, which obligates the establishment of a legal framework which would apply to the territories of the seam zone and would enable the military commander to effectively control and supervise the individuals who enter these territories, the passage from which into the territory of Israel is free and open. In the absence of such framework, there is a concern that the objective of the security fence would not be realized."

17. According to the power vested in the Respondent pursuant to the Order on Security Directives, the Judea and Samaria Area was declared a closed military area. Accordingly, a resident of the Area wishing to exit the Area is required to receive a permit from the military commander. In addition, a resident of the Area holding a permit which was issued by the military commander as aforesaid, is exempt from the need to receive an entry visa into Israel (according to the Entry into Israel Order (Exemption to residents of Judea and Samaria, the Gaza Strip, North-Sinai and the Shlomo Area (*Merhav Shlomo*) and the Golan Heights, 1968).
18. As far as entry to the seam zone is concerned, according to security legislation, the declarations pursuant to which the Area was closed do not apply to permanent residents of the Area. Hence, alongside permanent residency certificates in the seam zone, residents of the Area wishing to enter and stay in the seam zone are given various different permits, including: "Farmer permit in the seam zone", "Agricultural Worker permit in the seam zone", "Commercial permit in the seam zone" and "Personal Needs permit".

19. These permits enable the residents of the Area to enter and stay in the seam zone for different purposes, according to their connection to the seam zone. In establishing the conditions for granting the different additional permits, a balancing was made between the security considerations which led to the closure of the Area, and Respondent's obligation to maintain reasonable access to Judea and Samaria areas located on the west side of the security fence and to preserve, to the maximum extent possible, the proper fabric of life of the individuals residing in the seam zone and in the area adjacent thereto.
20. The procedures governing the entry into the seam zone and the issuance of seam zone certificates and permits are specified in a collection of orders of the Civil Administration referred to as the "Seam Zone Standing Orders" (hereinafter: the "**Standing Orders**"). The Standing Orders entrench and specify the rules concerning the residence, entry into and presence in the seam zone, including the criteria for receiving such certificates and permits, as well as the periods for which said certificates and permits are granted and the like.
21. The Standing Orders are updated and amended from time to time according to need. The most recent collection of Standing Orders entered into force on June 12, 2022 and is referred to as the "Collection of Entry Procedures into the Seam Zone". The entry procedure into the seam zone can be viewed at: <https://www.gov.il/he/departments/policies/entrance> .

Crossings to the Seam Zone and Israel

22. Pursuant to the seam zone declarations and the erection of the security fence, various crossing points were established along the fence, whose purpose is to enable the residents whose businesses, homes or agricultural lands remained in the seam zone to maintain their fabric of life. Palestinians holding entry permits into the seam zone and Israel may pass through these crossings according to the entry permits held by them.
23. The crossings in the security fence to the seam zone are divided into three categories of gates:

"Fabric of life gate": as a general rule these gates are designed for permanent residents of the seam zone. In normal times they open daily on variable hours depending on the gate, all subject to the state's undertakings in different legal proceedings or in coordination with the representatives of the permanent residents of each region, according to their needs.

"Agricultural Gates": "Daily Gates": open between two to three times a day for variable durations spanning between half an hour to two hours, depending on the scope of users and the specific agricultural needs. "Seasonal Gates": open in agricultural seasons (mainly in the relevant seasons for the olive orchards) and in the other seasons of the year these gates open subject to prior coordination.

"Operational Gates": are used by the operational forces.

24. The above schedules for the opening of the gates are determined by the military forces in the Area, after balancing between the security needs and the applicable operational constraints depending on the period, and the needs of the local population in each region. All of the above, subject to coordination, to the maximum extent possible, with the residents of the specific region, mostly through the Palestinian Coordination, the Head of the Village and the like.
25. It should be clarified that the seam zone entry procedures are more lenient compared to the entry procedures into Israel as far as the security examination is concerned. Accordingly, a person holding an entry permit into the seam zone may be precluded from entering the territory of Israel for security reasons, the above, although there is no barrier between the seam zone areas and the territory of Israel. Moreover, the security check conducted in some of the gates which are used to enter the seam zone, is limited compared to the examination conducted while entering Israel, based on the assumption that they are used solely for entering the seam zone. Therefore, it is highly important that the entry permits into the seam zone are not misused for the purpose of entering Israel.
26. To complete the picture, it should be noted that in recent years a lot of information has been accumulated by the security bodies showing that entry permits to the seam area are widely used for purposes other than that for which they were intended, namely, for an illegal and uncontrolled entry into Israel, with all ensuing consequences, and all the more so in these days.

Entry permits into the seam zone during the Iron Swords War

27. As aforesaid, on October 7, 2023, a war was imposed on the State of Israel, following which a security situation assessment was conducted and changes were made in the deployment of the forces in the Area. It should be noted that even in normal times the security need still requires, at this time, to prevent an uncontrolled entry of Palestinians into the seam zone, to maintain the security of the Area and the security of the State of Israel and its residents, and to protect the life of the Israeli citizens in the settlements located in the seam area. The above applies even more forcefully in a time of war.
28. On October 7, 2023, following a security situation assessment which was held due to the outbreak of the war and in the framework thereof, it was decided to extend the closure which had been imposed during the *Tishrei* holidays, which limited the entry of Palestinians from Judea and Samaria to Israel and the seam area until further notice and according to the policy which is updated from time to time based on periodic situation assessments (hereinafter: the **Closure Order**).

On November 3, 2023, the closure order was extended once again according to a situation assessment conducted in that regard.

A copy of the closure order imposed during the *Tishrei* holidays is attached and marked RS/1.

A copy of the extended up-to-date closure order dated November 3, 2023 is attached and marked RS/2.

29. According to the closure order, while it is in force the validity of all entry permits to Israel and in the case at hand to the seam zone is suspended, with the exception of unique humanitarian populations and additional populations which are essential for the Israeli economy and its ability to continue to function in an orderly fashion, all as explicitly described in the appendices of the order.
30. Given the security situation assessment and the increasing security threats during the war, and against the backdrop of changes in the current deployment of the forces of the Central Command and the increased risk arising from entering the seam space at this time, it was decided not to exclude from the closure order the holders of entry permits for commerce and agricultural purposes in the seam zone (as aforesaid, at this time adjustments are made to enable the entry of agricultural permit holders in a manner conforming to the security situation).

It should be further noted that the holders of a "permanent resident" permit were excluded from the closure order as well as the holders of permits for "personal needs" and their passage to the seam zone is allowed according to the opening hours of the crossings. In addition, passage for humanitarian reasons is provided all days of the week 24 hours a day, subject to a concrete coordination.

Crossing points to the seam zone with respect of which the petitions at hand were submitted

31. We shall first explain that in normal times some of the crossing points are under the responsibility of the IDF and are operated by it while other crossing points are operated by the Ministry of Defense Crossing Points Authority (hereinafter: **CPA**). As of November 5, 2023 and during the war, to enable the IDF to focus on its numerous additional tasks, it was decided to transfer the responsibility for operating additional crossings usually operated by the IDF to the CPA.

Barta'a Crossing

32. Barta'a crossing which is also known as the "Reihan" crossing or crossing point "356" serves the population of the permanent seam zone residents in the area of the Barta'a village holding suitable permits. The purpose of the crossing, as will be clarified below, is to enable the residents whose homes are located in the seam zone, to enter and exit their homes for the purpose of maintaining a proper fabric of life. Therefore, as stated in the state's response in the Permit Regime Case, the gate was classified as a "fabric of life" gate.

Barta'a crossing is also used as a crossing point to the territory of Israel and is included in the Order Regulating the Powers at the Crossing Points (Temporary Order)(Judea and Samaria)(No. 1665), 2020. The Barta'a crossing is operated by the CPA in normal times and at this time.

33. Before the outbreak of the "Iron Swords" war, the Barta'a crossing was open 24 hours a day, 7 days a week for the permanent residents of the seam zone – passing on foot and by vehicle, and was operated by 100-120 workers. In normal times about 12,000 pedestrians and about 800 vehicles, on average per day, crossed the Barta'a crossing

(including an estimated number of 300–350 vehicles of permanent residents) and 60 trucks carrying goods.

34. Since the war broke out, due to the security situation assessment and the fact that many of the CPA employees (more than half) were drafted by an emergency order (No. 8) to serve in combat, the crossing arrangements were changed and the forces currently operating the crossing consist of between 60 to 70 workers.

Currently, the Barta'a crossing opens between 06:00 to 16:00 for pedestrians and between 06:00 to 18:00 for vehicles. It should be noted that the number of vehicles allowed to pass through the gate is currently limited to 100 vehicles to ensure that all the vehicles passing through the crossing undergo a security check according to the number of workers currently operating the crossing. It should also be noted that the aforementioned list of vehicles was established in coordination with the Barta'a council.

It should be clarified that the crossing is open 24 hours a day 7 days a week, even in a time of war, for special humanitarian needs. If any such need arises, the matter is coordinated with the DCO which coordinates the entry with the crossing point, and indeed, according to information received from Respondent's officials and CPA's officials, humanitarian coordination as aforesaid actually takes place.

35. According to information received from CPA's officials, since the outbreak of the war about 800 permit holders who are excluded from the closure order pass on a daily basis through the Barta'a crossing on foot (on average); In addition, about 15 vehicles and about 15 trucks carrying goods pass through the crossing on a daily basis. It should be noted that according to the best examinations of Respondent's officials some of the vehicles in the area were detained in Pillbox 190 before arriving to the Barta'a crossing which encumbered the vehicles' ability to arrive to the crossing. It was also informed by Respondent's officials that the list of persons permitted to pass through the Barta'a crossing has recently been transferred to the forces on site to ease the arrival of the vehicles to the crossing.
36. In view of Petitioners' allegations concerning this crossing, it should be noted that there are no Border Police soldiers in the Barta'a crossing contrary to Petitioners' allegations. In addition, the exit on foot is unsupervised and is made through a separate route in which there are no delays or check-ups. Petitioners' allegations concerning this or that delay were examined in the operational logs and were found baseless.

Shaked Crossing

37. Shaked crossing, also known as the Tura crossing or crossing point "300", is located near Tura village. The crossing serves the population of the permanent residents and farmers in this area holding suitable permits. The purpose of the crossing, as will be clarified below, is to enable the residents whose homes are located in the seam zone and farmers whose lands are located in the seam zone, to enter and exit their homes for the purpose of maintaining a proper fabric of life. Therefore, as stated in the state's response in the Permit Regime Case, the gate was classified as a "fabric of life" gate.

38. As of November 5, 2023 the crossing has been operated by the CPA and until that date it was operated by IDF soldiers.
39. Before the outbreak of the "Iron Swords" war, Shaked crossing was open according to the state's commitment to the High Court of Justice – all days of the week, continuously between 07:00 in the morning and 21:00 at night for passengers travelling on foot and by vehicle (see in that regard HCJ 3948/06 **Bader Zweid v. Prime Minister of Israel**, dated October 12, 2006). The number of persons passing through this crossing in normal times on average per day amounted to approximately 320 pedestrians and approximately 260 vehicles.
40. Since the outbreak of the war, due to a security situation assessment, numerous intelligence alerts as well as a wide regional history which includes many riots, stone throwing, attempts to blow up the crossing by explosives which were placed there, the throwing of burning tires and Molotov cocktails, it was decided in coordination with the representatives of the residents of the Khirbehs, and Umm A-Rihan and Al-Dhaher al-Malih (who use the crossing) to operate the Shaked crossing only during the daylight hours due to the fear of hostile terror activity after sunset.

Therefore currently, in coordination with the Palestinian coordination, Shaked crossing is open every day of the week, 9.5 hours a day, from 07:00 in the morning until 16:30 in the afternoon (continuously) for passengers travelling on foot and by vehicle.

According to information provided by CPA officials, the crossing is operated by 12 workers. About 130 vehicles and about 250 permit holders pass through the crossing every day on foot. This crossing also serves the residents of Barta'a in humanitarian cases according to need during its operating hours, mainly for passage by vehicle since this crossing is more readily accessible by vehicle than the Barta'a crossing.

It should be noted that humanitarian assistance is not provided in this crossing beyond its operating hours and the residents who need such assistance are referred to the nearby Barta'a crossing.

Baqa ash-Sharqiya Crossing

41. Baqa ash-Sharqiya which is also known as crossing point "526" and which is located near Baqa-al-Gharbiyye serves the population of permanent residents in this area and the permanent residents and farmers in the area of Nazlat 'Isa holding suitable permits. The purpose of the crossing, as will be clarified below, is to enable the residents whose homes are located in the seam zone and farmers whose lands are located in the seam zone, to enter and exit their homes for the purpose of maintaining a proper fabric of life. Therefore, as stated in the state's response in the Permit Regime Case, the gate was classified as a "fabric of life" gate. This gate mainly serves the holders of permanent resident permits and agricultural permits in the region of Nazlat 'Isa. Passage through the gate is allowed according to a list of names consisting of about 57 permanent residents of the Baqa-ash-Sharqiya area and on the basis of permits given to permanent residents and farmers in the Nazlat 'Isa region.

42. Before the outbreak of the war, Baqa ash-Sharqiya crossing was open all days of the week between 06:00 in the morning until 22:00 at night. The crossing was staffed by a military force throughout its operating hours. Approximately 250 passengers on foot and approximately 11 vehicles passed through the crossing, on average per day.
43. Since the outbreak of the war the crossing opens twice a day, from 08:00 to 08:30 and from 16:00 to 16:30, until the last person passing through the gate in these hours (the crossing is not manned on a regular basis and is opened by a patrol unit arriving to the gate to open it), in view of the security risk arising from placing a regular force to open the gate at this time and the lack of manpower.

If an exceptional humanitarian need arises, a force arrives to the crossing and opens it according to need and after coordination.

Shweika Gate

44. Shweika gate, which is mainly known as the "Doctor Gate" or gate "664" is located between Shweika and the home of the Amar family. The gate serves the members of the Amar family who reside in the house and hold suitable permits. The purpose of the gate, as shall be clarified below, is to enable the members of the Amar family, whose house was left on the west side of the security fence after it was built, to access Shweika and the other Judea and Samaria areas, for the purpose of maintaining a proper fabric of life. Therefore, as stated in the state's response in the Permit Regime Case, the gate was classified as a "fabric of life" gate.
45. In the framework of a petition which was submitted by the family members residing in the house, agreements were reached between the parties which led to the deletion of the petition (see HCJ 2039/03 Amar Abdalla v. Commander of IDF Forces (June 5, 2003)). With respect to the Shweika crossing the parties agreed as follows:
 - "...
 - d. On the road leading from the Shweika village to Mr. Abdalla Amar's home a gate will be installed allowing the persons living in the house to access the village. The residents will be allowed to pass through the gate several times a day, according to the procedures which shall be established for similar cases in the seam zone, and at least three times a day.**
 - e. In addition to the pre-determined times, the residents of the house will be able to contact the civil administration to coordinate passage through the gate at other times.**
 - f. The residents of the house will be entitled, unless there is a security preclusion in their matter, to receive an entry permit into the state of Israel, with their vehicle, to reach the checkpoint which shall be built south of Tulkarm and enter the Area."
46. According to the agreements, the residents of the house against whom there is no security preclusion hold entry permits by vehicle into the state of Israel, to enable them to cross through Baqa-ash-Sharqiya crossing or through Te'enim crossing. Petitioners 11 and 12 do indeed hold permits allowing entry by vehicle.

47. Until the outbreak of the war, the residents of the house had a key to the gate, which was manned all hours of the day, all days of the week by IDF forces to ensure that the persons passing through the gate are permitted to pass through it and that it is not misused. After the outbreak of the war, many terror attacks were launched against the force which was manning the gate. Among other things explosives and burning tires were thrown and various shooting attacks took place. Due to the uniqueness of the gate, sometimes it is impossible to notice the suspects and even chase them and the force is often incapable of effectively defending itself.

Therefore, the commander of the regional division decided that the gate will no longer be manned all day long and that the gate will be opened, in coordination with the Amar family, three times a day from 07:30 to 08:00; from 12:00 to 12:30; and from 15:30 to 16:00 to mitigate the risk to human life. These hours were chosen in coordination with the Amar family which was asked what its preferable hours were and after it was made clear to it that as of the time these words are penned, the gate may be crossed only during the daylight hours.

48. It should be noted with respect to Petitioners' allegations regarding the incident dated October 22, 2023 that according to information received from Respondent's officials on that day IDF forces were chasing a bus which illegally brought residents of the Area into the state of Israel. It was informed that the bus dispersed the illegal aliens near the family house and that all the illegal aliens who got off the bus ran in all directions, including towards the family house.

In view of the military forces' suspicion that illegal aliens were hiding in the family house and that they were assisting to commit a crime, a search was conducted in the house and in Petitioners' 11 and 12's belongings. For this reason the military force instructed the family members to return to their home when the gate should have been opened. Hence, it was a single and targeted operational event.

Agricultural gates

49. According to the closure order and its extension dated November 3, 2023, these gates, which mainly serve the holders of agricultural permits remained closed.
50. **As stated above, on November 17, 2023, a decision was made by the military commander to coordinate the harvest work in the seam zone in the Jenin and Ephraim regions. These days, Respondent's officials allow the entry of holders of farmer permits, subject to coordination in advance and in a format conforming to the security needs and an array of applicable considerations. According to information provided by Respondent's officials, holders of farmer permits pass through different agricultural gates, according to need, the situation assessment and the allocation of the forces, giving advance notice to the Palestinian coordination and the land owners in the relevant region. The above, as of yesterday, Sunday, November 26, 2023 when dozens of farmers entered the various seam regions for agricultural purposes. This arrangement will continue to apply in the coming weeks depending on the weather and the security situation assessment.**

51. In addition, with respect to agriculture that requires daily care, the DCO acts according to the requests received by it, towards issuing permits for "personal needs" in the appropriate cases and after an individual examination, as was done in the cases of some of the petitioners in HCJ 8112/23.

The Petitioners in HCJ 7945/23

52. According to Respondent's computerized systems, Petitioners 1-2 hold permits which are not excluded under the closure order, and therefore, at this time, they cannot cross the security fence; Petitioners 3-12 hold permits of permanent seam zone residents and can currently cross the security fence through the crossings as shall be specified below.

53. Petitioner 1, _____ Ghanem, 50 years old, resident of Shweika in the Tulkarm region, married and a father of four. Petitioner 1 holds seam zone entry permits for different purposes as of January 2004, and commercial permits in the seam zone as of March 15, 2005. Since then and until this day Petitioner 1 has been holding entry permits into the seam zone, primarily for commercial purposes, intermittently. Currently Petitioner 1 holds a permit for "commerce in the seam zone" valid from June 30, 2023 until June 28, 2024.

54. Petitioner 2, _____ Jaber, 43 years old, resident of Baqa ash-Sharqiya in the Tulkarm region, is married and a father of three. Petitioner 2 has been holding entry permits into the seam zone for commercial purposes as of February 23, 2015 to date. Currently, Petitioner 2 holds a permit for "commerce in the seam zone" valid from March 4, 2023 until March 2, 2024. According to Respondent's computerized data, since August 23, 2023 Petitioner 2 did not pass through the crossings to the seam zone and Israel.

55. With respect to Petitioners 1-2, they hold a permit for "commerce in the seam zone" which is not excluded under the closure order, and therefore, during the validity of the current closure order, does not allow entry into the seam zone.

56. Petitioner 3, _____ Kabha, 46 years old, resident of Ya'abed in the Jenin region, married and a father of six. Petitioner 3 has been holding entry permits into the seam zone as of November 2003 and "permanent seam zone resident" permits as of August 21, 2012. Since then and until today Petitioner 3 has been holding seam zone entry permits for residency purposes. He currently holds a "permanent seam zone resident" permit valid from May 3, 2021 until May 1, 2025.

57. Petitioner 4, _____ Kabha, 40 years old, resident of Barta'a in the Jenin region, is married to Petitioner 3 and a mother of six. Petitioner 4 has been holding stay permits in the seam zone as a permanent resident since October 2003 and since then to date she has been holding different seam zone entry and stay permits. Currently Petitioner 4 holds a "permanent seam zone resident" permit valid from April 1, 2023 until March 30, 2027.

58. Petitioner 5, _____ Kabha, 17 years old, resident of Barta'a in the Jenin region, is single and is the son of Petitioners 3 and 4. Petitioner 5 has been holding a stay permit in the seam zone since he turned 16 in July 2022, since Palestinian minors less than 16 years

of age whose parents are permanent seam zone residents, are not required to hold entry permits into the seam zone. Currently, Petitioner 5 holds a "permanent seam zone resident" permit valid from July 24, 2022 until July 23, 2026.

With respect to Petitioners 3–5's allegation that their request to add their vehicle to the list of vehicles which are permitted to cross the fence due to petitioner 5's severe medical condition was rejected – **we wish to inform that after the matter has been examined it was decided to exclude them from the list of 100 vehicles transferred by the Barta'a council. Namely, Petitioners 3 – 5 are permitted to pass through the Barta'a crossing by vehicle every day, using their family vehicle whose details were specified in the petition, regardless of the list transferred by the Barta'a council. According to information received from Respondent's officials the Petitioners were informed of same.**

59. Petitioner 6, _____ Kabha, 35 years old, resident of Barta'a in the Jenin region, is married and a father of five. Petitioner 6 held entry permits into the seam zone for different needs as of June 2006 and stay permits due to the fact that he is a permanent resident of the seam zone as of December 16, 2016 to this day. Currently, Petitioner 6 holds a "permanent seam zone resident" permit valid from November 27, 2023 until November 25, 2027.
60. Petitioner 7, _____ Kabha, 30 years old, resident of Barta'a in the Jenin region, is married to Petitioner 6 and a mother of five. Petitioner 7 has been holding stay permits in the seam zone due to the fact that she is a permanent resident of the seam zone as of August 2009 and since then to this day she has been holding entry permits as aforesaid. Currently, Petitioner 7 holds a "permanent seam zone resident" permit valid from August 3, 2021 until August 1, 2025.
61. Petitioner 8, _____ Ashkar, 29 years old, resident of Saida in the Tulkarm region, is married and a father of one child. Petitioner 8 has been holding intermittently entry permits into the seam zone for different needs as of October 2011 and stay permits due to the fact that he is a permanent resident of the seam zone as of November 23, 2017. Currently, Petitioner 8 holds a "permanent seam zone resident" permit valid from March 2, 2020 until February 29, 2024.
62. Petitioner 9, _____ Ashkar, 30 years old, resident of Barta'a in the Jenin region, is married to Petitioner 8 and a mother of one child. Petitioner 9 has been holding stay permits in the seam zone due to the fact that she is a permanent resident of the seam zone as of September until this day. Currently, Petitioner 9 holds a "permanent seam zone resident" permit valid from September 30, 2021 until September 28, 2025.
63. Petitioner 10, _____ Amar, 69 years old, resident of Shweika in the Tulkarm region, is married and a father of four. Petitioner 10 has been holding stay permits in the seam zone due to the fact that he is a permanent resident of the seam zone as of October 2003 to date. Currently, Petitioner 10 holds a "permanent seam zone resident" permit valid from August 11, 2022 until August 9, 2024.

64. Petitioner 11, _____ Amar, 36 years old, resident of Shweika in the Tulkarm region, is single, and is the daughter of Petitioner 10. Petitioner 11 has been holding stay permits in the seam zone due to the fact that she is a permanent resident of the seam zone as of October 2003 to date. Currently, Petitioner 11 holds a "permanent seam zone resident" permit valid from January 10, 2023 until August 9, 2024, which includes a vehicle.
65. Petitioner 12, _____ Amar, 31 years old, resident of Shweika in the Tulkarm region, is single, and is the son of Petitioner 10. Petitioner 11 has been holding stay permits in the seam zone due to the fact that he is a permanent resident of the seam zone as of October 2003 to date. Currently, Petitioner 12 holds a "permanent seam zone resident" permit valid from January 10, 2023 until August 9, 2024, which includes a vehicle.

The Petitioners in HCJ 8112/23

66. According to Respondent's computerized systems, Petitioners 1-4 and Petitioner 7 hold permits which to date have not been excluded from the closure order, however, as aforesaid, according to the decision of the military commander they are currently allowed access; the permit held by Petitioner 6 was cancelled due to a security preclusion in his matter; Petitioners 5, and 8-9 hold permits which are excluded from the closure order (permits for personal needs) which allow them to pass through the crossing points in the security fence and access their lands as they actually do. All as shall be specified below.
67. Petitioner 1, _____ Radwan, 60 years old, resident of Khirbat al Nabi Elyas in the Qalqiliya region, is married and a father of seven. Petitioner 1 has been holding entry permits into the seam zone for agricultural purposes as of December 2003 and for other additional purposes as of June 2008. He currently holds a "seam zone farmer" permit valid from September 14, 2023 until September 12, 2025.
68. Petitioner 2, _____ A-Zakla, 58 years old, resident of [sic] Gharbiyeh in the Tulkarm region, is married and a mother of five. Petitioner 2 has been holding entry permits into the seam zone for agricultural purposes as of July 2004, and for other additional purposes as of October 2008. She currently holds a "seam zone farmer" permit valid from May 18, 2023 until May 16, 2025.
69. Petitioner 3, _____ A-Zakla, 36 years old, resident of Tulkarm, married, a father of two and is the son of Petitioner 2. Petitioner 3 has been holding entry permits into the seam zone for agricultural purposes as of July 2004. He currently holds a "seam zone farmer" permit valid from August 27, 2023 until August 25, 2025.
70. Petitioner 4, _____ Ghashash, 66 years old, resident of Qalqiliya, is a widow and a mother of nine. Petitioner 4 has been holding entry permits into the seam zone for agricultural purposes as of October 2003 and for other additional purposes as of September 2007. She currently holds a "first degree relative of a seam zone farmer" permit valid from June 14, 2023 until June 12, 2025.

71. Petitioner 5, _____ Ghashash, 44 years old, resident of Qalqiliya, married and a father of five, is the son of Petitioner 4. Petitioner 5 has been holding entry permits into the seam zone for agricultural purposes as of October 2003 and for other additional purposes as of March 2008. The Petitioner currently holds a "seam zone farmer" permit valid from June 14, 2023 until June 12, 2025; and following a request submitted by him to Respondent's officials he also holds a permit for "personal needs in the seam zone" valid from October 29, 2023 until November 30, 2023. **A permit for "personal needs in the seam zone" is excluded as aforesaid from the closure order and allows the Petitioner to enter the seam zone in the closure period for the purpose of accessing his lands.** According to Respondent's computerized system, Petitioner 5 uses this permit and has been entering the seam zone through various gates after the outbreak of the war. Accordingly, for instance the Petitioners entered the seam zone on October 10, 2023, October 31, 2023; November 10, 2023; November 14, 2023; November 24, 2023.
72. Petitioner 6, _____ Ghashash, 29 years old, resident of Qalqiliya, married and a father of child, is the son of Petitioner 4. Petitioner 6 has been holding entry permits into the seam zone for agricultural purposes as of September 2005, and for other additional purposes as of September 2007. The Petitioner held until recently a "first degree relative of a seam zone farmer" permit which was valid from February 6, 2023 until February 4, 2025, but due to indications of a security threat posed by Petitioner 6, **the permit was cancelled.**
73. Petitioner 7, _____ Zeid, 64 years old, resident of Zeid in the Qalqiliya region, is married and a father of five. Petitioner 7 has been holding entry permits into the seam zone for agricultural purposes as of January 2013. He currently holds a "seam zone farmer" permit valid from May 26, 2023 until May 24, 2025.
74. Petitioner 8, _____ Zeid, 38 years old, resident of Qalqiliya, married and a father of two, is the son of Petitioner 7. Petitioner 8 has been holding entry permits into the seam zone for agricultural purposes as of October 2003, and for other additional purposes as of February 2007. Following a request submitted by Petitioner 8 to Respondent's officials to allow him access to his lands in the closure period, the Petitioner received a permit for "personal needs in the seam zone" valid from October 29, 2023 until November 30, 2023. **A permit for "personal needs in the seam zone" is excluded as aforesaid from the closure order and allows the Petitioner to enter the seam zone in the closure period for the purpose of accessing his lands.** According to Respondent's computerized system, Petitioner 8 uses this permit and has been entering the seam zone through various gates after the outbreak of the war. Accordingly, for instance the Petitioner entered the seam zone on November 3, 2023; November 10, 2023; November 21, 2023; November 24, 2023; November 25, 2023; November 26, 2023.
75. Petitioner 9, _____ Zeid, 56 years old, resident of Qalqiliya, is married and a father of five. Petitioner 9 has been holding entry permits into the seam zone for agricultural purposes as of October 2003, and for other additional purposes as of July 2007. Currently the Petitioner holds a "first degree family member of a seam zone farmer" permit valid from September 25, 2023 until September 23, 2025; in addition, after a

requested submitted by him to Respondent's officials, he also holds a permit for "personal needs in the seam zone" valid from October 29, 2023 until November 30, 2023. **A permit for "personal needs in the seam zone" is excluded as aforesaid from the closure order and allows the Petitioner to enter the seam zone in the closure period for the purpose of accessing his lands.** According to Respondent's computerized system, Petitioner 9 uses this permit and has been entering the seam zone through various gates after the outbreak of the war. Accordingly, for instance the Petitioner entered the seam zone on November 2, 2023; November 9, 2023; November 10, 2023; November 11, 2023; November 12, 2023; November 13, 2023; November 15, 2023; November 16, 2023; November 19, 2023; November 20, 2023; November 21, 2023; November 22, 2023; November 24, 2023; November 25, 2023; November 26, 2023.

Respondent's position

76. Respondent's position is that there are no grounds for the Honorable Court's intervention in his decisions, the subject of the case at hand, which are guided by unusual and dynamic security and operational considerations, wishing to provide a solution to the maximum extent possible to the needs of the populations passing through the crossing points installed in the security fence to the seam zone.

H CJ 8112/23

77. The Respondent will argue that the petition in H CJ 8112/23 should be dismissed primarily due to the change which occurred in the factual infrastructure underlying it. Beyond need the Respondent will argue that the petition should be dismissed *in limine* in the matter of some of its petitioners as specified below.

78. It should be reiterated that **with respect to permits for agricultural needs, that on November 17, 2023, a decision was made by the military commander to coordinate the harvest work in the seam zone in the Jenin and Ephraim regions. These days, Respondent's officials allow the entry of holders of farmer permits, subject to coordination in advance and in a format conforming to the security needs and an array of applicable considerations. As aforesaid, according to information provided by Respondent's officials, holders of farmer permits are allowed entry through various agricultural gates, according to need, the situation assessment and the allocation of the forces, giving advance notice to the Palestinian coordination and the land owners in the relevant region. The above, as of the day before yesterday, Sunday, November 26, 2023 when dozens of farmers entered the various seam regions for agricultural purposes. This arrangement will continue to apply in the coming weeks depending on the weather and the security situation assessment.**

On the ramifications of such a change to the factual infrastructure which was underlying the petition when submitted – see the holdings of the Honorable Justice Hendel in H CJ 1273/20 **Israeli Democracy Guard v. The 22nd Knesset** (September 9, 2020):

"A well-known rule is that the court shall not consider on their merits petitions of a theoretical and academic nature. A theoretic petition was defined by case law as "a petition in which the court is not requested to solve a dispute which is sustainable when the petition is heard" ... the focus is on the point in time in which the petition is brought before the court: "... our court is not willing to discuss a petition, even if it concerns current matters, once it becomes theoretical" (HCJ 6055/95 **Zemach v. Minister of Defense**, IsrSC 53(5) 241, paragraph 3 (1999) (hereinafter: **Zemach**); see also: HCJ 4380/07 **Israel Medical Association v. Ministry Health**, paragraph 7 (August 30, 2009)). This rule also applies to petitions raising important and principled legal questions (HCJ 1853/02 **Nawi v. Minister of Energy and National Infrastructures**, paragraph 3 (August 10, 2003) (hereinafter: **Nawi**). The rule overlaps to a large extent the rule which applies to the dismissal *in limine* of a premature petition - "which is not based on an existing factual situation, but rather concerns a theoretical scenario", which has not yet materialized (HCJ 2655/06 **Noam v. The Attorney General**, paragraph 5 (March 27, 2006)).

79. Beyond need for this matter, it should be noted that the Petition should be dismissed *in limine* as it concerns petitioners who in practice use a "personal needs" permit and enter the seam zone through the gates – as specified above with respect to Petitioners 5 and 8-9 in HCJ 8112/23 – **permits which are excluded from the closure order and enable them to enter the seam zone and access their lands**. As aforesaid, the Petitioners actually use these permits and have been doing so since the outbreak of the war, several times.

With respect to **Petitioner 6 in HCJ 8112/23, the permit held by him was cancelled due to a security preclusion in his matter**. Therefore, even if the permit held by him was excluded from the closure order and even if the security fence crossing points were operating as they have operating before the outbreak of the war, he would not have been allowed to pass through the crossings due to the threat posed by him.

Hence, the remedy requested in HCJ 8112/23 whereby the Respondent "shall enable Palestinians who received entry permits into the seam zone for agricultural purposes to enter the seam zone" is theoretical in the matters of Petitioners 5, 8-9 and 6, since they are either totally denied access due to a security preclusion regardless of the type of permit held by them (Petitioner 6), or since they hold permits allowing them to enter even at this time (see and compare, *mutatis mutandis*, HCJ 4300/20 **The Aguda - The Association for LGBTQ Equality in Israel v. The Knesset** (Judicial Authority Website, December 16, 2020)).

Moreover, given the decision of the military commander allowing entry into the seam zone for agricultural purposes, the above remedy is also theoretical as it relates to all the Petitioners in this Petition and therefore, the Petition should be dismissed.

80. Respondent's position is that the Petition should be dismissed in the absence of grounds for the honorable court's intervention in his decisions. A well-rooted rule is that the military commander is vested with broad professional discretion, that the scope of the honorable court's intervention in the security considerations which are considered by the military commander is limited, in view of his expertise, responsibility and duty in these matters, and that a heavy burden should be satisfied by the petitioner for the purpose of refuting the military commander's security position (see: HCJ 5866/16 **Hebron Municipality v. Commander of IDF Forces in the West Bank** (December 28, 2016); HCJ 4825/04 **'Alian et al. v. The Prime Minister** (March 16, 2006); HCJ 1412/18 **Abu Alan v. GOC Central Command** (November 1, 2020)).

As stated by the Honorable Court in HCJ 3607/10 **Israel Law Center et al. v. Minister of Defense** (June 27, 2010):

The rule is that this court, sitting as a High Court of Justice, does not enter into the shoes of the competent military official, and does not replace the discretion of the military commander with the discretion of the court (see HCJ 2056/04 **Beit Sourik Village Council v. Government of Israel, IsrSC 58(5) 807, 843 (2004)). The military commander, who exercises discretion in matters concerning public safety, has the military and operational expertise, as well as the relevant data and a wide security perspective. The military commander also bears the responsibility for the security of the area under his command. Hence, in the examination of the security issues under his responsibility, the military commander is vested with broad discretion. The court attributes to the position of the military commander considerable weight and its judicial review will be exhausted by the examination of the lawfulness of the decision of the military commander, and its compliance with the obligating legal norms (HCJ 1005/89 **Aga v. Commander of IDF Forces in the Gaza Strip**, IsrSC 44(1) 536, 539 (1990); HCJ 7015/02 **'Ajuri v. Commander of IDF Forces in the West Bank**, IsrSC 56(6) 352, 375-376 (2002); HCJ 11651/05 **Beit Arye Local Council v. Minister of Defence**, paragraph 9 ([Reported in Nevo] May 21, 2006); paragraph 27 of the first judgment). Said norms include, inter alia, the duty to take into account considerations which pertain to the security of the Area, from which arises the consideration concerning the protection of the security and safety of Israelis who use the road; the rights of the Palestinian residents who are "protected residents"; and the protection of the rights of the Israelis who live in the Israeli settlements in the Area. (paragraph 28 of the first judgment; HCJ 10356/02 **Hess v. Commander of IDF Forces in the West Bank**, IsrSC 58(3) 443, 455-456 (2004); HCJ 4289/05 **Beir Naballa Local Council v. Government of Israel**, paragraphs 33-34 ([Reported in Nevo], November 26, 2006) (*Ibid.*, paragraph 5).**

81. As aforesaid, this proceeding mainly concerns the opening hours of certain crossing points to the seam zone for the passage of persons holding a "permanent seam zone resident" permit (alongside arguments of the failure to provide a concrete humanitarian solution) and the failure to exclude holders of commercial permits from the closure order, at this time.

The Respondent will argue that there are no grounds for the honorable court's intervention in his decisions concerning the operation of the seam zone crossing points according to the closure order, and in a time of war. As broadly specified above, after a security situation assessment had been conducted following the outbreak of the "Iron Swords" war, it was decided by the Chief of the General Staff, the Minister of Defense and the GOC Central Command to extend the closure which had been imposed in the holiday season, according to which, as a general rule, the entry of Palestinians from the Area to the seam zone and Israel was prohibited. Therefore, the validity of all entry permits into the seam zone and Israel has been suspended, excluding unique humanitarian populations and populations essential for the continued proper functioning of the Israeli economy. Commercial permits are not excluded from the closure, while permits to permanent residents of the seam zone are excluded as well as permits for personal needs. This decision and the manner of its implementation, *inter alia*, in terms of the opening hours of the seam zone crossing points, is at the core of the professional discretion of the military commander and is based on periodic situation assessments.

It should also be noted, as specified above, that with the intent to maintain a fabric of life and give adapted solutions, a constant and continuous discourse is conducted between Respondent's officials and the representatives of the residents of the Area. Accordingly, in coordination with the representatives of the residents, some crossing points are closed after sunset in view of their request to reduce the security risk posed in these places at night, making an effort to provide humanitarian assistance throughout the entire week and at all hours.

82. Before discussing Respondent's decisions against the backdrop of the "Iron Swords" war, attention should be drawn to the security purpose of the security fence which was recognized, also in normal times, by this Honorable Court. In the Permit Regime judgment, which was given on April 5, 2011 by the Honorable President Beinisch, the Honorable Deputy President Rivlin and the Honorable Justice Procaccia, the petition was dismissed, subject to the Honorable Court's comments regarding required changes in the relevant arrangements, holding, *inter alia*, as follows:

"46. In our judgment we have widely discussed the complex security situation which led to the erection of the security fence. This step severely injured the daily lives of many of the Palestinian inhabitants of the Area. **In its judgments, it was held many times by this court that such harm was inevitable taking into consideration the clear security need underlying the erection of the security fence.** [...] As aforesaid, the permit regime which was applied to the seam zone is a derivative product of the route of the fence. It also severely violates the rights of the Palestinian inhabitants – those who live within and those

who live without its boundaries. [...] The Petitioners in the petitions before us presented a harsh picture of the complex reality of life with which these inhabitants cope from the commencement of the permit regime. We do not dispute the fact that such hardships exist, and it seems that the state is also very well aware of them. **However, this time again, we could not ignore the essential security objective underlying the decision to close the seam zone,** and therefore we examined, with the legal tools available to us, whether the military commander used his best efforts to minimize the injury inflicted on the inhabitants under the permit regime. Under the circumstances of the matter, and given the factual infrastructure which was presented to us, **we came to the conclusion that subject to a number of changes which were widely discussed above, the decision to close the seam zone and apply the permit regime thereto satisfied the tests of legality and hence, there was no cause which justified our intervention therewith.** Our above determination is based, as aforesaid, not only on the arrangements themselves, but also on the statements of the state concerning measures continuously taken by it, which are designed to improve the handling processes of the different applications and to ease the accessibility to the seam zone, and by so doing, to minimize the injury inflicted on the daily lives of the Palestinian inhabitants."

83. In the Permit Regime judgment the honorable court has also emphasized the security purpose underlying the need to apply the permit regime, stating as follows: "In view of the nature and character of the seam zone, being an area which is not separated from the territory of Israel by any barrier, it is difficult not to accept the argument that there is a security need to establish a mechanism which would enable a close supervision of those who enter through it and which would assist the security forces and improve their ability to fight Palestinian terror threats the purpose of which is to cause harm to Israel and its inhabitants." (See paragraph 17 of the judgment of the Honorable President Beinisch in the Permit Regime judgment).
84. Alongside the aforesaid, the honorable court held, and there is no dispute about it, that against the security consideration "[...] the military commander must ensure that the human rights of the Palestinians under his control in an area which is under belligerent occupation, who are protected persons under international law, are properly protected." (See paragraph 19 of the judgment of the Honorable Justice Beinisch in the Permit Regime judgment).
85. The balance between all of the above purposes and rights is the issue underlying the Petitions at hand while at this time the security aspects are reinforced not only due to security risks but also due to manpower shortage which will secure the safety of the residents and the Area. **And note well. The most senior military officers (Chief of the General Staff) alongside senior political officials (Minister of Defense) and GOC Central Command, which is the most senior officer in the Judea and Samaria Area, have reviewed and considered the situation assessments and in view of the war extended the closure which was imposed on the entry of the**

residents of the Area to the seam zone and Israel, while things are examined from time to time according to security and other situation assessments in that regard (accordingly, holders of agricultural permits who until now were not excluded from the closure have now been excluded therefrom).

86. The Respondent will argue that his decisions are not made in a vacuum and that he is compelled, in view of the current security circumstances in the Area, to take pro-active measures to remove the severe risks threatening the life of the citizens of Israel and its security forces. For this purpose the number of people who are allowed to pass through the crossing points and stay in the seam zone has been limited. See in that regard H CJ 7287/23 **Ghidan v, The Military Commander**, paragraph 14 of the judgment of the Honorable Justice Canfy-Steinitz (October 11, 2023), where it was held as follows:

"The state of Israel has been fighting for a long time terror bodies that are willing to take any measure to harm innocent people. Recently, one attack follows another and the data show that only last year, before the events of the last few days, more than two thousand terror attacks were committed in which dozens of innocent persons lost their lives [...] In this harsh and complex security reality, a state wishing to protect itself and its existence, is entitled, and even obligated, to take measures, including severe ones, to protect the safety and security of its citizens and residents."

And see also: H CJ 7624/23 **Physicians for Human Rights – Israel v. Israel Defence Forces** (October 22. 2023), H CJ 7439/23 **Alwahad v. Israel Defence Forces**, paragraph 8 of the judgment of Justice Sohlberg (October 31. 2023),

87. The above is also manifested in the military commander's declaration of a "**special home front situation**" in the Judea and Samaria area, since he was convinced that "it is highly likely that an attack shall be launched against the civilian population". This declaration activates parts of the **Order concerning Civil Defense (Judea and Samaria) (No. 1699), 2012**, granting the military commander broad authority to act in order to protect the population under his control.
88. The Respondent shall argue that in view of the foregoing he must take into consideration the entire needs of all permit holders and closure population, and we shall explain – according to the closure order the closure should be carried out, *inter alia*, subject to the following emphases: entry of goods should be allowed; the fabric of life gates should be opened; solutions should be provided to fabric of life and humanitarian cases only which are not properly addressed and resolved in the open crossing points according to the closure order; The sectors which are excluded from the closure are: medical staff for hospital shifts, nursing, health services, Jewish burial services (*Chevra Kadisha*), factories essential to the Israeli economy, hotels on an individual basis after examination, all as specified in the order and its appendices.

The following categories of permit holders were also excluded from the closure: journalists and media personnel, humanitarian arrangements, legal needs, family unification, seam zone pupils, seam zone infrastructure staff, seam zone medical staff,

welfare needs, **seam zone permanent residents**, personal needs and more (see Appendix B of the closure order).

89. With respect to Petitioners' arguments concerning the Palestinian laborers who currently enter Israel – as specified in the closure order, the military commander allows Palestinian laborers to enter Israel mainly for essential businesses which are determined individually by COGAT's authorized bodies, following an individual examination of the essentiality of the business and the number of laborers it requires. All of the above, excluding the minimal number of laborers possible, to protect the security of the state of Israel and its citizens. It should be noted that according to information provided by Respondent's officials, about 5,000 laborers currently enter Israel on average each day, compared to an average of about 80,000 a day before the outbreak of the war.

In view of the foregoing, the Respondent will argue that Petitioners' argument in that regard has no merit, all the more so due to the difference between the control capabilities over individuals staying in the seam zone area and their employers (both in commerce and agriculture) and the security and criminal inspection procedures applicable to the holders of entry permits into the seam zone and the holders of entry permits into Israel, when their application for permit is examined as well as when they enter the seam zone or Israel.

90. There is no dispute that the holders of a "commerce in the seam zone" permit were not excluded, at this point, from the closure order and the Respondent is aware of the consequences of this state of affairs including in view of the passage of time and the above are taken into consideration in the periodic situation assessments. To the best knowledge of Respondent's officials, there are about 900 "commerce in the seam zone" permit holders, having about 6,500 employees holding a "commercial worker" permit. This should also be taken into consideration since if they are excluded from the closure order the number of permit holders who will be able to stay at this time in the seam zone shall significantly increase – with ramifications in terms of security and in terms of the manpower which shall be required to operate the crossings. The above is also considered by the military commander as part of all his other considerations.
91. Beyond the aforesaid, the crossing points are operated according to a security situation assessment adapted to the area in which the crossing is located and according to the manpower available to operate the crossing point, due to the changes made in the deployment of the forces as a result of the war. In addition, the different crossing points are operated to the maximum extent possible in coordination with the representatives of the residents that the crossing is meant to serve. Accordingly, for instance, the change of the opening hours of the Shaked crossing was coordinated with the residents of the Khirbehs and following the security concern of hostile activity at night. And it should be emphasized. To the extent there are individual humanitarian cases requiring the opening of any crossing outside its operating hours, Respondent's officials and CPA's officials are prepared to provide a solution accordingly after contacting and coordinating the matter with the relevant body for each crossing.
92. And note well. Sometimes – in exceptional circumstances such as in the case at hand, reality and the need of the hour create a situation in which limiting human rights,

including freedom of movement, in the framework of existing constitutional criteria – is inevitable. In that regard, applicable are the words of the court in HCJ 7052/03 **Adalah Legal Center for Arab Minority Rights in Israel v. Minister of the Interior**, IsrSC 61(2) 202, paragraph 11 (2002)

We do not interpret the statement that ‘**things that might be said in time of peace may not be endured in times of war**’ as a call to depart from the constitutional tests themselves in a time of emergency. This is the case with regard to freedom of speech and it is also the case with regard to other basic rights. The tests according to which we examine the restrictions on human rights due to various constraints are uniform tests at all times. The test is identical. But it should be remembered that its implementation is affected by reality. This was discussed by my colleague the president in his opinion here: ‘War is like a barrel full of explosives next to a source of fire. In times of war the likelihood that damage will occur to the public interest increases and the strength of the harm to the public interest increases, and so the restriction of the right becomes possible within the framework of the existing criteria’

93. Accordingly, in view of the war it was determined that central weight should be given to the change in the deployment of the security forces due to increased operational activity. In the current security reality, a tight and wide deployment of forces is required in large scope, the purpose of which is to handle unusual incidents taking place in different areas. In this highly unusual state of affairs greater weight is given to manpower constraints and restrictions of time and place – which respectively affect the manner of operation of the forces on site (HCJ 411/89 **Temple Mount Faithful and Land of Israel. Movement v. The Jerusalem District Police Commander**, IsrSC 43(2) 17, 21 (19189)).
94. In the case at hand, the decisions which are the subject of the Petitions were adopted in the framework of the powers and authority of the military commander, subject to an individual examination of the circumstances and the conflicting balances and against the backdrop of the current situation assessment, the individual threat posed in the locations at which the crossings are placed, from an overall proportionate perspective taking into consideration all seam zone permit holders with the intent to cause as little harm as possible to the fabric of life and needs of the population. Given the foregoing, there is no basis for Petitioners' argument that the decisions of the military commander constitute a "collective punishment", since as specified above, these are professional security decisions which were made on the basis of all the relevant considerations.
95. It should be emphasized that at this time the military commander makes an effort to maintain, to the maximum extent possible, the fabric of life in the seam zone. Accordingly, the fabric of life gates continue to operate with a considerable allocation of resources and despite the risk posed to the forces operating in the area. With respect to agriculture in the seam zone the military commander also acts these days to allow, to the maximum extent possible, the entry of farmers for the harvest in the seam zone. At the same time, the restrictions on the other populations currently included in the closure are examined from time to time, including the possibility to extend the

operating hours of the crossings and all changes which were created as a result of the constraints of the "Iron Swords" war.

All of the above, with the attempt to cause as little harm to the population as possible on the one hand, while providing proper solutions to the current complex security situation, on the other.

96. Respondent's position is therefore that in the highly unusual circumstances of these days, considering the foregoing security considerations, the total picture concerning the crossing points in the seam zone and the closure order, there is no cause for the Honorable Court's intervention. It should be noted that Respondent's officials conduct periodic situation assessments in which all of the unique considerations applicable to this period are considered.

97. In view of all of the above, the Respondent will argue that HCJ 7945/23 should be dismissed in the absence of cause for intervention in the decisions of the military commander and that HCJ 8112/23 should be dismissed mainly due to the change of the factual infrastructure underlying the petition as described above.

98. The facts in this response, excluding those relating to the CPA, shall be supported by the affidavit of Brigadier General Ofer Hindi, Head of the Rainbow of Colors Administration, Central Command.

The facts in this response relating to the CPA shall be supported by the affidavit of Mr. Charlie Ochana, manager of the Reihan and Shaked crossings, CPA, Ministry of Defense.,

Brigadier General Hindi and Mr. Ochana confirmed the content of this Response, but due to technical difficulties their affidavits could not be submitted together with this Response. Therefore, and to prevent any delay in the submission of the Response the Respondent requests to submit the affidavits supporting the Response within the next few days.

Today: Kislev 15, 5784
November 28, 2023

Sharon Hoash-Eiger, Adv.
Senior Deputy A, HCJ Department
State Attorney's Office

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