

# **The Permit Regime**

Human Rights Violations in West Bank Areas  
Known as the "Seam Zone"

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# Introduction

Ever since 2003, the Israeli military has been employing a draconian permit regime in the area of the West Bank located between the Green Line and the separation wall. Israel refers to this area, which it declared closed to Palestinians, as the “seam zone.”<sup>1</sup> Though it is an inseparable part of the West Bank, any Palestinian living in this area or wishing to enter it is required to obtain a military issued permit in order to do so. This permit regime applies only to Palestinians. Others, be they Israelis or tourists from anywhere in the world, do not require any permit to enter the “seam zone” or remain in it.<sup>2</sup> This report concerns the permit regime – its lawfulness, implementation and ramifications.

The Government of Israel passed the resolution to build the separation wall in 2002, in the context of the attacks carried out as part of the second Intifada. The government declared that the purpose of the wall was “to impede – as much as possible – the infiltration of terrorists and war materiel into Israel.”<sup>3</sup> However, in reality, the wall does not separate the West Bank from Israel. Contrary to the principles of international law, most of the separation wall is built inside the Occupied Palestinian Territories, or OPT, rather than on the Green Line. As such, it does not just separate West Bank Palestinians from Israelis, but also Palestinians from other Palestinians. Upon completion, the wall will cut off an area spanning over 9.4% of the West Bank (including East Jerusalem) from the rest of the West Bank,<sup>4</sup> leaving it, along with many settlements, on the western side of the wall, in an area that has territorial contiguity with the State of Israel.<sup>5</sup> In practice, the wall splits the West Bank in two and traps Palestinian land

1. The term “seam zone” is meant to conceal the fact that this area is part of the West Bank. The term is used here as there is no accepted alternative.

HaMoked stresses that the term “seam zone” refers to the territories of the West Bank that have been trapped between the separation wall and the Green Line, excluding East Jerusalem, where Israeli law has been applied and Gush Etzion, where Israel declared the permit regime would not apply.

2. Pursuant to old military orders, the entire West Bank is a closed zone where Israelis may not reside or remain for more than 48 hours without a permit. To HaMoked’s knowledge, these orders are still in effect but are not enforced. For more information, see <http://www.hamoked.org/Document.aspx?dID=Updates1052>.

3. Comments made by Defense Minister Binyamin Ben Eliezer at a government meeting. See (in Hebrew) <http://www.hamoked.org.il/Document.aspx?dID=Documents1388>.

4. United Nations Office for the Coordinator of Humanitarian Affairs (OCHA), occupied Palestinian territories,

**The Humanitarian Impact of the Barrier**, July 2012 (hereinafter: OCHA 2012).

5. Because of the route of the separation wall, “seam zone” areas are sometimes located to the north or south of it. For the sake of convenience, we refer to the entire “seam zone” as being located west of the separation wall.

and communities between it and the Green Line.<sup>6</sup>

The severe human rights violations suffered by West Bank Palestinians as a result of the wall were predicted immediately after the decision on the wall's route was published. In November 2003, HaMoked petitioned the High Court of Justice, or HCJ, demanding the route of wall, which runs through the West Bank, and the permit regime introduced in the "seam zone" be revoked. Another petition on this issue was filed by the Association for Civil Rights in Israel, or ACRI, in 2004. In 2006, after the Court approved building the wall inside the occupied territory, the two petitions were amended to focus on the permit regime. In its amended petition, HaMoked argued that the permit regime the military implements in the "seam zone" is nothing short of a regime of separation based on nationality and as such, it is a grave breach of both international humanitarian law and international human rights law, as well as the fundamental principles of Israel's administrative and constitutional law.<sup>7</sup>

Over the years, the concerns that the need to repeatedly obtain military permits in order to continue leading normal lives would severely interfere with the lives of Palestinians who reside in this area, or whose family, land or workplace is located in it, have been validated. The process for obtaining permits that allow presence in the "seam zone" and for renewing them requires Palestinians to weather lengthy bureaucratic processes and have very specific connections to the "seam zone," as defined by the military. These connections are defined in the "Standing Orders for the Seam Zone," (hereinafter: the Standing Orders), which were first published in 2009 and have since been reissued in two different versions. Use of the permits is restricted to limited times and to passage through specific gates in the wall which are only open at certain hours. Figures that were presented by the State in 2009<sup>8</sup> show a consistent decline in the number

6. This report does not address the separation wall and its severe violation of human rights in the OPT directly. For more on this issue, see [http://www.hamoked.org/topic.aspx?tid=main\\_15](http://www.hamoked.org/topic.aspx?tid=main_15). Yet, it is important to note that in most cases the separation is implemented using a "barrier" composed of barbed wire, ditches, groomed sand paths, patrol roads and buffer zones. This is the case in most of the areas relevant to this report.

7. HCJ 9961/03 **HaMoked: Center for the Defence of the Individual v. Government of Israel**, see <http://www.hamoked.org/Document.aspx?dID=6653> (hereinafter: HCJ 9961/03); HCJ 639/04

**The Association for Civil Rights in Israel v. Commander of the IDF Forces in Judea and Samaria**, see <http://www.hamoked.org/Document.aspx?dID=5431> (hereinafter: HCJ 639/04).

8. HCJ 9961/03, Supplementary Notice on behalf of the State, July 30, 2009.

of individuals who receive permits and the situation on the ground reflects the severe harm suffered by Palestinians and the massive destruction of agriculture in the area.

9. HCJ 9961/03, Judgment, April 2011, Para. 46.

In April 2011, the HCJ dismissed the general petitions filed by HaMoked and ACRI against the permit regime. In the judgment, the Court ruled that the “decision to close the seam zone and apply the permit regime in the area meets the tests of constitutionality.” In so doing, the Court legitimized the military’s requirement, made only of Palestinians, to obtain a special permit in order to be present in their homes and lands. The justices noted that the permit regime “does lead to a severe impingement on the rights of the Palestinian residents,” but dismissed the petition on the grounds that the harm was proportionate, barring a number of issues in the military’s orders that required correction.<sup>9</sup>

This report is largely based on the work HaMoked conducted in 2009-2010 in the agricultural areas of the northern West Bank. During these years, HaMoked processed hundreds of complaints by Palestinians who had trouble navigating the complicated bureaucratic military system that issues the permits they require in order to continue to lead their routine lives. Many of these difficulties are caused by the orders and protocols established by the military for processing permit applications which span dozens of pages. Other difficulties are caused by the manner in which these orders are implemented and interpreted by the authorities involved in issuing the permits. Whatever the cause, all the difficulties stem from the underlying premise of the permit regime: Palestinians are not permitted to be present in the “seam zone” other than in restricted and exceptional circumstances which are not usually a part of everyday life.

The objective of this report is to shed light on the mechanisms that lead to the violation of the rights of

Palestinians in the part of the West Bank known as the “seam zone,” whether they live in this area, wish to relocate to it, work in the area or wish to visit family or cultivate land located beyond the separation wall. As we demonstrate below, “security reasons” cannot justify these mechanisms and the severe harm caused to the local population is the inevitable result of the permit regime.

HaMoked’s work vis-à-vis the military, whether directly or through the State Attorney’s Office, has led to some improvements in the permit-issuing process, but the permit regime remains a discriminatory system which many are unable to navigate successfully, if at all. It is a breach of Israel’s obligation under international law to allow residents of the OPT freedom of movement in their own land. HaMoked continues to battle the harmful provisions of this regime and takes every measure possible in order to protect the rights of OPT residents who must receive permits in order to reach their homes, relatives, farmlands and workplaces located in the area known as the “seam zone.” In these circumstances, it seems that it is necessary to revisit the purpose of the permit regime and the justifications provided for it.

On October 10, 2012, HaMoked provided a copy of the report to the Ministry of Justice. HaMoked did not receive the State’s response to the report before publication in March of 2013 ■



# Background

## The “Seam Zone”

Under international law, like the rest of the West Bank, the area Israel calls the “seam zone” is occupied territory. Israel also considers this area to be under belligerent occupation and as such, it is administered by the military and Israel has refrained from applying its laws to the area or giving its residents civil status in Israel.

As stated in the introduction, when completed, the separation wall, which is built inside the West Bank, often many kilometers away from the Green Line, will cut off 9.4% of the West Bank from the rest of the territories Israel seized in 1967. In November 2006, the State Attorney’s Office estimated that upon completion of the wall, the area that would come under the permit regime and remain off limits to Palestinians – except by special permit – would span 325,000 dunums,<sup>10</sup> accounting for 5.9% of the territory of the West Bank.<sup>11</sup> According to state figures, 137,219 dunums had been declared a closed military zone (the “seam zone”) by the year 2011.<sup>12</sup>

In July 2012, some 7,500 individuals lived in 12 Palestinian communities inside the territories Israel declared as the “seam zone.”<sup>13</sup> According to various estimates, when the wall is completed, 23,000 more Palestinians will be living in similar enclaves.<sup>14</sup> More than half the land located in these areas, 93,401 dunums, is privately owned by Palestinians;<sup>15</sup> much of it belongs to residents of 150 different villages and communities that are located east of the wall, outside the “seam zone.”<sup>16</sup> Of this land, 43,808 dunums have

**10.** 1 dunum is the equivalent of 1,000 square meters (just less than 0.25 acres).

**11.** HCJ 9961/03, Response on behalf of the State, November 13, 2006. A request for current information filed by HaMoked in this petition on July 7, 2010, received no response. Three requests for statistics filed by HaMoked on April 30, 2012 under the Freedom of Information Act 5758-1998 had not been answered at the time of writing. The gap between the figures is a result of Israel’s declaration that the parts of the West Bank that are located west of the separation wall in East Jerusalem and Gush Etzion would not be declared part of the “seam zone” (see *Supra* note 1).

**12.** Introduction to Chapter 1 of the “Standing Orders for the Seam Zone, 2011” (hereinafter: the Standing Orders). Unless otherwise noted, all references are to the 2011 edition of the Standing Orders.

**13.** OCHA 2012. According to figures presented by the State in November 2011, about 7,390 people lived in this area (Standing Orders, Introduction to Ch. 1). The 12 communities that are trapped in the “seam zone” are Barta’a a-Sharqiya, Um a-Rihan, Dhafer al-Malih, Khirbet ‘Abdallah al-Yunis, Khirbet a-Sheikh Yunis, Khirbet al-Muntar a-Sharqiya, Khirbet al-Muntar al-Gharbiyah, Khirbet Jubara; the Bedouin communities of Arab Abu Fardah and Arab a-Ramadin al-Janubi; and the East Jerusalem neighborhoods of Dahiyat al-Bareed and a-Sheikh Sa’ed (B’Tselem, **Arrested Development – The Long Term Impact of Israel’s Separation Barrier in the West Bank**, October 2012).

**14.** OCHA 2012.

**15.** Standing Orders, Introduction to Ch. 1.

**16.** OCHA 2012.

been declared “state land” and are administered by the military.<sup>17</sup> At least some of this land had presumably served as land reserves for natural population growth in the West Bank and for developing the Palestinian towns and villages that are now located on two separate sides of the wall.

Closing the “seam zone” to Palestinians has effectively resulted in the military administering this area as if it were part of the State of Israel. Palestinians’ presence in the “seam zone” is subject to personal permits, even if their homes, relatives, lands or sources of income have been in this area for generations. Anyone caught in the area without a permit, or in breach of the terms of the permit, could face criminal prosecution and a penalty of up to five years in jail.<sup>18</sup> Israel has thus turned Palestinians’ most basic, mundane activities into complicated bureaucratic processes that have to be undertaken once every few months.

The “permit regime” is a complex web of procedures made up of a collection of orders and protocols. Anyone wishing to study this web thoroughly must begin with the Declaration regarding Closed Zones, continue with three orders issued by the Head of the Civil Administration<sup>19</sup> and conclude with the a thick book entitled “Standing Orders for the Seam Zone.” The Standing Orders – the holy book of the “seam zone” – are a collection of the military orders relevant to this area. This collection has been amended twice since it was first published in 2009. Following the rules of the Standing Orders requires careful and thorough study of each and every order. In addition, though the Standing Orders are designed for use by the Palestinian population, to HaMoked’s best knowledge they have only been published in Hebrew and since they are extremely complex and written in legal language, they are not readily comprehensible even to Hebrew speakers.<sup>20</sup>

Despite the principle, anchored in both Israeli and international law, that people are entitled to be

**17.** Standing Orders, Introduction to Ch. 1. Until the 1980s, the expression “state land” referred to land that the British or Jordanian regimes had declared belonged to them. In the 1980s, in order to build more settlements, Israel began declaring large swathes of land, which it claimed were not cultivated, as land that had been “repossessed” by the ruling authorities – which Israel had replaced. For more, see B’Tselem, **Under the Guise of Legality – Israel’s Declarations of State Land in the West Bank**, February 2012 (hereinafter: **Under the Guise of Legality**).

**18.** Order regarding Security Provisions [Consolidated Version] (Judea and Samaria Area) (No. 1651), 5770-2009, Sect. 333.

**19.** The Civil Administration is the military body in charge of administering civilian matters in the OPT. The orders in question are: Order regarding Security Provisions (Judea and Samaria Area) (No. 378) 5730-1970, Provisions regarding Crossings in the Seam Zone; Order regarding Security Provisions (Judea and Samaria Area) (No. 378) 5730-1970; Provisions regarding Permits to Enter and Remain in the Seam Zone, Order regarding Security Provisions (Judea and Samaria Area) (No. 378) 5730-1970, Provisions regarding Seam Zone Permanent Resident Certificates.

**20.** The Standing Orders were first presented to the Court along with the State’s notice in HCJ 9961/03, on July 30, 2009. They have since been amended twice, in September 2010 and November 11. See (in Hebrew) IDF MAG Corps website <http://www.law.idf.il/163-4906-he/Patzar.aspx>. According to the State’s notice in HCJ 261/11

**Yussef et al. v. Military Commander of the West Bank et al.**, dated July 9, 2012, a fourth version of the Standing Orders was to be published in September 2012. Despite the State’s undertaking before the HCJ, the new

found anywhere in their country, unless exceptional circumstances justify restricting this right for a limited period of time, the premise for the permit regime is the opposite: Palestinians are not to enter or remain in the “seam zone,” unless the military deems their entry or presence “necessary.” The military has recognized 13 “needs” for Palestinian travel into the areas located west of the wall and has formulated 13 different types of permits for these needs – each with its own special requirements: a permanent resident certificate, a permanent farmer permit, a temporary farmer permit, a business permit, an employment permit, a personal needs permit, an education worker permit, an international organization employee permit, a Palestinian Authority employee permit, an infrastructure worker permit, a medical personnel permit, a student permit and a minor child permit.<sup>21</sup>

All permits issued for the “seam zone” are temporary. The longest validity period is two years, but most permits are issued for much shorter durations, three months at most. During this time, permit holders must apply to have their permit renewed in order to continue to enter or remain in the “seam zone” after the original permit expires. This process is repeated every time a permit expires. The work HaMoked has done on this issue indicates that it is rare for Palestinians to obtain new permits before their old ones expire. A refusal to issue a new permit or a delay in issuing a permit deny access to the “seam zone” which impacts the ability to maintain family relationships, work in this area or farm crops that require continuous land cultivation and more.

As stated in the introduction, the permit regime applies to all Palestinians living in the OPT<sup>22</sup> and only to Palestinians. The military exempts Israelis and tourists from the need to apply for or have a permit in order to enter or remain in the parts of the West Bank that are west of the wall. For them – this is not a closed zone

Standing Orders were not published prior to the publication of this report in March 2013.

**21.** The Standing Orders previously included a “seam zone new resident certificate,” for individuals who planned to move into the “seam zone,” but this permit has been amalgamated with the “personal needs permit.”

**22.** With the exception of individuals holding a permit to work in the settlements or a permit to enter Israel. Such permits are also personal and require the applicant to undergo a separate bureaucratic process.

at all.<sup>23</sup> It is no coincidence that the area defined as the “seam zone” includes many settlements.<sup>24</sup> However, the general entry permit given to non-Palestinians is unrelated to whether or not they live in the area. The closure of the area and the requirement to hold a permit in order to enter or remain in it is based solely on nationality. Palestinians whose family has been living in the area now called the “seam zone” for generations are at the mercy of the military, dependant on a military permit if they wish to continue living in their home. They must ask for a new permit time and time again. On the other hand, any Israeli and any tourist, who have never set foot in this area may travel anywhere within it, for any reason, without needing a permit at all.

### **Building the separation wall inside the West Bank**

The closure of the “seam zone” to Palestinians followed the Israeli government’s resolution of 2002 to build a separation wall inside the West Bank.<sup>25</sup> The resolution was passed, according to the government, in response to terrorist attacks carried out by Palestinians during the second Intifada, which resulted in many deaths and injuries. The government claimed that this was not a political boundary, but rather a “temporary barrier” designed to prevent terrorists from reaching densely populated areas inside Israel.

Building the wall deep inside the West Bank rather than on the line that marks Israel’s sovereign territory (the “Green Line”) is a breach of international law and it leads to a slew of injuries to the local Palestinian population, including massive land expropriations for the purpose of building the wall; the trapping of communities in enclaves surrounded by the wall from all, or most sides; the permit regime and others.<sup>26</sup> The government’s decision to build the wall in order to protect its citizens is legitimate. However, the wall should have been built in accordance with international law. Article 43 of the Hague Regulations (1907)<sup>27</sup> and

**23.** General Permit to Enter and Remain in the Seam Zone (Judea and Samaria Area) 5763-2003, and the amendments made thereto after publication.

**24.** These include 71 of the 150 settlements built in the West Bank. More than 85% of the population of settlers, including in East Jerusalem, live on the west side of the wall, see OCHA, **Barrier Update, Seven years after the Advisory Opinion of the International Court of Justice on the Barrier: The Impact of the Barrier in the Jerusalem area**, July 2011 (hereinafter: OCHA 2011), p. 4.

**25.** See (in Hebrew) <http://www.hamoked.org.il/Document.aspx?dID=Documents1388>.

**26.** For more information, see [http://www.hamoked.org/topic.aspx?tid=main\\_15](http://www.hamoked.org/topic.aspx?tid=main_15).

**27. Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land**, The Hague, 1907, determines, *inter alia*, the obligations the military power owes to the population under its control. Israel recognizes the applicability of the Convention to the West Bank and considers itself bound by its provisions.

Supreme Court case law on this article determine that the military is not a sovereign in the West Bank, but rather a “temporary trustee” and as such, may not effect permanent changes in the area. It is limited to making temporary changes that are required for security purpose or for supplying the needs of the population under occupation. Since the wall was built inside the West Bank and not on the Green Line, it is possible to conclude that it was meant, in fact, to protect Israel’s settlement project inside the OPT, which is a breach of international law in and of itself.<sup>28</sup>

In July 2004, the International Court of Justice, or ICJ, published an advisory opinion on the legality of the separation wall. The ICJ held that Israel had a right and, in fact, a duty to protect its citizens, but that it must do so in keeping with international law. The ICJ found, *inter alia*, that the wall was built in a manner that annexed most of the settlements (including East Jerusalem), which were themselves a breach of the laws of war, and in so doing violated the human rights of the local Palestinian population and the Palestinian people’s collective right to self-determination. The ICJ called for dismantling the parts of the wall that were built inside the West Bank and rebuilding them along the Green Line.<sup>29</sup>

The Israeli government did not endorse the advisory opinion, nor did the Supreme Court. The latter said that the ICJ had not been presented with the same factual infrastructure brought before the Israeli Supreme Court.<sup>30</sup> Israel’s Supreme Court decided to refrain from making a finding on the status of the settlements and held that Israel had a duty to protect their residents regardless of their status. The Supreme Court did not review the status of East Jerusalem or the ICJ’s finding regarding the harm the wall causes to the Palestinian people’s ability to exercise its right to self-determination.

In separate petitions filed by HaMoked and others

**28. Art. 49 of the Convention (IV) relative to the Protection of Civilian Persons in Time of War**, Geneva, 1949, determines that: “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.” This prohibition is designed to protect the local population from being dispossessed by a relatively more affluent and entitled population that enjoys the protection of the occupying power such that it may lead to the destruction of the economy of the local population and the violation of its rights. In the advisory opinion on the separation wall given by the International Court of Justice (ICJ) in 2004 (see *Infra*), the ICJ held that the settlements were illegal.

**29. International Court of Justice, Advisory Opinion, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory**, July 9, 2004.

**30. HCJ 7975/04 Mara’abe v. The Prime Minister of Israel**, Judgment, September 15, 2005.

against certain segments of the separation wall, the HCJ accepted the State's arguments regarding the security purpose and held that protecting the settlers, citizens of Israel, justifies building some segments of the wall inside the West Bank. This finding was subject to the purpose of the segment being, indeed, security, rather than, for example, the "annexation" of land for settlement expansion<sup>31</sup> and inasmuch as the local population was not harmed beyond necessity.<sup>32</sup> Accordingly, in some petitions, the Court accepted the petitioners' arguments regarding disproportionate harm to the population and ordered the State to change the route of the wall in certain segments.

31. HCJ 2732/05 **Head of 'Azzun City Council v. State of Israel**, Judgment, June 15, 2006.

32. See, e.g., HCJ 2056/04 **Beit Sourik Village Council v. The Government of Israel**, Judgment, June 30, 2004.

33. HCJ 9961/03, HCJ 639/04.

### **The petitions against the permit regime**

In November 2003, HaMoked petitioned the HCJ to instruct Israel to refrain from building the separation wall inside the West Bank and abolish the permit regime applied by the military to the territories defined as the "seam zone." In January 2004, ACRI filed another general petition on this issue.<sup>33</sup> After the HCJ gave the seal of approval to building the wall inside the West Bank, the general petitions were amended to focus on the struggle against the permit regime.

The permit regime, which, according to Israel, was put in place for security purposes, has created a destructive mechanism; a mechanism that unnecessarily harms thousands of innocent Palestinians who are not involved in the struggle against Israel, people against whom the military has made no security allegations. In their petitions, HaMoked and ACRI argued that the permit regime violated human rights disproportionately, was unreasonable and constituted collective punishment of the entire Palestinian population. In addition, since the permit regime applies only to Palestinians, it constitutes wrongful discrimination. HaMoked, in its petition, argued that the fact that in a single geographic area, members of one ethnicity were required to have

permits while members of another ethnic group were not, was necessarily comparable to the Pass Laws of apartheid South Africa.<sup>34</sup>

In April 2011, the HCJ dismissed the general petitions and held that the decision to close the area of the West Bank at issue to Palestinians, was justified, *per se*, for reasons of security and as such, it constituted neither collective punishment nor discrimination.<sup>35</sup> The HCJ further held that performing security checks on Palestinians wishing to enter the “seam zone” was insufficient even if it did reduce the harm to the Palestinian population and that the permit regime, which requires applying for a personal permit over and over again while proving very specific ties to this area, was lawful. Though the Court dismissed the petitions, it did find that the military must relax the rules pertaining to Palestinians who live in the “seam zone” and wish to enter or leave it, as well as the rules regarding moving to live in the “seam zone” or visiting people who reside there. In addition, the justices instructed the State to establish a clear and efficient timetable for processing applications for permits, with the object of allowing “residents of the seam zone” and other Palestinians wishing to enter it to maintain a reasonable routine. The Court left the door open for petitions regarding specific problems with the permit regime or in the “seam zone” and for individual petitions by Palestinians wishing to reach their land.

### **The impact of the permit regime on the population**

The permit regime, with its restrictions on accessing lands in the “seam zone” and the bureaucratic obstacles it places in the path of Palestinians, has inevitably led to a sharp decrease in the number of Palestinians permitted to enter or remain in the part of the West Bank located west of the separation wall and has severely disrupted life in this area.

**34.** In reference to South Africa's Pass Laws which peaked in 1952 with the enactment of the Natives (Abolition of Passes and Co-ordination of Documents) Act, Act No. 67 of 1952. This law required all black persons over the age of 16 to carry a Reference Book at all times and present it on demand to any police officer or administrative official as a type of pass. This pass included a photograph, information about the holder's place of origin, employment records, tax payments and previous encounters with police.

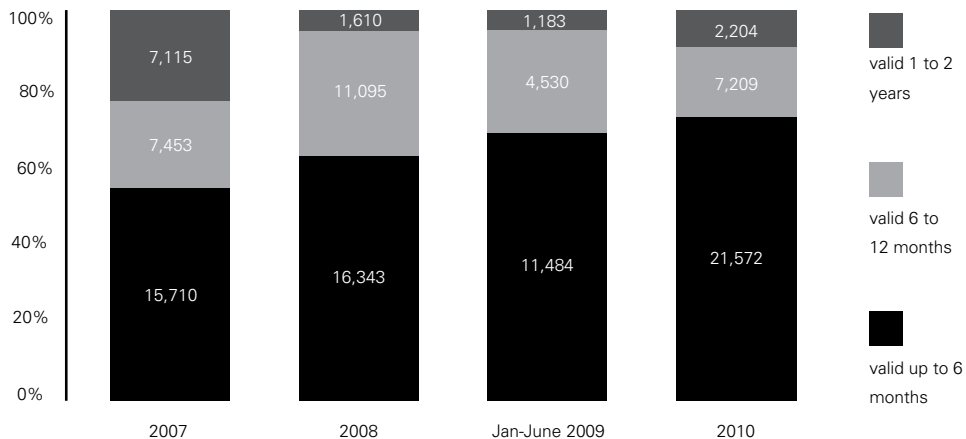
**35.** For full judgment (in Hebrew), see <http://hamoked.org.il/Document.aspx?dID=Documents1454>.

According to state figures, the number of **individuals** holding various permits has declined dramatically over the years: In 2007, 31,573 Palestinians held various permits for the “seam zone,” but the number decreased to 28,654 in 2008 and continued to drop in the first six months of 2009, reaching 23,805.<sup>36</sup> However, there has been no real change in the number of **permits** issued in the years 2007-2009. This seems to contradict the figures showing a decline in the number of individuals who received permits, but the figures provided by the State indicate that during this period of time, the **validity period** of the permits became increasingly shorter,<sup>37</sup> requiring Palestinians who wish to enter or remain in the “seam zone” to obtain more permits every year. In other words, fewer people get permits, but the

**36.** See *Supra* note 8, Para. 21. Though the figure provided for 2009 relates only to the first six months of that year, it is safe to assume that it is not the equivalent of half the annual number since most of these individuals are expected to have access to their land for most of the year.

**37.** The figures are based on HCJ 9961/03, Supplementary Notice on behalf of the State, July 30, 2009, Exhibits R/35, R/36, R/37; Letter of the Civil Administration Public Liaison Officer to ACRI, April 4, 2011. The figures for 2009 cover January to June. The figures provided by the State do not include information regarding applications for “student permits,” “minor child permits” and “Palestinian Authority worker permits.” Therefore, these applications, inasmuch as they were submitted, and the decisions rendered therein, are not included in the figures presented in this report.

## Reduced Validity Periods for Long Term Permits





number of permits remains the same, and even rises. Those who do receive permits must make do with short term permits only and renew them more often, encountering, each time, the difficulties caused by the permit regime.

Israel's policy, which decreases the number of people who are permitted to remain in the "seam zone," has harsh, clear and immediate results. A 2009 UN report noted that in 2007, delegates from 67 farming communities in the northern West Bank reported a decrease of more than 80% in the number of farmers who routinely cultivated their lands compared to the period preceding the erection of the wall. This figure appeared again in a similar survey conducted in the middle of 2008.<sup>38</sup>

Moreover, the limited and short validity periods of the permits, the bureaucratic complexity involved in obtaining them and the military's arbitrary, and often negligent processing of the applications, result in many cases in which there is no continuity between one permit and the next. Palestinian farmers whose homes and lands are separated by the wall are unable to effectively plan the agricultural cycle and use their land throughout the year. Many are forced to refrain from investing in crops that require continuous cultivation, even if such crops are profitable. A 2011 UN report estimated that the olive tree yield in the areas west of the separation wall was 60% lower than the yield in plots located on the other side of the wall, which are accessible to farmers throughout the year.<sup>39</sup>

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The 2009 UN report found that in the neighboring villages of Jayyus and Falamyia in the Qalqiliya area, where about 6,100 dunums of farmland were separated from the villages by the wall, about 100 hothouses were dismantled and some 500 dunums were converted from citrus groves to crops that do not require as much maintenance

**38. OCHA, Five Years After the International Court of Justice Advisory Opinion, a summary of the humanitarian impact of the barrier,** July 2009 (hereinafter: OCHA 2009), p. 21 and note 36. In this context it should be noted that as of 2009, farming accounted for 11%-20% of the Palestinian economy and employed 15% of the formal labor force and 39% of the informal labor force (Ibid., p 20).

**39. OCHA, The Monthly Humanitarian Monitor,** December 2011, p. 8.

but are less profitable, such as wheat. Agricultural crops in that area dropped from about 9 million kilograms of fruits and vegetables in 2002 to about 4 million kilograms in 2008. In addition, since the villages' grazing pastures were cut off, the number of shepherds also decreased. At the time the UN report was written, only one family had a permit that allowed it to tend to sheep in the "seam zone" overnight.<sup>40</sup>

The farmers of the village of Arabunah in the District of Jenin once cultivated olives, almonds, carobs and chickpeas. Only the olives have remained. In Um Dar, the number of livestock has dropped from 6,000 to 1,500. In May 2009, only 70 of the 3,700 inhabitants of A'nin had permits to cultivate an area with 8,000 olive trees. Only a handful of the residents of Ya'bad, with a population of 13,600, had permits allowing access to 10,000 olive trees, and these few were prohibited from bringing tractors into the closed zone in order to transport the crop out.<sup>41</sup>

In the Tulkarm District, 70% of the almond trees owned by residents of the village of al-Jarushiya, which are located in the closed zone and previously yielded ten tons of crops, stopped giving fruit entirely due to lack of access and cultivation. In Khirbet Jubara, the number of chickens dropped from 120,000 to 20,000. In hundreds of dunums of farmland belonging to the village of Far'on, the citrus and guava trees have dried up as a result of lack of access by farmers, and in four fires that raged in the Sal'it enclave, about 500 dunums of olive trees burned to the ground because Palestinian fire fighter teams were not allowed to enter the area.<sup>42</sup>

40. OCHA 2009, p. 28. This is supported by aerial photographs ACRI presented in its response to the figures provided by the State in HCJ 639/04, with the object of comparing the situation in 2001 to the situation in 2008.

41. OCHA 2009, p. 35.

42. Ibid., p. 37.

The permit regime has also severely disrupted the lives of Palestinians living inside the "seam zone." The 2009 UN report indicates that nine communities

had reported pregnant women had to leave their villages long before they were due to deliver in order to make sure they received the proper medical care during the delivery. Seven communities reported about medical emergencies and deaths that had occurred because of the limited opening times of the gates. Individuals who offer various services to the villages inside the “seam zone” are not permitted to enter them when a sudden need for their services arises, because of the requirement to apply for a permit in advance. Weddings and funerals are often held without members of the extended family who have trouble obtaining permits, and many parents refrain from giving their blessing to marriages with individuals who live west of the wall for fear they will not receive permits to visit the couple.<sup>43</sup>

43. Ibid., p. 16.

The rights of those who must obtain a permit in order to live in their home or toil their land are severely violated. HaMoked provides assistance to individuals whose rights have been abused from the moment the application is filed until the case is brought before the High Court of Justice. The vast knowledge HaMoked has gained through providing this assistance has enabled it to analyze the mechanisms of the permit regime and its attendant processes and grasp the extent of the injury Palestinian society suffers as a result of the military’s policy and its leading causes ■

## **The Work of HaMoked: Center for the Defence of the Individual**

One of the services HaMoked offers is assistance to Palestinians who wish to obtain permits for the “seam zone” or who face difficulties when crossing the gates. Providing this assistance does not signal a retreat from HaMoked’s position that the permit regime is unlawful in and of itself and that it severely violates the human rights of residents of the West

Bank, nor does it constitute recognition of the legitimacy of demanding that Palestinians wishing to enter the area of the West Bank referred to as the “seam zone” obtain a military permit for this purpose.

The figures in this report are based on HaMoked’s activity from the beginning of 2009 until the end of June 2012. During this time, HaMoked assisted 898 Palestinians, most of whom required help on more than one occasion. The vast majority of the applicants sought assistance in obtaining permits for the rural areas of the northern West Bank, in the districts of Qalqiliya, Tulkarm and Jenin. Most of the applications were for access to agricultural land for the purpose of cultivation; others were for entering the areas west of wall for the purpose of relocation, family visits or work.

HaMoked’s work is based on the complaints of the individuals who seek its assistance. Most applicants contact HaMoked by telephone, but beginning in mid-2012, contact has been made through a field worker operating in the northern West Bank. The people whom HaMoked assists naturally account for a relatively small part of the general Palestinian population that requires permits and therefore the information in this report does not necessarily provide the full picture. However, it is reasonable to believe it constitutes a sample that reflects the difficulties impeding the lives of many residents of the West Bank.

Until the end of 2009, HaMoked also processed complaints related to the “seam zone” through its emergency hotline, which provides assistance in real time. The complaints HaMoked handled through the emergency hotline included delays in issuing permits, late opening of gates designated for passage by farmers, delays at checkpoints and crossings in the separation wall and soldiers’ refusal to allow livestock, equipment and goods across. Assistance in these complaints was provided immediately

through telephone calls to the relevant military officials with the object of finding a speedy solution to the problem. However, the activity conducted through the emergency hotline, the publication of the statistics regarding the number of permits issued and the disclosure of the Standing Orders have brought HaMoked to the realization that it must intensify its activity on this issue. As a result, at the beginning of 2010, HaMoked began providing assistance to Palestinians who contacted it with regards to the "seam zone" from the moment the application for a permit is filed until the end of the administrative or legal proceeding. Since any "seam zone" permit is temporary by definition, HaMoked also handles the repeated renewals of the permits. HaMoked's work on this issue includes communicating with military authorities and the State Attorney's Office and taking legal action. In addition, HaMoked continues to receive complaints through the emergency hotline and to provide immediate assistance to the extent possible ■

**44.** A case file may be opened for more than one person, for instance, for a few members of the same family.

	Calls to emergency hotline, "seam zone" and separation wall	Files opened by HaMoked <sup>44</sup>	Written communications to the military	Hearings	Petitions
<b>2009</b>	119	6	–	3	–
<b>2010</b>	365	43	49	8	15
<b>2011</b>	11	134	159	32	34
<b>2012</b> (to end of June)	4	187	260	50	27

45. The military refers to this phase as an “application for convening a hearing committee,” but it is in effect an appeal against the rejection (see further details below).

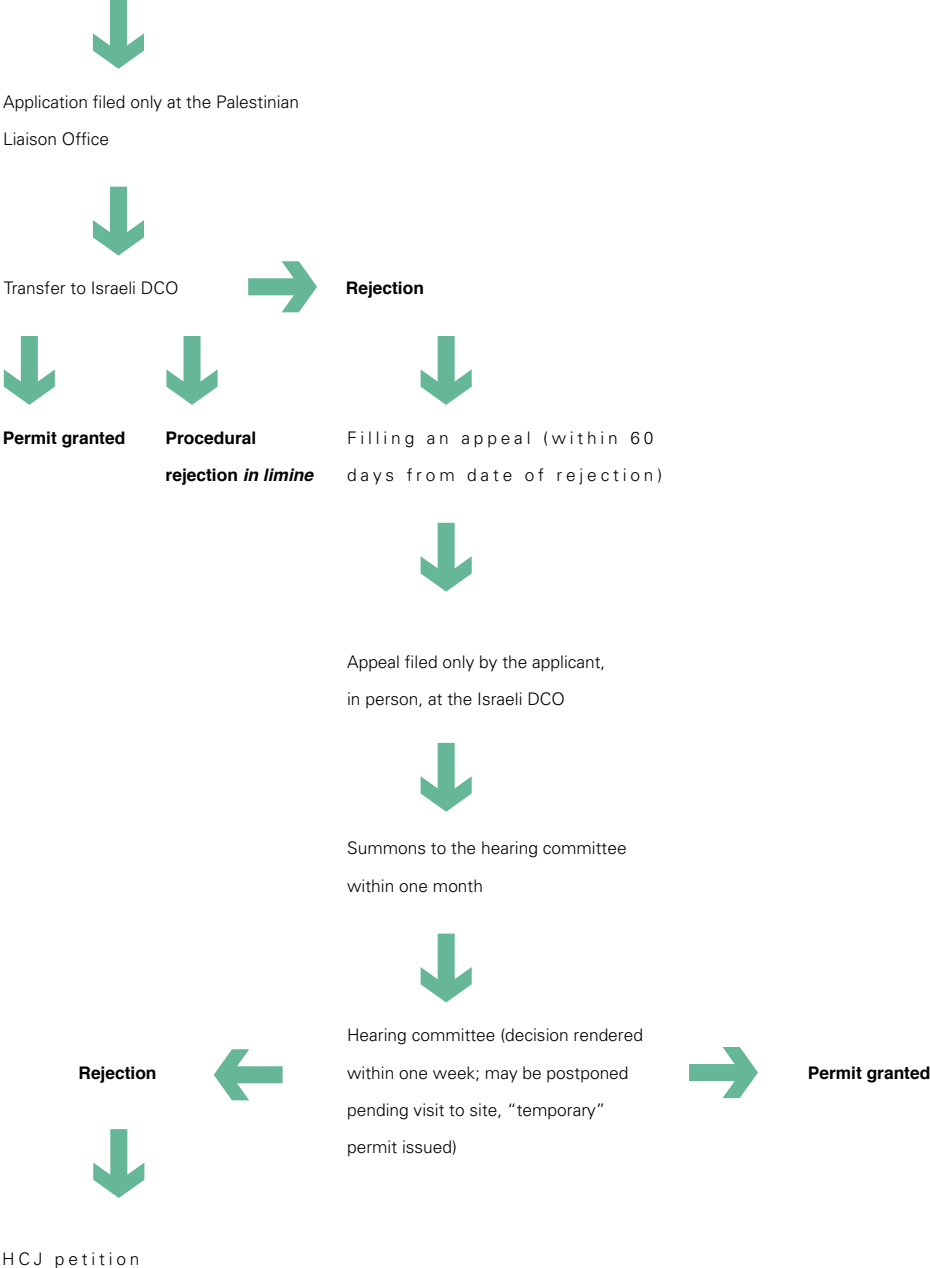
# The Bureaucratic-Legal Process for Receiving a Permit for the “Seam Zone”

The permit regime contradicts the norms and principles of international law. Yet, in addition to its unlawfulness, the manner in which it is effectively implemented by the military precludes Palestinian residents of the West Bank from any possibility of leading a normal life. In the “seam zone,” even trivial, simple actions such as going to work, returning home from school or visiting relatives come up against a wall of bureaucratic requirements.

Ostensibly, the process for obtaining a permit for the “seam zone” is simple: Palestinians, and, as aforesaid, only Palestinians, who wish to enter the parts of the West Bank that are beyond the separation wall must submit an application in writing. If this application is rejected, they may file an administrative appeal against the rejection<sup>45</sup> and the matter is heard by a military committee. If the committee also rejects the application, the applicants may petition the Supreme Court sitting as the High Court of Justice. However, everyday reality shows that what lies behind this simple description of the phases for obtaining a permit is a Sisyphean process that costs a significant amount of time and money. This process is composed of complicated and intricate military working protocols that make it very difficult for applicants to obtain the permit and often render the entire endeavor impossible ■

# Processing of "Seam Zone" Permit Applications According to Military Orders

Filling the application for permit



# The Application

## Submitting an application

Palestinians wishing to obtain a “seam zone” permit must submit their application at the Palestinian Authority’s Liaison Office. The military refuses to review applications that are not transferred to it from the Palestinian Liaison Office. Applications filed directly with the Israeli District Coordination Offices (hereinafter: DCOs),<sup>46</sup> even if made via human rights organizations, are not processed.<sup>47</sup> This requirement does not appear in the Standing Orders, which indicate the complete opposite,<sup>48</sup> and applicants discover this through trial and error.<sup>49</sup>

The Palestinian Liaison Office has no authority to approve applications. Its only role is to transfer applications made by Palestinians to the military. This division of labor allows the military to pick and choose and accept only some of the applications for processing while the rest remain in the Palestinian Liaison Office unattended. HaMoked has learned that the military sometimes refuses to accept any applications from the Palestinian Authority. So, for example, in 2011, HaMoked came across a number of cases in which representatives of the Palestinian Authority had told permit applicants that their applications could not be transferred to the military because there was a “backlog at the Israeli DCO” and the military refused to accept new applications.<sup>50</sup> No protocol stipulates how long it should take an application to reach the Israeli military after it has been filed with Palestinian Authority officials and obviously no such timetable can be monitored or enforced.

Palestinians who submit applications through the Palestinian Liaison Office often contact the DCOs to check on their applications only to be met with the response that “no application has been received” (through the Palestinian Liaison Office). The military

**46.** The DCOs are the local offices of the Israeli Coordination Administration – the military unit in charge of liaising with representatives of the Palestinian Authority and coordinating communications between the Israelis and Palestinians.

**47.** In a letter sent on May 1, 2011 in response to HaMoked’s communication on this issue, the Legal Advisor to the West Bank Military Commander implied that the military may be contacted directly in cases it defines as “humanitarian.”

**48.** For example, Chapter 3, Sect. 7(a) of the Standing Orders (application for “permanent farmer permit”) stipulates: “applications shall be submitted as follows: A. submission of application in the DCO (T-1) for a permanent farmer permit in the seam zone.” The same is stated in the sections relating to applications for other types of permits. The letter of response cited above and dated May 1, 2011 states that the term “DCO” in the Standing Orders refers to the Palestinian Liaison Office, but this interpretation is unnatural and does not conform with other provisions in the Standing Orders which empower the same “DCO” to approve applications, a power Israel has vested only in the Israeli DCOs.

**49.** In response to communications HaMoked made to the military regarding this issue, the Civil Administration Public Liaison Officer replied on March 21, 2012, that the requirement to file applications directly is a result of the relations between Israel and the Palestinian Authority as anchored in the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (the Oslo Accord). As a source for this statement, the military referred HaMoked to Article 1, Subsection 1.c. of the third annex to the agreement. However, this section states only that Israel and the Palestinians would establish joint committees for reviewing various issues such as the granting



sometimes gives this answer to Palestinians who have written documentation from the Palestinian Liaison Office that their applications had been transferred to the military. In many of these cases, the applicants must submit new applications.

The response that “no application has been received” can be clarified only by contacting the Civil Administration Public Liaison Officer. Clearly, most Palestinians are unable to do so without obtaining the services of a lawyer or getting help from a human rights organization. Yet, even then, there is no immediate response. When HaMoked requests information on a certain individual’s application, it often waits for weeks to receive the military’s response that “no application has been filed” and that the applicant must repeat the entire process.

And so, many Palestinians never reach the point where their application is received by the military. Others do not know if their application is being processed or what to do in case it is not. They are also precluded from taking legal action since in the absence of an “application filed in accordance with procedure” they are deemed as not having “exhausted their remedies,” which may lead to the dismissal of a petition.<sup>51</sup> This leaves many with neither a permit, nor the possibility of asking for one. In other cases, the military gives inaccurate, unreliable, and sometimes even entirely erroneous information, for example, claiming “no application has been transferred,” yet issuing a permit or a summons to a hearing a few days later.

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In 2011, T.A., a farmer who lives in a village near Qalqiliya leased a plot of olive trees located west of the separation wall. In August 2011, he filed an application for a permit to enter the “seam zone” with the Palestinian Liaison Office. After no response was received from the military for

of various permits to Palestinians. In this context, it is worth noting that a Palestinian who wishes to file an application for an appeal process following a rejection of an application for a “seam zone” permit must submit it directly to the Israeli DCO rather than via the Palestinian Liaison Office. On this issue, see *Infra* p. 38.

**50.** In the Standing Orders published in September 2011, the military included a provision that DCO backlogs cannot serve as a reason for refusing to admit applications for processing. See Standing Orders, Ch. 2, Sect. 22; Ch. 3, Sect. 55(e). This provision is an improvement, but at the same time it implies that this was indeed the practice in the DCOs and their conduct vis-à-vis the Palestinian Liaison Offices.

**51.** Regarding the demand to “exhaust remedies” prior to taking legal action, see *Infra* p. 33.

two months, T.A. contacted HaMoked. Since the Liaison Office stated that the application had been transferred to the Israeli DCO, HaMoked contacted the military asking what its status was. In his response of November 2011, the Civil Administration Public Liaison Officer said that “the Israeli side has not received any application for a permit to enter the seam zone.”

T.A. had no choice but to return to the Liaison Office and reapply. After the Liaison Office once again said that the application had been transferred to the Israeli DCO, HaMoked contacted the military again, asking to expedite the processing of the application. In a response from December 2011, the military once again claimed that “no such application has been received by the Israeli side” and recommended that T.A. be instructed to contact the Israeli DCO directly in order to file the application.

T.A. had no choice but to go to the Israeli DCO and file a third application to reach the plot of land he had leased. Once again, HaMoked sent a request for speedy processing of the application, but despite the fact that T.A. had handed the application to an Israeli military officer, the military replied that “no application has been filed in your client’s matter,” and yet, on January 27, 2012, T.A. suddenly received a permit to enter the “seam zone” for one year – six months after he filed his first application. For six months, without any reason, security or otherwise, T.A.’s right to cultivate his land was denied as a result of the permit regime and the military’s conduct. (Case 70566)

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It is possible to assume that flaws in the operation of the Palestinian Liaison Office, not just in the Israeli DCO’s, result in delays in processing the application. However, Israel has sole power to

process applications for permits, and also bears the attendant responsibility.<sup>52</sup> The claim that failures on the Palestinian side cause the delays is nothing more than an attempt on the part of the military to evade responsibility.

52. As is known, the Palestinian Authority is not independent. Its employees depend on Israel for their salaries and it operates only where Israel allows it to operate.

In 2010 and 2011 HaMoked asked the military to process applications that are directly submitted to it because of the inconvenience involved in the demand to file applications only through the Palestinian Liaison Office. The response was negative. In a few cases, in which HaMoked was able to prove that the applicants had filed their applications and done what they were required to do, the military agreed to allow them to file the application again, this time directly to the Israeli DCO. In other cases the military agreed to accept an application directly only after receiving a written communication from a lawyer working on behalf of HaMoked.

During 2012, the number of applications that received the response "no application has been transferred" decreased compared to 2009-2011. Hopefully, this trend will continue.

### **Supporting documents**

Every permit application must be supported by documents proving that the applicant really needs to enter or remain in the "seam zone." The required documents vary according to the type of permit and therefore, careful study of the Standing Orders is required. This document, as stated, was published only in Hebrew. Sometimes it is not clear why the military needs the documents it requests, such as land rights records, which are issued by the military itself. HaMoked has encountered cases in which applicants were told to attach to their application documents that are not listed in the Standing Orders, such as a fiscal map showing that the plot that belongs to the person applying for a "permanent farmer permit" is in fact located in the "seam zone."

The military rejects any application that arrives at the DCO without all the required documents, even if all of them were submitted to the Palestinian Liaison Office. HaMoked's experience shows that it is difficult to provide the missing document. One might have expected the military to make it possible to send the documents to it, but the military insists that it be done through the Liaison Office only, which is, in effect, tantamount to filing a new application.

Every year, many permit applicants must produce a new, current document that proves their "need" for a permit,<sup>53</sup> despite the fact that most of this information is readily available in the military's databases and the military is, in fact, responsible for recording it. A person who files an application with an "old" document is sent to the Civil Administration to pay a fee, have the same document reprinted and told to bring the "new" document to the Palestinian Liaison Office along with a new application – all this just so the Liaison Office can send it back to the DCO. In the case of applications for farmer permits, the updated document is always identical to the previous one as the military does not allow making changes in land registration.

In theory, the military requires all documents to be filed only with the first application and thereafter, applicants may have their permits renewed by attaching only their identification cards and a copy of the previous permit. However, an application received by the military after the expiry of a previous permit<sup>54</sup> is defined as a "new application" and must include all documents.<sup>55</sup> In addition, since many permits are given for limited and discontinuous periods of time to begin with, applicants must always file new applications enclosing all required documents. This is the case with respect to "seasonal permits" for example, which are issued to individuals working in agriculture for a specific cultivation season, who must file a new application every season. Military orders clarify that some types of

- 53.** HCJ 2430/10 **Hersha et al. v. Military Commander of the West Bank et al.**, Response on behalf of the State, April 26, 2010; see also OCHA 2011, p. 9.
- 54.** See, e.g., Standing Orders, Ch. 2, Sect. 13(b) referring to renewal of a "seam zone permanent resident certificate" and Chapter 3, Sect. 9(b) referring to renewal of a "permanent farmer permit."
- 55.** Letter from the Legal Advisor to the West Bank Military Commander to HaMoked, August 16, 2012.

permits cannot be renewed and that in order to receive them, one must file a new application each time.<sup>56</sup>

Many permit applicants must resubmit the same documents time and time again. In the case of agricultural permits, since land ownership is often not recorded in the land registry, nor are changes in ownership updated in it,<sup>57</sup> permit applicants must add the chain of inheritance orders and sales deeds that connect them to the registered land owners. Naturally, as years go by, there are more and more of these records and the onus of keeping them on file and attaching them to applications increases accordingly. The loss of a single one of the required documents might break the chain of evidence proving the connection to the land and result in the application being rejected out of hand.

### **The type of permit sought**

Upon submission of the application, applicants must name the permit they seek. There are 13 types of permits,<sup>58</sup> but the fact that these various types exist and the differences between are not clear to most Palestinian residents. So, for example, Palestinians often have permits to cultivate their family's plots, but when they apply to have them renewed they are denied on the grounds that "no connection to the land has been proven." Inquiries made by HaMoked have revealed that though no one disputes that the applicant is entitled to the permit, the military refuses the application because the application bears the title "farmer permit," whereas, according to the Standing Orders, it is an application for an "employment permit."<sup>59</sup> And so, even if all the relevant documents demonstrating the applicant's entitlement to enter the "seam zone" in order to cultivate the land are present, and even if the applicant holds a military permit that was issued based on recognition of this entitlement, the military still refuses the application just because it is misnamed.

**56.** Chapter 3 in the Standing Orders, subhead "personal needs permit," Sect. 3 stipulates that this type of permit cannot be renewed; Sect. 10 of this chapter stipulates that an "educational worker permit" cannot be renewed; Sect. 25 stipulates that an "international organization employee permit" cannot be renewed; Sect. 32 stipulates that a "Palestinian Authority employee permit" cannot be renewed; Sect. 39 stipulates that an "infrastructure worker permit" cannot be renewed; Sect. 46 stipulates that a "medical personnel permit" cannot be renewed; Sect. 63 stipulates that a "student permit" cannot be renewed.

**57.** Two thirds of the land in the West Bank is defined as "unsettled," that is, land whose ownership has not been registered and updated in the land registry over the years. The only ownership documents regarding this type of land are the original property tax forms from the time of the Ottoman Empire, British Mandate or Jordanian rule, which contain the name of the person who owned the land at the time (*ikhraj qayd*). On the structure of land ownership in the West Bank, see *Infra* p. 65.

**58.** For a list of the 13 types of permits listed in the Standing Orders, see *Supra* pp. 10-11.

**59.** On the difference between the two types of permits, both of which are designed to allow land cultivation, see *Infra* p. 66.

The duty to name the precise type of permit sought, and one type only, creates difficulties for those who are not versed in the provisions of the Standing Orders or the types of permits contained in it. As we have seen in the above example, most of the individuals who work in agriculture do not know whether the military defines their “need” to enter the land as “farming” or “employment.” Unsurprisingly, many assume that the application is for “farming.” This requirement serves no purpose and does not correspond to the situation on the ground, but this is not enough for the military to alter its demands. HaMoked’s communications to the military on this issue were to no avail.

This requirement is particularly problematic for individuals whose connection to the “seam zone” cannot be reduced to one specific issue. Many individuals naturally have both work ties and family ties in the West Bank areas located west of the wall. Yet, since the military does not issue permits without a specific need and since, as HaMoked’s experience has revealed, the military processes only one application per individual at a time, permit applicants must choose which of their needs they would rather fulfill. Absurdly, people who have been issued a permit to cross the wall for one “need” require a special permit to cross it for another “need.”

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A.Z., who lives near Jenin, works in his brother’s shop in Barta’a which is in the “seam zone.” He receives renewable “employment permits.” In June 2010, A.Z. became engaged to a woman from Barta’a. The wedding was set for September 2011 in the home of the groom’s parents and the Henna ceremony was set for two days earlier in the bride’s family home in the “seam zone.” In July 2011, two months before the wedding, without explanation or reason, the military did not

renew A.Z.'s work permit. He filed an application to have the permit renewed, and at the same time, filed another application to enter the "seam zone" for "personal needs" in order to attend his own celebration. Neither application received a response. In August 2011, HaMoked contacted the military with an urgent request to approve A.Z.'s entry into the "seam zone" in order to participate in his Henna ceremony with his fiancée. The military's response from August 22, 2011 indicated that the military had approved the "employment permit" to enter the "seam zone," though it never took the trouble to inform A.Z. of this, but the Civil Administration Public Liaison Officer stressed that "in order to enter for the Henna referred to in your letter, your client must obtain a permit to enter the seam zone for personal needs and may not use the employment permit for this purpose." (Case 69983)

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### **Processing times**

The "needs" Palestinians have for arriving at the part of the West Bank located beyond the wall, such as operating a business or residing in the "seam zone," usually require speedy, daily access. Farmland often requires ongoing monitoring and cultivation that go beyond seasonal activities such as sowing and plowing (weeding, pest control, irrigation, dealing with weather damage or theft and others) and any delay may result in irreversible damage to the crops. This is all the more so in the case of animal husbandry where constant and consistent access is critical. The same holds true for "exceptional" family events, such as visiting relatives who have fallen ill, given birth or lost a loved one and for supplying essential emergency services.

Until November 2011, there was no particular timetable for processing permit applications and the issue came under the general administrative law of Israel which stipulates an application must be

answered within 45 days of submission (as far as the military is concerned, this period does not include the time it takes for an application to reach the DCO after it is submitted in the Palestinian Liaison Office). Individuals were required to make the necessary preparations and submit their applications in advance so that they would be processed within the aforesaid time frame, which, in any event, could not satisfy urgent and unexpected needs. Since this is not a one-time process and must be repeated frequently the "waiting period" was also repeated each time. In addition, responses given to applicants from the Palestinian Liaison Offices indicated that the military was refusing to allow individuals who had a permit to submit an application for renewal before their permit expired. Thus, applicants were required to file a new application only after their permit expired (enclosing new copies of all the relevant documents) and wait, each time, for weeks and months to get the new permit. During this time, they had to postpone the "needs" for which they asked to enter the area of the West Bank called the "seam zone."

In the course of handling the cases of Palestinians seeking "seam zone" permits, HaMoked has filed many individual petitions which included a demand to set a timetable for processing applications. In April 2011, along with dismissing the general petitions against the permit regime, the Court did recognize that quick access to the "seam zone" was necessary. In the judgment, the Court held that Israel should stipulate clear and efficient timetables for processing applications for permits.<sup>60</sup> Seven months later, the military amended the Standing Orders and stipulated that a decision regarding applications by individuals who do not live in the "seam zone" must be made within 14 days of receipt by the DCO and that applications for renewal may be submitted three weeks prior to the expiry of a permit.<sup>61</sup>

**60.** See *Supra* note 9, Para. 39.

**61.** Standing Orders, Ch. 3, Sects. 55(a) and 55(c). Slightly different timetables apply to "seam zone residents." They are contained in the Standing Orders, Ch. 2, Sects. 22(a), 22(b), 22(d) and 22(e).



In reality, the provisions on expediting processing are not followed, at least with respect to permits for individuals who do not reside in the “seam zone” but wish to cross the wall routinely. Of 195 cases handled by HaMoked in the first half of 2012 which resulted in the issuance of a permit, the military met its own target in only 13 cases (under 7%); 18 cases (9%) were processed within two weeks to a month; and in 158 (84%), processing took more than a month.

Those who are able to afford it, hire a lawyer who can – after following all the legal procedures known as “exhaustion of remedies” – petition the HCJ for non-response to the application. HaMoked’s experience shows that filing a petition does not necessarily lead to a speedier response, but in some cases, delays it. After a petition is filed, the Court grants the State time to formulate its position and a hearing is often not scheduled for quite some time. In this situation, since a response is not given immediately, it is better to wait for the military’s answer. However, in most cases, the petitioner is issued a permit shortly after a petition is filed and solely because it is filed.

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A.A. is a Palestinian farmer who wishes to cultivate his family’s farmland which is located west of the separation wall. He requires military-issued temporary permits to enter the area. Until 2009, A.A. had filed many applications for a “seam zone” permit, but the military never issued him one. In early 2010, he contacted HaMoked for help.

HaMoked contacted the military with a demand to issue A.A. a permit or, alternatively, to allow him to present his case. Indeed, the military held an oral hearing and, in August 2010, issued A.A. his first permit to access his land for three months. At the end of this period, A.A. filed an application to renew the permit, but, again, did not receive an

answer from the military. HaMoked had to write the military again and A.A. was summoned for a hearing committee once more, after being denied access to the “seam zone” and his land for seven months. A few days after the hearing, in July 2011, A.A. received another three-month permit.

In October 2011, A.A. submitted an application to renew the permit, but the military did not bother answering. This time, HaMoked’s letters were also of no avail and it had no choice but to file a petition with the Supreme Court requesting it to instruct the military to respond to the application.<sup>62</sup>

In December 2011, two weeks after the petition was filed, the State Attorney’s Office notified HaMoked that the permit had been renewed for an additional three-month period.

What followed seems to be self-evident. In February 2012, A.A. once again tried to renew the permit and was once again met with silence from the military. Two more months went by before he was allowed to access his land. Of the 42 month-period between early 2010 and mid-2012, the military denied A.A. access to his land, located, as recalled, inside the West Bank, for 18 months – not because of security considerations or any other pertinent reason, but simply due to arbitrary bureaucracy. (Case 65808)

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In this context, it is important to stress that the fact that Palestinians are cut off from this part of their land, which is called the “seam zone,” as a result of delays in processing applications, is not just a result of the conduct of the military in general and the DCOs in particular, but of the very fact that there is a permit regime as part of which people are required to repeatedly ask for permits for the “seam zone” and wait for them for a long time. The military can obviously set tight schedules for processing applications, but without any real ability to meet these

schedules, the delays will remain an inevitable result of the permit regime.

### **Review and decision**

Each year, about 30% of all applications for permits are not approved by the military.<sup>63</sup> Most of these are applications that have been rejected.<sup>64</sup> Most of the applications are rejected because the military believes the applicants – once again, these are Palestinians seeking to enter a part of the West Bank located west of the separation wall – have not proven a need or a connection that justify their entry to the “seam zone” (this type of rejection is called a “rejection on criteria”). Other applications are rejected as a result of classified intelligence information against the applicant.<sup>65</sup>

Permit applications are decided in an internal military process at the DCOs. At this point in the process, applicants cannot present their case to the officials who make the decision, despite the fact that a hearing is included in the inherent right to due process. A hearing allows a person to understand why the administrative authority is considering rejecting the application and correct use of the right to a hearing allows applicants to prove their claims and confront the allegations made against them.

According to administrative norms, in the absence of special circumstances, a hearing is held before a decision is made. However, HaMoked’s experience shows that in the vast majority of cases, the military does not hold a hearing prior to reaching a decision in applications for “seam zone” permits. This practice is particularly problematic considering the fact that when appeals are filed against rejections, the DCOs convene hearing committees which often overturn the decision made by the very same DCO. About half of the rejections that were reexamined in administrative appeals during 2007-2010 (133 of 282) were found to be unjustified by the hearing committees. It is safe to

**63.** This figure does not include an unknown number of applications which, according to the military, were not transferred from the Palestinian Liaison Offices. In its response in HCJ 2228/12 **Odeh v. Military Commander of the West Bank**, dated May 23, 2012, the State related that in 2011, 89.4% of applications were approved and that in the first four months of 2012, 83.3% of applications were approved. However, according to the figures presented in the State’s response, it seems that these figures represent the rate of approvals out of all decisions rendered and not out of all applications filed. As stated, many of these applications received no response but they are not included in the figures provided or in the calculations presented in the State’s response.

**64.** In 2007-2010, 153,036 permit applications were filed; 107,509 were approved and 33,746 were rejected. The figures include 11,781 applications which were neither approved nor rejected and it is not clear, from the military’s figures, whether these applications were rejected out of hand, not processed, not finalized in the year in which they were submitted, etc. Since the figures relate to the number of permits sought rather than the number of people who applied, it is possible that one application submitted by a certain individual was approved but another that was filed at some other time during the period covered by these figures was rejected or went unanswered. The figures are taken from the State’s notice in HCJ 9961/03, July 30, 2009, Para. 20 and Exhibit R/44 and Letter of the Civil Administration Public Liaison Officer to ACRI of April 4, 2011. The figures for 2009 cover January to June only.

**65.** See more on this *Infra* p.72.

assume that if the hearing had been held during the initial processing of the application rather than just at the appeal stage, the application would have been approved.<sup>66</sup>

Holding hearings only at the appeal stage has two crucial disadvantages: First, because the military has already decided to deny the application, it is reasonable to assume that the applicant would not be able to have the decision overturned in an appeal reviewed by the military itself rather than by a court. Second, it unnecessarily protracts the process, forcing the applicants to wait for extended periods of time – the time it takes to file the appeal and to have it reviewed – in addition to waiting for the initial decision on the application.

Rejections are not issued in writing, and are obviously not accompanied by reasoned arguments. Though the Standing Orders do stipulate an obligation to issue a special form in such cases,<sup>67</sup> the military satisfies itself with transmitting a notice of rejection to the Palestinian Liaison Office. Applicants often find out that their permit application has been rejected only after HaMoked contacts the military on their behalf. Moreover, since the military demands an appeal be submitted within 60 days from the notice of rejection, or, in the case of a “seam zone” resident, within 30 days,<sup>68</sup> those who do not find out that their application has been rejected promptly must wait for the special permit much longer. If no appeal is filed within the time frame specified in the Standing Orders, the rejection remains valid for six months from the date of issuance.



Filling an application for a permit to enter the “seam zone” requires Palestinians to be thoroughly familiar with the military orders: where to file the application, what type of permit to request, what documents

**66.** The figures for 2009 cover January to June only. It is important to note that the absolute majority of Palestinians whose applications are rejected are not fortunate enough to have their matter revisited in an appeal. See on this *Infra* p. 39. The figures, thus, are based only on the cases that were heard on appeal and not on cases in which the applications were rejected.

**67.** For example, Standing Orders, Ch. 2, Sect. 11(b)(2)(I), and Ch. 3, subhead “permanent farmer permit,” Sect. 8(b)(1)(I).

**68.** See, e.g., Standing Orders, Ch. 3, Sect. 8(b)(1)(II). On the timetable for submission of an appeal by a “seam zone resident,” see Standing Orders, Ch. 2, Sect. 8(b)(1)(II).

to attach and more. Even when the application is submitted in accordance to Standing Orders provisions, the time it takes the military to respond to it may be quite protracted, and during this period, the applicant cannot enter the “seam zone.” When the answer is finally given, many – in a quarter to a third of all applications – find out that the military has not approved their application. If they wish to insist on their rights, they must contact the military again and begin another long proceeding – the appeal ■

## The Appeal

Between 2007 and 2010,<sup>69</sup> the military refused 33,746 applications for “seam zone” permits (the figure relates to the number of applications, not the number of applicants).<sup>70</sup> Beginning in 2010, the Standing Orders provided that individuals whose applications had been rejected could, in most cases, submit an application to convene a hearing committee directly to the military.<sup>71</sup>

As stated, the military does not hold a hearing before a decision is made on the original application. Since rejections are not issued in writing and no reasons are provided, the entire essence of the appeal is an application to convene a hearing committee – a military committee, which, if the process had been properly conducted, would have been convened before the decision to reject the application was made. Since this hearing committee is the same body that is meant to be consulted prior to the original decision,<sup>72</sup> it is clearly in a conflict of interests. Moreover, since the decision to reject an application is not given in writing and the grounds for it are not disclosed, the applicants sometimes discover that they are unable to file an appeal either because, according to the military, they missed the deadline (60 days for the most part) – even if they had just found out about the rejection – or

**69.** See *Supra* note 8, Para. 21. The figures for 2009 cover January to June only.

**70.** See *Supra* note 63.

**71.** In the original Standing Orders, the appeal process was not mandatory. Those whose applications were rejected could submit a petition to the Court. The military, on its part, summoned applicants to hearing committees at its discretion. At a certain point in time, the State began to argue that petitions filed without first appealing the decision were premature and should be rejected since the remedies had not been exhausted and no application to convene a hearing committee had been filed. The Court accepted this position, effectively turning the “hearing committee” process to an appeal process and we shall refer to it as such hereinafter.

**72.** Standing Orders, Ch. 1, Sect. 14.

because their application was not “refused,” but rather “rejected out of hand” (for example, due to insufficient documentation). In these cases, the applicants cannot file an appeal and must instead file a new application and repeat the entire process.

### **Filing an appeal**

Individuals whose application has been rejected are not automatically summoned to appear before a hearing committee. According to the Standing Orders, they must “request a hearing” (in other words, file an appeal). Taking this action requires familiarity with the process. Most applicants have no legal education and are not familiar with, let alone versed in the provisions of the Standing Orders, which, as mentioned, are published in Hebrew only and span dozens of pages. The inaccessibility of the information contained in the Standing Orders can be gleaned, for example, from the location of the provision regarding filing an appeal against the rejection of an application to relocate into the “seam zone” (Subsection 11(b)(2)(II) in Chapter 2), or that of the provision regarding appealing a refusal to issue a “permanent farmer permit” (Subsection 8(b)(1)(II) in Chapter 3, subhead “permanent farmer permit”). Moreover, with respect to some types of permits, the Standing Orders make no reference to an appeal process in case of a rejection, for example, in applications for a permit to visit family in the “seam zone” (defined as a “personal needs” entry permit). Despite this, the military still requires an appeal be filed as part of the exhaustion of remedies.

The expression “filing an appeal” may give the wrong impression that it is a specific process in which the appellants file a form that contains their various arguments, supported by documents. In fact, all an appeal requires is for the appellants to arrive at the DCO and state that they would like to appeal the rejection. Indeed, unlike filing an application, which, as recalled, the military insists be done via the Palestinian

Liaison Office, the appeal is filed directly at the Israeli DCO. However, due to additional requirements made by the military, this phase also includes many obstacles. The appellant must arrive at the DCO in person and file the appeal. The military refuses to process appeals submitted by mail, fax, telephone or e-mail. This requirement is nowhere to be found in the Standing Orders or any other order and its outcome is that the appellants cannot ask their lawyer to file an appeal on their behalf.<sup>73</sup>

The requirement to arrive at the DCO in person makes it difficult for many to file the appeal. First, the military insists on arrival at the DCO twice, once to file the appeal and a second time to appear for the hearing itself.<sup>74</sup> Second, there are only eight DCOs in the West Bank and they are meant to serve the entire Palestinian population in this area. There is only one DCO in each district and getting to it may involve a long journey, and sometimes a difficult one, through checkpoints and side-roads, off the main traffic routes which are often the sole purview of settlers. Third, the DCOs lack the manpower required to handle the large number of applications, or, in fact, any applications at all. As part of its work, HaMoked has assisted many Palestinians who had to wait for hours at the DCOs in order to receive service. Sometimes, service was given only after HaMoked called the Public Liaison Officer or the Head of the DCO. Many Palestinians have to leave the DCO after waiting for a long time and return another day. Fourth, many of the soldiers serving at the DCOs do not speak Arabic and have difficulty understanding what the applicants are seeking; in addition, they themselves are often unfamiliar with the appeal process due to the complexity of the Standing Orders and their inaccessibility even to Hebrew speakers and due to the fact that the soldiers do not serve at the DCOs for extended periods of time. This results in soldiers sending applicants to file a new application at the

**73.** This is a relatively new requirement. When HaMoked worked through its emergency hotline, it was able to transfer requests for a hearing committee over the telephone.

**74.** The military's explanation for the requirement to appear in person is that "the purpose of the hearing committee is to conduct a thorough examination of the purpose of the application. This includes a dialogue with the applicant and requires him to answer the questions of the Head of the DCO" (Letter of the Civil Administration Public Liaison Officer to HaMoked, April 3, 2012). The military's response does not clarify why it is not possible to do this in writing.

Palestinian Liaison Office (it should be noted that there was a slight improvement on this issue toward the end of the period covered in this report). Fifth, agents of the Israel Security Agency, or ISA,<sup>75</sup> also operate out of the DCOs and Palestinians who arrive at the DCO seeking “seam zone” permits are often referred to them for “conversations” during which they are pressured into collaborating with the ISA. The result of all these difficulties is that many Palestinians do not file an appeal against a decision to reject their application, and so, of 33,746 applications that were rejected between 2007 and 2010, in only 959 cases, were applicants summoned to a hearing – less than 3% (!).<sup>76</sup>

**75.** The Israel Security Agency was formerly known as the General Security Service or Shin Beit.

**76.** See *Supra* note 8, Exhibit R/44; Letter of the Civil Administration Public Liaison Officer to ACRI, April 4, 2011. The figures for 2009 cover January to June only.

### **Summons to a hearing committee**

Palestinians who arrive at the DCO and submit an appeal do not get a hearing then and there, nor do they receive information about the date on which the hearing will be held. They must return to their homes and wait for the military to notify them of the hearing date.

As stated, Palestinians may not write, phone, fax or e-mail the DCOs, leaving them with no way of finding out what the status of their appeal is, other than receiving a communication from the military. Indeed, most applicants do not receive notice of the date of the hearing and are forced to wait endlessly, or arrive at the DCO once again, with all the difficulties this entails, in order to find out whether their appeal is being processed. HaMoked often has to contact DCOs directly in order to find out the status of the appeal and the date of the hearing, a “privilege” Palestinians are denied. Moreover, the DCOs have no special forms to give to the applicants indicating that an appeal has been submitted. Applicants sometimes receive an otherwise blank page with a brief confirmation: “The above named person arrived at the counter [...]. Will be summoned to a hearing committee in future.” This



document bears no seal and sometimes no date or even the name of the “above named person.” Without a formal document or form, individuals who file an appeal have difficulty proving they indeed filed one or when.

77. Standing Orders, Ch. 2, Sect. 22(g);  
Ch. 3, Sect. 55(f).

According to the 2011 version of the Standing Orders, following the HCJ’s instructions on timetables, the DCO must convene a hearing committee within a month of the date of submission of an appeal.<sup>77</sup> This period of time is quite long and significantly extends processing the matter of individuals whose applications had been rejected. It is doubtful that this period of time meets the Court’s demand for an efficient timetable, especially considering that hearings are not always scheduled within this liberal schedule.

Usually, even applicants who do get scheduled for a hearing within the required month do not receive notification of the date. Even when the DCO “summons” applicants to a hearing, it often provides the date to the Palestinian Liaison Office rather than to the applicants themselves or HaMoked, which acts as their counsel. Since the Liaison Office plays no part in the appeal process, most applicants do not even conceive of the possibility that the response is “waiting” for them there and so many of these notices do not reach their destination (in this context too, it is worth noting that close to the time of writing, applicants began receiving hearing summons directly from the DCOs, over the telephone and sometimes in Arabic).

The failure to provide notice of the date of a hearing has a crucial impact: According to the Standing Orders, individuals who fail to appear for a hearing without prior notice of 12 hours are deemed to have never filed an appeal and the rejection of their applications remains valid for six months (this seems to be the case even when an applicant has fallen ill or was held

up at a military checkpoint). The situation is even more absurd when the DCO's notice of the date of a hearing arrives after the date has already passed.

78. HCJ 2518/12 'Amar et al. v. Military Commander of the West Bank et al.

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On January 12, 2012, M.A. filed an application to renew his permit to enter the “seam zone” to cultivate his family’s farmland, located west of the separation wall. When no response had come for three weeks, HaMoked contacted the military demanding that processing of the application be expedited. On February 23, 2012, at 11:50 A.M., HaMoked received a fax from the Civil Administration Public Liaison Officer advising that M.A. “has been summoned for a hearing committee to be held on February 23, 2012 at 10:00 A.M.” It turned out that M.A. never received notice that his application had been rejected or a summons to a hearing. He first learned of the hearing from HaMoked, which, as stated, received notice only after the committee had been convened.

HaMoked contacted the military demanding M.A. be summoned to the hearing committee once more and protested the military’s outrageous rejection of the application because the applicant failed to appear for a hearing to which he was never summoned. Only after a petition was submitted to the Supreme Court in the matter of M.A.’s brother,<sup>78</sup> was M.A. summoned to an additional hearing committee. (Case 68686)

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In the rare cases in which the DCO notifies a person of the date of the hearing, the notice is usually given shortly before the date of the hearing, often just a day or two in advance, leaving the appellants no time to prepare for the appeal or even reschedule their other affairs. Many Palestinians who have received a summons over the phone report that the person who

called them spoke only Hebrew and therefore they did not understand what they were told. Only inquiries made by HaMoked revealed that the applicant had been summoned for a hearing.

The figures provided by the State, as presented to the HCJ, suggest the possibility that most individuals who were summoned for a hearing were entirely unaware of this fact (as stated, of the 959 Palestinians who were summoned to hearing committees between 2007 and 2010, only 282 appeared).<sup>79</sup> Further support for this conjecture can be found in information provided to HaMoked by the military which contained slightly different figures from those presented in court.<sup>80</sup> According to this information, in 2010, 220 Palestinians were summoned to hearing committees and only 81 (36%) appeared. However, a breakdown by DCOs – the Jenin DCO and the Efrayim DCO (which is a single administrative unit that includes the Qalqiliya and Tulkarm DCOs) indicates that almost all of the applicants summoned to the Jenin DCO appeared for the hearing (33 out of 35 – 94%), as opposed to only a quarter of the individuals summoned to the Efrayim DCO (48 out of 185 – 26%). The gap in the appearance rate between the DCOs leads to the almost certain conclusion that most “summons” issued by the Efrayim DCO never reached the appellants. In a letter to HaMoked dated March 21, 2012, the military claimed that this was because the “residents chose to do so,”<sup>81</sup> a perplexing response given the difference between the “choices” made by residents of the Efrayim District and those made by residents of the Jenin District.

### **The hearing**

The military does not allow hearings to be held in writing other than in extremely rare cases (for example, a severe handicap supported by medical documents). The hearings before the committees are the only chance applicants have to present their case.

**79.** See *Supra* note 76.

**80.** Letter of the Civil Administration Public Liaison Officer to HaMoked, August 9, 2011, para. 6.

**81.** Letter of the Civil Administration Public Liaison Officer to HaMoked, March 21, 2012, para. 2(f).

For years, A.M., a member of the Palestinian Authority security forces, had helped cultivate his family's farmland. When the separation wall was built and the permit regime applied, the land was trapped in the "seam zone" and A.M. received military permits to enter the closed zone. In 2010, the military rejected two permit applications filed by A.M. and denied him access to the land for "security reasons." A.M. asked his superiors in the Palestinian Authority to let him go to the Israeli DCO to file an appeal in person, but they refused due to political sensitivities. In July 2011, HaMoked sent a letter to the military requesting to appeal the rejection on A.M.'s behalf and stressing that A.M. was precluded from arriving at the DCO in person as he was a member of the Palestinian security forces. A month later, A.M. was summoned to a hearing committee, but was required to appear in person (it should also be noted that the hearing was scheduled for the first day of the Muslim holiday of Id al-Fitr). Further communications from HaMoked received no pertinent responses and in February 2012, HaMoked filed a petition to the HCJ requesting it instruct the military to allow A.M. to exercise his right to a hearing and hold a hearing in writing.<sup>82</sup> After the petition was submitted, the military notified HaMoked that A.M. would be able to file a new application at the Palestinian Liaison Office and that it would be considered favorably. A month after he filed the new application, the military said that his application had not been located. Another application was delivered directly to the State Attorney's Office and some six weeks later, M.A. was issued a six-month permit. The issue of holding hearings in writing remains open. (Case 68380)

The committee hearings are meant to be a serious and professional affair. They are to take place in the presence of at least two military personnel, one of whom is the Head of the DCO or the DCO Coordination Officer (most senior DCO officers speak Arabic) and a soldier. The military allows appellants to arrive at the DCO with a lawyer, but forbids the lawyer from arguing or taking any part in the hearing, which impinges on the right to counsel and impedes the appellants' ability to insist on their rights.<sup>83</sup> Soldiers take minutes during the hearings, but from the few that were provided to HaMoked, these seem to be deficient documents in which some of the points raised at the hearing were recorded in brief, at the discretion of the soldiers taking the minutes. As such, they cannot be considered a proper protocol that summarizes all the arguments raised by the parties. The minutes sometimes contain incorrect information and there have been cases in which they attributed to Palestinian residents statements they did not make. In addition, under the Standing Orders, a special form confirming that a hearing was held must be provided,<sup>84</sup> but HaMoked has never seen such a form, including when a lawyer working on its behalf was present at the hearing and asked for it. This conduct allows the military to hold the hearings in a casual, unprofessional manner, and unacceptable statements are often heard during the proceedings. During the hearing, the military often asks unnecessary questions, the answers to which it already knows, such as who in the appellant's family has "seam zone" permits. Individuals who ask for agricultural permits are often told to identify the exact location of the plot they seek to access on an aerial photograph map, which is a near impossible task for someone who has no experience reading aerial photographs.

**83.** Standing Orders, Ch. 1, Sect. 14(e).

Here too, the only exception is when an applicant cannot make the statement independently, for example, as a result of a handicap. Individuals seeking to arrive at the hearing with their lawyer must make arrangements for this up to 48 hours before the hearing (though in effect, the military does not uphold this provision). However, appellants often find out about the hearing shortly before the scheduled date and are unable to arrange for a lawyer to be present.

**84.** Standing Orders, Ch. 1, Sect. 14(f)(5).

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**M.A. is a Palestinian farmer who lives near Qalqiliya. Throughout the years, he worked his land with no trouble, but the separation wall**

now stands between him and his land. He began receiving temporary permits for the “seam zone” in 2010, after HaMoked’s emergency hotline intervened. However, a new application filed on September 5, 2011, was denied. He found out about the rejection from the Palestinian Liaison Office a month after the fact. That day, M.A. went to the Israeli DCO to submit an appeal, but the soldier refused to see him. When HaMoked inquired, a military representative said that the application had not been refused and that in fact, according to the military’s computer, no application had been submitted at all. M.A. was forced to file a new application for a permit. It took another month and two letters from HaMoked for the military to advance processing. On November 10, 2011, a DCO soldier called M.A. and summoned him to a hearing scheduled for three days later. The hearing was held in front of the Head of the Qalqiliya DCO, an officer holding the rank of lieutenant colonel, who spoke Arabic. At the opening of the hearing, the officer presented a permit and said it had been prepared for M.A. He put it on the desk and said “but first, let’s have a little chat.” He then asked M.A. for some personal information and for information regarding the land he owned, questions to which the military had the answers, and finally took the permit he had put on the desk and told M.A. that he would not receive a permit for security reasons, which he did not specify. As if the need to obtain a permit to reach his own land, the great delay in processing and the rejection were not enough, M.A. had to suffer humiliation and disrespect from the head of the DCO himself. As no other soldier was present, no protocol was recorded and no document confirming the hearing was provided, against Standing Orders provisions. A few days later, HaMoked petitioned the Court requesting it instruct the military to renew M.A.’s

permit.<sup>85</sup> Close to a month after the petition was filed, M.A. received a temporary permit allowing him to enter the “seam zone.” (Case 69287)

In the many cases in which an application is rejected for failing to meet criteria, the hearing of the appeal is held before the position of security officials is obtained.<sup>86</sup> And so, even individuals who manage to show that they are entitled to a permit at the hearing may discover that only then are their applications transferred for ISA review, sometimes months after they were submitted, which significantly extends processing times. Even when it turns out at the hearing that the application was rejected on “security grounds,” the appellants discover that the hearing was meaningless: the nature of the “security risk” attributed to them is not revealed at the hearing, the basis for the “security grounds” are not provided and no ISA agent, who in theory would know the relevant details and might be able to present them so that the appellants could respond, is present at the hearing. It is not enough that Palestinians discover that their applications had been denied for security reasons only at the hearing, but they also learn that the committee itself believes it is incapable of doing anything and that there is no point in convening it since there is an “ISA refusal” anyway. In this context, it is important to note that the Standing Orders themselves stipulate that an ISA agent must be present at the hearing in cases of rejections based on security grounds.<sup>87</sup> Despite this, HaMoked has never encountered even one such hearing. Moreover, when the rejection is based on criminal grounds, the Standing Orders require the presence of a police representative, and when the applicant’s connection to the land is questioned, the Standing Orders require the presence of the Property Custodian Staff Officer.<sup>88</sup> These requirements are not upheld either. In fact, the hearing is nothing more than a formality lacking any real substance.

**85.** HCJ 8857/11 **al-Sheikh et al. v. Military Commander of the West Bank et al.**

**86.** For more on this, see *Infra*, p. 72. This refers to the position of the ISA and the Israel Police as to whether there is a security or criminal preclusion to issuing the permit.

**87.** See Standing Orders, Ch. 1, Sect. 14(d): “The composition of the committee during sessions on special applications.” In response to HaMoked’s complaints of flaws in the composition of the hearing committee, which did not include an ISA agent, the State Attorney’s Office claimed that the requirement to hold hearings in the presence of an ISA agent applied only to “special cases” and the case HaMoked had referred to in its letter was not “special.” However, the Standing Orders clearly indicate that any hearing held following a security based rejection requires a “special” composition of the committee. The State did not specify what it considers to be a “special” case.

**88.** According to the military, the Property Custodian Staff Officer is the official in charge of abandoned government property in the West Bank.

## The decision

The Standing Orders stipulate that an appeal must be answered within a week from the date of the hearing.<sup>89</sup> In reality, many of the decisions which are not given at the end of the hearing itself, are not given within a week either and applicants must wait again for an answer. Out of the 65 hearings held in HaMoked's cases since October 2009, only 35 answers (53%) were given within a week of the hearing. The average response time was about 20 days. Those who are rejected at the hearing itself do not receive the decision, or the reasons for it, in writing, making it difficult to challenge the decision in court.

Rejection or approval is not the only possible end result of the hearing. The hearing committee sometimes decides to take a tour of the area in question in order to examine the state of the plot (size, location, the degree of cultivation, etc.).<sup>90</sup> According to the Standing Orders, the tour and the decision made thereafter must be completed within six months,<sup>91</sup> meaning the entire proceeding is delayed for six more months. In cases such as this, the Standing Orders stipulate that the applicant must be granted a "temporary permit" for up to three months.<sup>92</sup> To recall, all permits are, in fact, temporary. HaMoked's experience has shown that only a few of the applicants in whose case a visit to the plot was carried out received such a permit and those who did receive one had to settle for a short-term permit, mostly for less than three months. So, even those who receive "temporary permits" are forced to have them renewed, with all the attendant difficulties of the process, until the tour is done and the decision is made.



Because of the complicated bureaucracy the military imposes on Palestinians seeking to get a "seam zone" permit, the probability that a person whose

**89.** Standing Orders, Ch. 1, Sect. 14(f)(6).

This provision was included in the Standing Orders prior to the HCJ judgment.

**90.** According to the military, the State has undertaken to map the plots in the "seam zone," measure them and record the crops grown in them. This claim has been heard for some time now and it is unknown whether the mapping process has begun and if so, how much of it has been completed.

**91.** See, e.g., Standing Orders, Ch. 3, subhead "permanent farmer permit," Sect. 8(b)(3)(II).

**92.** See, e.g., Standing Orders, Ch. 3, subhead "permanent farmer permit," Sect. 8(b)(3)(I).



application is rejected will be summoned to a hearing committee is very low – about 3% (959 of 33,746 rejected applications). The probability that the cases of those who have been summoned would actually be heard by a hearing committee is even lower, only 29% of the 3% (282 of 959 rejected applications in which the applicant was summoned to a hearing); in other words, only 0.008% of all permit applications that were rejected between 2007 and 2010 ultimately reached a hearing committee, with a remote possibility that the hearing was held within a short period of time. All of this takes place in a situation in which 30% of the applications are not approved, but half of the appeals that make it to a hearing – before the very same people who rejected the applications in the first place – result in the granting of a permit to enter the part of the West Bank that is trapped between the Green Line and the separation wall (133 out of 282).

## **Legal Action**

A Palestinian whose appeal was rejected by the hearing committee may submit a petition to the HCJ, which, among its other capacities, serves as an administrative court that has jurisdiction over the actions of public authorities and agencies and regulates the relationship between them and the public. As such, it has the power to instruct the military, represented by the State Attorney's Office, to take a certain action or refrain from taking it.

Between March 2010 and June 2012, HaMoked filed 76 petitions to the HCJ on behalf of individuals whose applications for "seam zone" permits had been rejected or unanswered by the military. The petitions were filed without relinquishing HaMoked's general position that the permit regime itself is a severe violation of international law. Most of these petitions were filed on behalf of Palestinian farmers who live on

the eastern side of the wall and have lands to the west of it, and have been denied access to their land by the military. In these petitions, HaMoked argues that in denying the petitioners access to their lands, located in the "seam zone," the military severely violates their rights to property, freedom of occupation and freedom of movement in an unreasonable and disproportionate manner. This violation is a breach of Israeli and international law, as well as case law produced by the Supreme Court, the State's express declarations to the Court and the military's own orders and protocols.

In most of the petitions filed against the military's refusal to issue "seam zone" permits, the petitioners ultimately receive the requested permits, whether as a result of a judicial decision or a retraction of the State's position after the petition is submitted. These unnecessary petitions involve significant expenses and waste the Court's valuable time. Still, the main victims remain all those petitioners who are entitled to access their lands but have to wait for extended periods of time to get the permit allowing them to do so, as well as the many Palestinians who lack the knowledge, time, strength or wherewithal to fight the draconian apparatus of the permit regime and submit a petition to the Israeli Court.

As of June 2012, of the 76 petitions filed by HaMoked, 19 are still pending before the Court. Of the remaining 57, only five were withdrawn or rejected without a permit being issued. Four of these were petitions in which the Court reviewed classified information regarding the petitioners (note, two petitioners later received permits after additional petitions were filed on their behalf).<sup>93</sup> By contrast, in 52 petitions in which judgment has been issued (about 91%), the petitioners received the permits.<sup>94</sup>

The justices of the Supreme Court are aware of the problematic practices of the military. So, for example,

**93.** One petition was withdrawn at the request of the petitioners before it was heard once it became clear that following a change in the wall's route, the petitioner's land returned to the eastern side of it.

**94.** These are petitions that were completed with respect to the issuance of the permit. Some of the petitions remained pending after the permit was issued as a result of yet to be resolved differences on matters such as the validity period of the permit or the process for renewing it. This figure also includes 34 petitions on non-response, all of which resulted in the issuance of the permit.

in a decision on a motion to cancel a court hearing given when, only a day before the scheduled hearing, the State announced that the petitioners would receive permits, Supreme Court Justice Rubinstein wrote:

**It is a great pity that a matter that could have been resolved without a petition and without wasting my secretarial and judicial time and all that this entails – is resolved at the very last moment before the hearing. I request that this comment be brought to the attention of the relevant officials, inasmuch as they care, and I hope that they do [emphasis in original].<sup>95</sup>**

Justice Rubinstein's main grievance is about the costs incurred by the Court as a result of the military's conduct, but it is important to remember the high costs Palestinians who are forced to petition the Court incur: Palestinians who wish to bring their matter before the Court must study their rights, hire a lawyer, and invest a significant amount of time and money, or turn to a human rights organization, which also has limited resources. There are few Palestinians who are able to exhaust the legal remedies available in their battle against Israel's bureaucratic apparatus in the "seam zone," and this is when the State itself does not defend the military's rejections or lack of response and for the most part, approves the permit even before the matter is heard by the Court ■

## **Conclusion**

Despite the great importance attached to the expeditious processing of permit applications and despite the Court's instructions, the timetables and processing protocols the military employs in the "seam zone" are inconsonant with the rights and needs of

95. HCJ 5205/11 **Kabha et al. v. Military Commander of the West Bank et al.**, Decision, July 20, 2011.

Palestinians who must enter the areas to the west of the separation wall. In the cases in which the military does not approve the permit application – as stated, between a quarter and a third of all cases – the delay and the harm persist even longer.

Under military orders, as presented in the Standing Orders, the processing of an application for a permit to enter the “seam zone” should take no longer than two weeks. This schedule does not include the time it takes to have the application transferred from the Palestinian Liaison Office to the Israeli DCO or the time it takes to provide the answer to the applicant. Even without delays or mishaps (such as the claim: “no application has been received”), the total processing time may reach a month or more. When the military rejects an application, the Standing Orders add another month for the hearing proceedings and an additional week for a decision. This schedule does not take into account the time it takes an applicant to arrive at the DCO in person to submit the appeal. At this stage, the total processing time may reach six weeks, in addition to the aforementioned month, barring any delays or mishaps. Finally, individuals whose applications are refused at the appeal stage, must take legal action which requires time, money and more waiting for the decision in the petition.

Since no one knows whether their application will be approved, rejected or even reviewed, anyone who needs a permit must file their application two and a half months in advance. This is necessary in case they need to petition the Court and wish to avoid being told that they failed to exhaust the remedies the military offers before taking legal action. As stated, this two-and-a-half month period must be repeated as the permits are temporary and their holders must renew or reapply for them. Every time an application is made for renewal of an existing permit or for a new one, access to the “seam zone” might be denied. In reality,

however, it is not possible to do this because the military does not allow individuals to apply for permit renewals so long in advance.

As stated, the military imposes the permit regime on Palestinians – and Palestinians only – who wish to access the part of the West Bank located beyond the separation wall. Palestinians usually need to access this area urgently (such as for a funeral) or on a daily basis (such as in order to cultivate land). Yet, because of the complicated bureaucratic process, many applications are not answered promptly and many are not reviewed at all and remain unanswered. The permit regime employed in the “seam zone,” by its nature, does not allow Palestinian residents to have normal family lives or to study, work or cultivate land continuously.

As indicated by the UN reports cited above,<sup>96</sup> the difficulty in receiving permits has, among other things, led to a change in the agriculture of the area. Farmers are dropping crops that require continuous maintenance in favor of ones that require less work that can be done intermittently. Beyond the attendant economic harm, the change in crops may result in the rejection of applications to reach farmland, as it no longer requires daily, continuous maintenance. Such rejections are particularly deplorable when the crops die out and the land is no longer cultivated. The main fear in these cases is not just that the landowners’ livelihoods would be harmed, but that they might also lose their property. According to Israel’s interpretation of the law applicable to the OPT, it is entitled to declare “unregistered” land (most of the land in the West Bank) which has not been cultivated for three consecutive years, “state land.” This is one of the methods by which Israel obtains land reserves for building or expanding settlements.<sup>97</sup>

The process of obtaining a permit to enter the “seam

96. OCHA 2009, OCHA 2011, OCHA 2012.

97. For a comprehensive review of the mechanism for declaring “state land,” see **Under the Guise of Legality** (*Supra* note 17); B’Tselem and Bimkom, **The Hidden Agenda: The Establishment and Expansion Plans of Ma’ale Adummim and their Human Rights Ramifications**, December 2009.

zone” requires time, patience, and often a significant amount of money when applicants are unable to face the military apparatus alone or when they need to petition the court. Not everyone has these resources and, as emerges from the figures provided by the State, many Palestinians despair and, to their detriment, give up cultivating their land and their rights to the areas of the West Bank located west of the wall – the “seam zone” ■

# Permit Eligibility

One of the premises of both Israeli and international law is that people have a right to be found anywhere in their country, unless there are exceptional circumstances justifying a restriction on this right for a limited period of time. This premise remains in effect under occupation as well, pursuant to international humanitarian law and the law of war which, among other things, protect the right of the residents of an occupied territory to freedom of movement. The permit regime Israel employs in the part of the West Bank it calls the “seam zone” is the exact opposite of this premise: residents of the OPT **do not have a right** to be present anywhere in their country, unless there are exceptional circumstances justifying their presence there for a limited period of time. Ironically, this right, which is guaranteed to residents of the OPT under both Israeli and international law, is granted to persons who are not recognized as “protected” – Israelis and tourists.

As stated, in the judgment given in the general petitions filed by HaMoked and ACRI, the HCJ ruled that the permit regime was justified for reasons of security. This blanket statement, which effectively means that the entire Palestinian population of the West Bank poses a threat to the occupying power that rules its land and that this justifies denying its freedom, drains international law of any substance. Moreover, the security threat does not give legitimacy to the permit regime: Once the HCJ approved building the wall inside the West Bank, a physical barrier was created that allows controlling the movement of Palestinians who wish to reach the part of the West Bank located west of the wall. At this barrier,

the military can perform security checks and make sure that there is no security information against the individual seeking entry in its database. If the sole purpose of the permit regime is to make sure there is no security threat, security screening at the crossing point itself would suffice. In this context, it is worth noting once again, that providing protection for Israel's own territory would have been possible if the wall had been built along the Green Line. Since Israel chose to build it deep inside the West Bank, it seems that the purpose of the wall and the permit regime is to protect Israel's presence in the West Bank.

98. HCJ 9961/03, Response on behalf of the State, November 13, 2006.

Para. 119. The State also presents this position in its responses to petitions HaMoked files on behalf of individuals.

Though the Court chose to uphold the permit regime on security grounds, it seems that Israel was guided by other considerations when it formulated this policy. For example, in its response to the general petitions, the State claimed that "There is real concern that this policy [a liberal policy regarding issuance of permits for the "seam zone"] would be used for the purpose of illegally entering Israel."<sup>98</sup> In other words, the demand for proving a "connection" to "seam zone" lands does not necessarily stem from security considerations, but rather, from internal Israeli concerns. Israel has every right to prevent Palestinians from entering its territory. However, in order to do so, it may build a wall along the Green Line, but it may not restrict the rights of OPT residents to freedom of movement or to residence anywhere in their own country.

This chapter reviews the rules the military imposes on Palestinians in the "seam zone," as detailed in the Standing Orders. These rules seek to restrict Palestinian residents' rights to access their homes and lands and they do so successfully ■



## **“Permanent Resident in the Seam Zone”: Proving “Center of Life”**

The permit regime forbids Palestinians who have been living in their homes for generations to continue living on their land, unless they have a military-issued permit. This permit may be titled “permanent resident certificate,” but like all other “seam zone” permits, it is also temporary. As stated, according to 2012 figures, about 7,500 Palestinians reside in the part of the West Bank located west of the wall and called the “seam zone.”

The case of “permanent residents in the seam zone” is different from that of those who wish to access it for specific purposes (agriculture, employment, personal needs), since even the military has difficulty explaining how security is served by requiring them to seek permission to continue living in their own homes. Indeed, the Standing Orders explicitly state that even security information cannot deny “permanent residents in the seam zone” their permit<sup>99</sup> and that the primary goal of issuing a “permanent seam zone resident certificate” or a “new permanent seam zone resident certificate” is to enable the “fabric of life in the seam zone and respect for the value of the integrity of the family.”<sup>100</sup> Despite this, all Palestinians older than 16 years of age who live in the “seam zone” must apply time and again for a permit that allows them to continue living in their home. This permit, which is called, as stated, a “permanent seam zone resident certificate” is meant to allow individuals to live in their own homes for two years from the time of issuance, but in reality, many permits are issued for shorter durations.

When a person applies for a “permanent resident certificate,” the military checks if the applicant’s center-of-life is indeed in the area defined as the

**99.** Standing Orders, Ch. 2, Sect. 5(b). Despite this, in 2007, Israel refused 55 applications for a “permanent resident certificate” on security grounds. In 2008, it rejected 19 applications on the same grounds and six in the first half of 2009. See *Supra* note 8, Exhibits R/35-R/37.

**100.** Standing Orders 2009, Ch. 5 (2)(a). In the versions of the Standing Orders published in 2010 and 2011, the military omitted the words “respect for the value of the integrity of the family.”

“seam zone.” To prove center-of-life, an applicant must produce many different documents, including tax payments, confirmation of address from the local council and school report cards for the children in the family. After the documents are produced, the DCO conducts its own comprehensive examination which includes home visits and reexamination of the documents in order to remove any doubt that the applicants really do live in their home.<sup>101</sup>

**101.** Standing Orders, Ch. 2, Sect. 6(b)(2) and Sect. 7(a)(2)-(6).

**102.** Standing Orders, Ch. 2, Sect. 14(a)(2)-(3).

**103.** On this issue, see *Infra* p. 84.

Those who have received a permit and wish to renew it must undergo another exhaustive screening, as part of which the military checks if the applicants remain in the “seam zone” over time and whether they sleep there. The military also checks if the applicant’s name appears in a special list entitled “potential loss of connection to the seam zone.” The list contains the names of people who are suspected to have moved their center-of-life outside the area.<sup>102</sup> The results of this screening determine whether the applicants’ center-of-life has moved outside the “seam zone,” in which case, they would not be issued a new permit.

This makes matters particularly difficult for people who work in the areas of the West Bank that have not been made part of the “seam zone” and who must get to work early or leave late. Because the gates controlling movement in and out of the “seam zone” do not operate 24 hours a day,<sup>103</sup> these individuals cannot sleep in the “seam zone” and, as stated, the military uses overnight presence in the “seam zone” as one of the yardsticks for ascertaining center-of-life.

Because no hearing is held before a decision is made whether or not to issue a permit, applicants cannot explain their movements into and out of the “seam zone,” as recorded by the military. Applicants may file an appeal only after a refusal, and only then – if they are summoned to a hearing, if they receive notice of the hearing in time and if they manage to appear for

the hearing – can they provide the explanation.

The situation is worse when it comes to individuals who wish to relocate to the “seam zone.”<sup>104</sup> They must embark on a two-phase process. They are first defined as “new residents” for a cumulative period of two years, and only then do they become “permanent residents.” This is of little comfort as, despite the title, like all other permits issued as part of the permit regime, this one is also temporary. Moreover, unlike applications by “permanent seam zone residents,” those made by individuals who wish to relocate to the “seam zone” may be rejected based on security information. So, for example, in the case of relocation as a result of marriage, if there is security information against the applying spouse, the couple must either live separately, or move to the part of the West Bank that is not included in the “seam zone.”

In the past, military orders stipulated that a “new permanent seam zone resident certificate” would be valid for a year and renewed for another year. In the 2010 version of the Standing Orders this permit was replaced with a “personal needs permit.”<sup>105</sup> These permits are valid for short periods of time and they must be renewed for two years. This means that those who wish to relocate to the “seam zone” are under close scrutiny for two years, during which their center-of-life is examined once every six months. Since these are relatively short periods of time, any absence, even if temporary, from the “seam zone” might result in the applicant’s inclusion in the “potential loss of connection to the seam zone” list, which ultimately precludes his or her eligibility and right to live in the “seam zone” and receive a “permanent resident certificate.”

Moreover, Palestinians who move to the “seam zone” obviously have strong connections to the parts of the West Bank that have remained to the east of the wall:

**104.** As demonstrated below, until publication of the third version of the Standing Orders in November 2011, relocation to the “seam zone” was allowed in a limited number of cases. In the 2011 version of the Standing Orders, and following the HCJ ruling on this issue, the relevant rules were relaxed.

**105.** Standing Orders, Ch. 2, Sects. 11(a)(7)(III), 11(a)(8)(II), 11(a)(9)(I).

this is where most of their relatives and acquaintances live and this is where they work. In order to maintain their familial, social and professional ties, they must exit the “seam zone” rather frequently, which may be to their detriment as far as the military is concerned. So, for example, individuals who marry “residents of the seam zone” cannot live with their spouses in the “seam zone” and maintain their former ties, nor can they live with them outside the “seam zone” because the military may revoke their permits to live in their native villages due to “loss of connection to the seam zone.” Couples are not free to choose their place of residence. Their choice is dictated by the military’s policy.

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S.K. and R.K., a couple from the Jenin area, were married in early November 2009. The distance between their childhood homes is no more than a few hundred meters, but the wall Israel built separates between them. The two sought to make their new home in the wife’s village, west of the wall. Immediately after the wedding, the husband updated his address in the population registry to his wife’s address and applied for a “new seam zone resident certificate.” The military rejected the application on the absurd claim that the applicant “is not a permanent resident.” In other words, he was denied a permit because he did not have one. Another application received the same answer. At the same time, in order to see his new wife, the husband requested a permit to visit the “seam zone.” In late February 2010, the military issued him a “personal needs permit” which allowed him to visit his wife for three days over a period of three months, and only during the day. In July 2010, HaMoked filed a third application for a “new seam zone resident certificate.” Due to further delays in processing, HaMoked contacted the Israeli Coordination Officer at the Jenin DCO

by phone, but the latter replied: “I know him... It’s not urgent. He’s not living on the streets. He can wait.”

When no answer came for three weeks, HaMoked petitioned the Supreme Court requesting it to instruct the military to issue a “new seam zone resident certificate” for R.K.<sup>106</sup> In the petition, HaMoked argued that preventing the couple from living together was a severe violation of their right to family life and of the petitioner’s right to freedom of movement in his country. In October 2010, ten months after the first application was filed, the husband received a six-month entry permit for the “seam zone” as the first stage in the graduated process toward becoming a “permanent seam zone resident.” Six months later, after the many required documents were filed once again, the military renewed the permit for six more months. Yet, the legal-bureaucratic battle got the best of the couple and as of the summer of 2012 they have been living in the husband’s home, east of the separation wall. The wife splits her time between her home in her husband’s village and her parents’ home in the “seam zone.” (Case 65164)

**106.** HCJ 6158/10 **Kabha et al. v. Military Commander of the West Bank et al.**

**107.** HaMoked has thus far not processed cases of individuals who have had trouble renewing their permits. It is reasonable to assume, based on the Standing Orders, that “potential loss of connection” might occur also in situations such as studies abroad, prolonged hospitalization, caring for elderly parents living outside the “seam zone,” etc.

The military intrusively monitors the movements made by Palestinians living in the “seam zone” and carefully records them. This practice has had a serious impact. The homes of Palestinians living in the “seam zone” have become cages, trapping inside them the residents who are afraid that if they leave, they will not be allowed to return.<sup>107</sup> The permit regime Israel has imposed on the “seam zone” has isolated the residents whose homes are west of the separation wall from the rest of the population of the West Bank, turning them into a separate group, trapped in their villages, unable to leave. Naturally, many West Bank residents are reluctant to marry residents of the “seam zone.” Those who do, often face a difficult

choice: they can give up the idea of having a family life with their spouse, or choose to move to live with them in the cage known as the “seam zone,” giving up family, social and professional ties in the process. “Seam zone” residents are also afraid to marry outside the area for fear that if they leave their homes, they will not be able to prove center-of-life and continue receiving “permanent resident certificates” ■

108. Standing Orders, 2009, Ch. 5, Sect. 3.

109. Standing Orders, 2010, Ch. 2, Sect. 9.

## **“Necessary” Passage**

As stated, Palestinians who wish to obtain a permit to enter the “seam zone” must prove a connection to the areas located west of the wall in keeping with the catalogue of 13 predefined connections recognized by the military as justifying an entry permit. However, presenting documents and proving the connection are not always sufficient and applicants must often prove that it is necessary to exercise the connection specifically in the “seam zone.” In these cases, the permits are granted subject to the military’s discretion and to the manner in which each individual soldier defines the term “necessary.”

So, for example, the 2009 version of the Standing Orders recognized only three situations as justifying the issuance of a permit for the purpose of relocating to the “seam zone”: the purchase of property in the area; relocation for the purpose of marrying a person living in the area with “permanent resident” status; relocation in order to live together with said spouse.<sup>108</sup> When the Standing Orders were updated in 2010,<sup>109</sup> individuals who wished to relocate in order to live with a spouse in the “seam zone,” but had not yet married, were no longer eligible for a permit. No version of the Standing Orders recognizes any other reason a person might relocate within their own country, such as renting an apartment in order to live closer to work, support elderly or sick relatives, separating from a spouse, etc.

Moreover, the 2009 version of the Standing Orders allowed Palestinians to visit the “seam zone” in very few cases, in keeping with what the military calls “humanitarian cases”,<sup>110</sup> and the 2010 amendment to the Standing Orders clarified that visit permits would be granted only to those who prove that “the applicant’s entry into the seam zone is **necessary** for humanitarian reasons” (emphasis in original): “weddings, funerals, visiting family, births, illnesses, and temporary presence for the purpose of determining eligibility for a ‘new resident permit’.”<sup>111</sup> Other cases have not been recognized as justifying a visit because they are not “humanitarian” and show no “necessary” cause, even if the applicant has strong ties to the “seam zone.” So, for example, individuals who are interested in buying a home in the “seam zone,” a legitimate reason for relocating to the area according to the military, will not receive a permit to visit the area so that they may inspect their prospective purchase, as this does not meet the definition of a “humanitarian necessity.” The military also does not recognize visiting friends, going on educational trips, participating in professional conferences and other such events as “necessary” and seals the fate of the social and professional ties of Palestinians who live in the West Bank area separated by the wall.<sup>112</sup> It is not superfluous to recall once again at this point, that Israelis and tourists may enter and leave the “seam zone” as they wish, with no need for a permit.

A person who owns a business in the “seam zone” requires a “business permit.” Yet, this type of permit is granted only to “business owners whose business ties make it **necessary** for them to enter the seam zone” (emphasis added).<sup>113</sup> The Standing Orders stipulate how this “necessity” is determined: “the type of business, the location of the business, the number of entries into the seam zone required in order to run the business and the contribution these entries make

**110.** Standing Orders, 2009, Ch. 6, Sect. 2(g)(1).

**111.** Standing Orders, 2010, Ch. 3, Sect. 37(a).

**112.** In April 2011, the Court ruled that the criteria for allowing visits and relocation to the “seam zone” must be expanded. It took the military seven months to introduce additional criteria – only when the Standing Orders were updated in November 2011. See Ch. 2, Sect. 9(b) and 10(b)(4), as well as Ch. 3, subhead “personal needs permit,” Sect. 5.

**113.** Standing Orders, Ch. 3, Sect. 19.

to the operation of the business.”<sup>114</sup> Thus, according to the rules stipulated by the military, business owners’ right to reach their work places, located in the West Bank, is not self-evident, but rather subject to whether soldiers think it is essential for the operation of the business. As stated, business owners whose application is rejected can voice their arguments only at a hearing conducted as part of an appeal against the rejection – if they are fortunate enough to get a hearing – and even then, the hearing is held long after the application is filed.

114. Standing Orders, Ch. 3, Sect. 22(a).

115. Standing Orders, Ch. 3, Sect. 29(c).

116. Standing Orders, Ch. 3, Sect. 65(b).

Individuals wishing to work for a business located in the “seam zone” require an “employment permit,” according to the needs of the business as these are determined by the military. Agricultural laborers receive permits according to “the type of work, the size of the plot, the number of people employed in the plot, the schedule for issuing seasonal permits, etc.”<sup>115</sup> In other words, employment contracts between employers and employees are not enough. The needs of both parties are examined against the military’s criteria for whether or not an employee is necessary. In this way, the needs of the business or plot of land are determined by the soldiers’ decision to approve or deny employee permits, often resulting in harm to the employee, the weaker party in a business relationship, whose employment may terminate at any given moment, not just because of work related issues but also because of the military’s decision.

Another example is a “student permit,” designed to allow students to reach their schools on the other side of the wall. Military orders make it clear that one of the eligibility conditions for a “student permit” is that “there is no alternative institution the student can attend which does not require travel between the seam zone and the Judea and Samaria Area.”<sup>116</sup> This requirement applies to all students regardless of whether they live in the “seam zone” and study



outside it or vice versa. During processing of the application, the military requires “the position of the Education Staff Officer on the application as to whether there is an alternative institution the student can attend which does not require travel between the seam zone and the Judea and Samaria Area.”<sup>117</sup> This provision denies the right of students and their parents to choose their educational institution and gives soldiers veto power on education as well ■

117. Standing Orders, Ch. 3, Sect. 67(b).

118. See **Under the Guise of Legality**, p. 31 (*Supra* note 17).

119. See OCHA 2009, p. 20.

## Agricultural Permits

According to UN figures, 80% of Palestinian farmers own lands that belong to their extended family on a collective basis. In other words, farming in the West Bank is mostly traditional: members of the extended family work their land together for generations. The Ottoman Empire gave individuals who cultivated farmland in historic Palestine the right to use their plots through a land deed – a *kushan* in Turkish (Israel has similar rules pertaining to the lease of state land that is inheritable). After Britain seized control of the region, British Mandate authorities found that many of the country’s inhabitants lacked documents attesting to the fact that they had received these land deeds, but they continued to recognize their rights to their plots of land.<sup>118</sup> The main documentary proof of farmers’ land rights came in the shape of property tax forms (*ikhraj qayd*) that connected the holder to the land. These forms were not passed down the generations and were only issued until the end of Jordan’s rule over the West Bank in 1967. Since these documents were mainly used for tax purposes, they did not accurately reflect the state of the rights to the land, or the size of the plots. Many landowners declared that they owned smaller plots than they actually did in order to pay lower taxes. Others did not register their rights at all and preferred traditional possession rights, similar to the collective possession practiced by Bedouin communities.<sup>119</sup>

British Mandate authorities began recording land rights in the land registry (known as the *tabu*) and accurately measuring plots of land in a process known as “land settlement” (not to be confused with the Israeli settlements built after the occupation). This process continued in the West Bank under Jordanian rule, but was stopped by Israel in 1968, after it took over the West Bank.<sup>120</sup> Thus, only about a third of the land in the West Bank had undergone land settlement and had been registered in the land registry. Most of this land is located outside the area defined as the “seam zone.” In theory, the law that currently applies in the OPT allows for a process similar to land settlement, titled “first registration.” However this is a long and costly process which must be initiated and fully funded by the landowners (unlike land settlement which is funded by the State). “First registration” requires landowners to produce many documents and it can only be applied to small areas of land.<sup>121</sup> In light of all this, registered ownership is not common in the “seam zone.” In fact, it does not exist other than in isolated cases in which land rights were registered in the land registry, and have been updated over the years, or in cases in which the owner of the land was registered on a property tax form, *ikhraj qayd*, prior to 1967 and is still alive.

**120.** See *Under the Guise of Legality*, p. 32 (*Supra* note 17).

**121.** *Ibid.*, p. 34.

Despite all this, the military has decided that the condition for obtaining a “seam zone farmer permit” is proof of registered ownership of the land – either in the land registry or on the original tax form. Those who prove registered ownership of land are entitled to a “permanent farmer permit.” In this case too, despite the word “permanent,” the permit allows landowners to work their land for up to two years, at which point, they must renew the permit. In reality, many of these permits are given for less than a year. Moreover, military orders allow issuing a permit to one owner of any given plot, and so, when multiple owners (such as siblings or a married couple) apply

for a permit, only the first application is granted. The second is refused and the “two individuals claiming ownership” are summoned to a hearing committee.<sup>122</sup> In reality, HaMoked hardly ever encounters use of this section.<sup>123</sup> In cases in which a plot belongs to elderly or ill individuals who cannot work their land, they must give up their permit and choose who in the family will get it instead.

Thus, in light of the history of land registration in the West Bank, most farmers who have rights to a plot of land have no record of this fact – the plot is not registered in their name in the land registry and they are not the owners that appear on the original property tax form, *ikhraj qayd*, from before 1967.<sup>124</sup> Most have inherited or purchased their rights to the land and as such, the military considers them “temporary” rather than “permanent” farmers who are entitled to permits valid for no more than six months.<sup>125</sup> Here too, state figures show that many of these permits are given for much shorter periods than the one stipulated in the Standing Orders. However, when these applications are rejected and the applicants file petitions to the court, the military issues them permits that are valid for two years for the most part. HaMoked has yet to encounter a case in which the military claimed that since the petitioner was not the registered owner of the land they would not receive a two-year permit.

Military orders stipulate that a “temporary farmer permit” is not renewable “unless there are objective grounds for the failure to register the land.”<sup>126</sup> Here too, HaMoked has not encountered cases in which the DCOs refused to renew these permits on the grounds that the heir or buyer must register the land. It is hoped that this practice continues since, as a result of Israel’s policy, Palestinians have no real possibility of registering land.

Farmers who lease their farmland are in an even

**122.** Standing Orders, Ch. 3, Sect. 8(a)(6) stipulates: “In cases in which there is a person who has a permit, the new application will be refused and the two individuals claiming ownership of the land will be summoned to a hearing committee.”

**123.** In one case, in the framework of the petition (HCJ 7684/11 **Salman et al. v. Military Commander of the West Bank et al.**), the State Attorney’s Office stated that the petitioner could not be granted a permit as his father had already received one and that a joint hearing must be held. Once it was clarified that the father’s permit was for a different plot, no hearing was held and no arguments were made regarding this section. (case 70354)

**124.** This will presumably become more prevalent in the future as landowners with *ikhraj qayd* forms in their name will pass away. This is also reflected in the figures provided by the State in Para. 21 and Exhibit R/38 of its notice of July 30, 2009, HCJ 9961/03 (see *Supra* note 8): In 2007, 9,977 Palestinians had valid “permanent farmer permits” (including permits issued in previous years but still in effect during 2007); in 2008 the number of valid “permanent farmer permits” dropped to 2,601. In the first half of 2009, the number was 1,640 (in that year, the permit regime was expanded to apply to additional areas, and as such, to more Palestinians).

**125.** Standing Orders, Ch. 3, Sect. 11.

**126.** Standing Orders, Ch. 3, Sect. 18.

more difficult position. They have no rights according to the land registry, no *ikhraj qayd* and no ownership rights in the land. Military orders contain no specific provisions on such lessees. After HaMoked filed a petition demanding that the military be instructed to grant “seam zone” permits to individuals who lease land west of the separation wall, in January 2012, the State declared that it would introduce into the Standing Orders a “section that will specifically regulate the type and manner of issuance of a seam zone entry permit for residents leasing farmland in the seam zone.”<sup>127</sup>

Still, most farmers in the West Bank do not belong to any of the aforesaid categories. As previously stated, farming in the West Bank mostly follows a traditional model in which members of the extended family work their plot together. This means that most farmers are related to the “right holders,” rather than being direct right holders in the property themselves. The military does not consider them “farmers” and denies their right to access the land, ignoring not only the traditional property rights model, but also their right to a livelihood and to freedom of occupation and movement in their country and in their family’s land. The military treats these individuals as if they were hired help. They must ask for an “employment permit” and are often required to attach an employment contract between them and their “employer,” who is a relative. They are also required to produce a declaration from the “employers” that they intend to hire them.<sup>128</sup> According to the Standing Orders, “employment permits” are valid for up to six months, but many are issued for much shorter periods, as shown below.

**127.** HCJ 5205/11 **Kabha et al. v. Military Commander of the West Bank et al.**, Response on behalf of the State, January 22, 2012. In a different petition (HCJ 261/11 **Yussef et al. v. Military Commander of the West Bank et al.**), the State undertook to introduce the new section by September 1, 2012 and this undertaking was given the force of a judgment. As stated, despite this undertaking, no new Standing Orders were published before the publication of this report in March 2013.

**128.** Standing Orders, Ch. 3, Sect. 30(b)(2)-(3).

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**M.G., a Palestinian farmer, was issued military permits to work his family’s farmland, located west of the separation wall. In 2011, he filed four applications to renew the permit he had**

received for the “seam zone,” but the military either failed to answer or rejected them. HaMoked petitioned the Supreme Court,<sup>129</sup> and the State Attorney’s Office requested that M.G. file another application, attaching, as per the provisions of the Standing Orders, an employment contract and an undertaking by the employer for lawful employment in the relevant sector only. What this requirement meant in reality was that M.G.’s 76-year-old grandmother should confirm that there was an employment contract between her and her grandson and that they had an employer-employee relationship. Only after HaMoked assured the State Attorney’s Office that the family ties between the grandmother and her grandchild “were even stronger than an employer-employee relationship” did the State withdraw its demand. (Case 68108)

129. HCJ 4035/11 **Ghanem et al. v. Military Commander of the West Bank et al.**

130. For the original table in Hebrew, see <http://www.hamoked.org.il/Document.aspx?dID=Documents2125>. For English, see <http://www.hamoked.org/Document.aspx?dID=Documents2125>.

Since the relatives who do not have property rights in the land are considered by the military to be “laborers,” they may reach the family’s land only when the military thinks this is essential. The military’s decision depends, among other factors, on the type of crop and the season. For this purpose, the military has a table that lists the various crops and seasons during which “laborers” are allowed to reach the land in the “seam zone” based on the type of crop.<sup>130</sup> Olives, for example, justify entry for various types of activities only between October and March. It has been HaMoked’s experience that during the olive harvest, which takes place from October to December, the military does tend to allow many Palestinian farmers to reach their family plots using “employment permits.” However, during the rest of the year, particularly in months when “there is no seasonal necessity,” as the military understands this to be, many farmers who do not meet the conditions for “farmer permits” are prevented from reaching their land.

The “seasonal necessity” claim obviously ignores routine maintenance of farmland which is not limited to a certain season such as weeding, irrigation, pest control and the need to protect the land from harm inflicted by people. The military presumes that outside the harvest, most of the work can be carried out by the individuals who have rights to the land even if they cannot do so for various reasons such as age, medical condition or the inability to devote all their time to their farmland.

In addition, the military has issued permit quotas based on the size of the plots. According to the military, once the quota is full, any further permit applications must be denied. This requirement and the manner in which it is implemented create various problems. As mentioned above, since the size of the land on record is often the size as listed on tax forms, it does not necessarily reflect the actual plot size, which may have been incorrectly recorded and never corrected in the absence of land settlement processes. And so, though the size of many plots is larger than what is recorded, the military considers only the recorded size and uses that figure to calculate the “needs of the plot.” In addition to this, the military calculates the size of the plot relative to the number of direct right holders, even if some or all of them have never requested a permit. This means that the military may refuse an application for an “employment permit” because there are “potential applicants” who may one day ask for a “farmer permit.” In these cases, the relatives must produce affidavits from the right holders, stating that they have no intention to work on the land.

As previously stated, the military also checks how many people already have permits for a certain plot of land and issues permits on a first-come-first-serve basis. And so, when members of the extended family ask for permits to work the family’s plot of land, only the first to have their applications reviewed by the

military will receive permits. This arbitrary system creates competition and tension among relatives, interferes with their connection to the land and may affect the way the plots are passed down to future generations. The nuclear family often finds itself in a dilemma in which a father has to choose between two sons. This practice also ignores the nature of agriculture in the West Bank, which partly stems from the structure of land ownership, whereby most family members do not work in agriculture exclusively and have other activities such as housekeeping or a job to supplement income. In other parts of the West Bank, since family members share in the agricultural work, they can have other jobs. In the “seam zone,” since the military issues permits according to the permit quota for the plot, based on the assumption that these are “laborers” entirely devoted to working the land, the agricultural work becomes the sole responsibility of a few relatives and they are not always able to carry the weight on their own.

131. HCJ 5078/11 **Abu Zer et al. v. Military Commander of the West Bank et al.**

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M.A., a 41-year-old Palestinian, married and a father of six, lives in the village of a-Zawiya, near Tulkarm. Until the separation wall was built, M.A. and his relatives worked their family’s land, which was registered to his late grandfather, where they grew wheat and olives. After the wall was built, the land was trapped in the “seam zone,” but the military initially allowed village residents to cross the wall and work their lands, requiring them only to present their ID cards. As of 2009, the military began requiring permits in order to cross the wall. M.A. applied time and again for a “seam zone” permit but received no written answer. Letters HaMoked sent on behalf of M.A. also went unanswered. On July 6, 2011, HaMoked petitioned the Supreme Court requesting it to instruct the military to issue M.A. a permit that would allow him to continue working his family’s land.<sup>131</sup>

The State Attorney's Office attached to its response to the petition a letter that was addressed to HaMoked but never arrived. The letter stated, "Your client's application for a permit to enter the seam zone for employment purposes has been denied since his need for a permit was not established." The "need" was determined by the "Agricultural Staff Officer Table" and by the fact that four of M.A.'s siblings had permits. In the judgment issued in the petition, the Court ruled that the State's refusal to issue M.A. a permit to enter his land "could not be upheld." Five months after the petition was filed, the State Attorney's Office announced that M.A. would receive a permit to access his family's land. (Case 68290)

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The short validity periods of the permits, the bureaucratic complexities and the arbitrariness of the military system prevent Palestinian farmers working lands in the "seam zone" from effectively planning the agricultural year and using their lands throughout it. As a result, many refrain from investing in profitable crops that require constant maintenance. The violation of Palestinians' right to freedom of movement in their own country caused by the permit regime also results in severe harm to agriculture on the west side of the wall, decreased yields and reduced crop quality as well as family feuds over the right to receive permits ■

## **Classified Intelligence Information**

Meeting the criteria stipulated by the military is only a prerequisite for transferring the application to the ISA and the Israel Police for screening. These agencies ostensibly check if approval of the application involves a security risk. The military is supposed

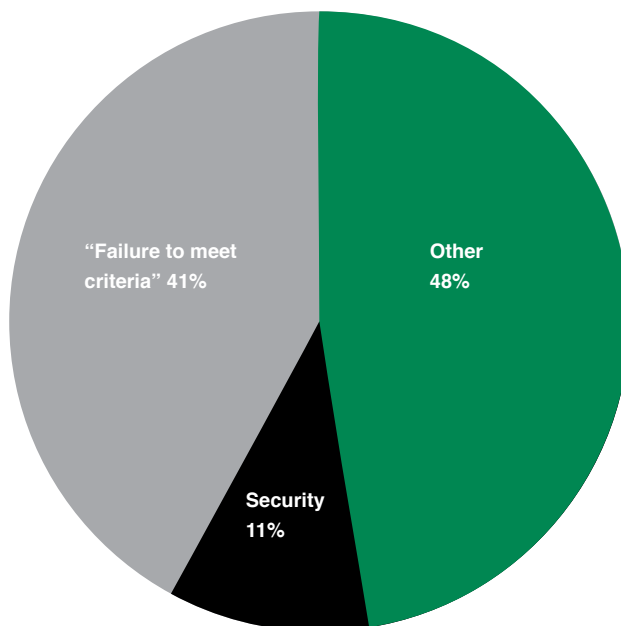


to weigh the recommendation of these security agencies against the rights of the applicants and decide whether to approve the application, deny it, or, within its discretion, grant a permit for a shorter time. State figures show that between 2007 and 2010, 3,885 applications were denied on security grounds on the recommendation of the ISA. It is unknown how many applications were rejected on criminal grounds following an objection from the police. These presumably appear under "other":<sup>132</sup>

**132.** See *Supra* note 8, Exhibits R/35, R/36, R/37; Letter of the Civil Administration Public Liaison Officer to ACRI, April 4, 2011. The figures for 2009 cover January to June only.

## Rejections 2007-2010

(Total: 33,746 rejections)



Even when an application is approved and a “seam zone” permit is issued, new security or criminal information often leads to revocation. The figures provided by the military do not clarify how many permits have been revoked due to new information.

As shown below, an assessment that a certain individual poses a security or criminal threat is almost irrefutable and extremely difficult to challenge. These assessments are not specific to the “seam zone” or even the OPT, but they are more prevalent in the OPT than in Israel and their damage is particularly serious when they deny people their right to move freely in their own land and the rights that depend on this.

### **The formulation of ISA and police recommendations**

The assessment that a person poses a “threat” is not made as part of a judicial process in which evidence presented by the ISA or the police is examined and the individual in question may bring his or her own evidence, examine witnesses, or present arguments. In fact, most Palestinians presumed to be a security threat by the ISA or the police are not arrested or brought to trial. The evidence that forms the basis for the assessment is sometimes inadmissible in a court of law (for example, hearsay evidence or evidence obtained through illegal wiretapping) and sometimes, the ISA and the police do not present the information on the claim that they do not want to expose their sources or methods of operation.

The processes by which the ISA and the police formulate their recommendations and the information on which these are based are naturally difficult to describe. HaMoked’s experience in processing other cases in which security objections were raised indicates that in many of the cases, the information on which the security assessment is based largely consists of statements made by someone under ISA interrogation about the person in question.

ISA interrogations are common in the OPT. Many OPT residents require ISA approval in order to carry out the most basic activities and as such, many come in contact with ISA agents and are summoned to interrogations. In these interrogations, ISA agents often clarify to the individuals they have summoned that in order to get what they want, they must cooperate with the ISA and provide incriminating information about others. The pressure ISA agents put on their subjects calls into question the quality and reliability of the information provided.

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**B.K., a farmer from a village near Jenin, married and father of two, had received “seam zone” permits from the military ever since the separation wall cut off his home from his family’s land. In 2009, the military suddenly stopped renewing the permits and did not answer B.K.’s applications. In November 2010, B.K. was summoned by the ISA to the Barta’a checkpoint, where he was questioned by an ISA agent who introduced himself as “Captain Ayub.” “Captain Ayub” questioned B.K. for four hours. He suggested B.K. “work” with the ISA in return for Israeli work permits for him and his family. B.K. refused. The military prevented B.K. from reaching his land in the “seam zone” for another year. In October 2011, following a letter from HaMoked, the military renewed the permit, but for two months only, after which B.K. had to continue to battle the military bureaucracy in order to exercise his right to access his land. (Case 70390)**

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In this context, it is important to note that the purpose of ISA interrogations is to uncover security threats rather than determine the guilt or innocence of the subject of the interrogation. As such, the interrogations are specifically oriented towards locating threats on

a broad scale, rather than towards justice and due process. Despite this, and despite the aforesaid doubts regarding the reliability of the information obtained in these interrogations, the ISA and the police use this information as a basis for assessing the threat posed by the subject of the interrogation, as well as other individuals. These assessments sometimes serve as grounds for denying Palestinians basic rights such as freedom of movement inside and outside the OPT.

The identity of the people who provide the information, what they say and the very fact that the information is based only on statements, is kept secret. Thus, most of the applicants do not know if information against them has been gathered in this manner and if so, what the information is. In fact, most applicants find out there is a security or criminal objection against them only when they attempt to exercise their right to reach their land. The result is that in most cases, the ISA and police formulate their recommendation with respect to a certain individual without access to the subject's own position on the information collected against him or her in this manner.

Moreover, the involvement of the police in the process of issuing "seam zone" permits contradicts the official security purpose of the permits. As stated, the Court upheld the permit regime after accepting the claim that it was necessary for security reasons. This does not explain why individuals who are under a "criminal preclusion" may not reach their land. Israel may prohibit such a person from entering its own territory. It may build a wall along the Green Line in order to enforce this prohibition. It may even criminally prosecute those who break the law and use the police to prevent crimes. The involvement of the police in the process of issuing "seam zone" permits is another indication that Israel uses security allegations in order to promote a policy that is applied in the West Bank but meant to satisfy its own internal needs.

### **Acceptance of recommendations by the military**

As stated, the assessment of the ISA or the police is merely a recommendation sent to the military. The military has discretion as to whether or not to issue the applicant a permit, taking into consideration the overall circumstances and the potential violation of the applicant's human rights. Naturally, HaMoked has no information about the protocols governing the way in which the ISA and the police work with the military in general and the DCOs in particular. However, experience shows that recommendations are unlikely to include reasons or specifics about the evidence or the threat it allegedly points to. This evidence is classified and presumably inaccessible to soldiers serving in the DCOs, much like it is kept secret from the applicants themselves. In this situation, DCO soldiers are unable to correctly assess the overall circumstances that led to the recommendation and decide whether the alleged threat justifies refusing to issue a permit, considering the impinged rights and the expected harm to the applicants, their agricultural crops, etc. Inasmuch as this is the case, the position of the ISA or the police is not a recommendation but rather a final decision.

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B.A. has been leasing a clothing store in the village of Barta'a since 2005. The village is located west of the separation wall. Until early 2011, B.A. received renewable permits for the "seam zone." Shortly before his last permit was to expire, B.A. applied to have it renewed. His application was denied due to "ISA refusal." Four more applications he filed received the same answer. HaMoked contacted the Legal Advisor to the West Bank Military Commander on B.A.'s behalf, reminding him that the premise is that Palestinians have the right to freedom of movement in their own country as well as the right to property and freedom of occupation. HaMoked

further noted that the military had not held a hearing for B.A. prior to reaching the decision and that the grounds for its decision had not been provided.

The military replied that the applications “were rejected by the competent officials in the Civil Administration, following receipt of the negative position of security officials,” and recommended B.A. go to the DCO and request a hearing. In early July 2011, B.A. arrived at the Jenin DCO and filed an appeal, known as a request for a hearing committee. A DCO officer told him that the hearing would be held on an unspecified future date, as per the decision of the ISA. In view of the severe harm to B.A.’s livelihood and the violation of his rights, HaMoked sent an urgent letter to the DCO asking to expedite processing of his application. However, on July 28, 2011, with no hearing (!), the military issued B.A. a “seam zone” entry permit for the purpose of business.

For more than six months, without any explanation, the military prevented B.A. from accessing his business and denied his right to a livelihood only because of a secret, unreasoned recommendation by “security officials.” (Case 69223)

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As demonstrated, the DCO decision-making process does not allow applicants to present arguments in support of their application. This is also true in cases in which security officials recommend denying an application based on “intelligence information.” The decision to deny an application on “security” or “criminal” grounds is made without holding a hearing in which applicants have a chance to defend themselves and respond to the allegations against them. Usually, even after a rejection is issued, the applicants, if told of the refusal at all, are not told what the reason for it was. Applicants find out whether the refusal was based on security allegations, or on

other reasons, only if they file an appeal and receive a summons to a hearing. In the few cases in which applicants were told that their applications had been refused for security reasons, the responses were short and contained only the phrase “security refusal” or “ISA refusal” without any further specifics or explanation that might allow them to challenge and refute the allegations. Even if applicants do get a hearing after filing an appeal, it is largely a futile process because since the information that led to the rejection was classified, the threat they allegedly pose is not identified at the hearing and they are not able to refute it. Despite an explicit Supreme Court ruling that even in cases of security concerns, the State must disclose as much of the material as possible in order to enable an effective hearing,<sup>133</sup> requests made by HaMoked for the material, or any part thereof, ahead of hearings have never been answered. In all these cases, the applicants had to file an appeal and arrive at the hearing empty handed. As stated, applicants may not avail themselves of the services of a lawyer during the hearing, and in any case, contrary to the provisions of the Standing Orders, ISA or police representatives who have access to the intelligence or criminal information and who might provide renewed threat assessments do not attend the hearing committee sessions.

This makes countering police and ISA assessments inherently difficult. In many cases, these assessments are used as an automatic pretext for rejecting applications and the rejections remain intact after the hearing as well. Thus, “security hearings” are often a mere formality that does not help applicants in any way and only prolongs the proceedings. The only course of action available to individuals against whom there is a negative recommendation and whose appeal had been denied is an HCJ petition. Yet, filing such a petition itself requires time and further prolongs the wait for the permit. In addition, not everyone has the means to

**133.** AAA 1038/08 **State of Israel v.**

**Ghabis**, Judgment, August 11, 2009.

The case concerned a family unification application.

pay for such legal action.

Assessments regarding a security or criminal threat are carried out every time an application is filed, resulting in a situation in which even individuals who have received permits in the past may find out the next time they apply that they are now classified as a “security” or “criminal” threat. In fact, if new information is obtained, a “criminal” or “security” “preclusion” may be imposed immediately after an application is approved and a permit is granted. Thus, even individuals who successfully pass the entire screening process are not immune from permit revocation. In this sense, the threat assessment process never ends. In addition, the process works in only one direction as even if a certain person is no longer considered a “threat,” the permit is not issued automatically.

Permit revocations are also carried out without a hearing and without notice. HaMoked has encountered cases in which Palestinians found out their permit had been revoked only when they tried to use it. Revoking a permit without prior notice is particularly harmful as permit holders often wait for a long time to get the permits in the first place and make preparations for using them. It is also unclear what people whose permits have been revoked should do procedurally. Revocation is not regulated in the Standing Orders and the applicable protocols are unknown. The result is that Palestinians whose permits have been revoked do not know whether they must file a new application, an appeal or petition the HCJ.

### **Secret hearings at the High Court of Justice**

As stated, after an appeal is denied for “security reasons,” the only course of action open to the applicant is a petition to the HCJ requesting it instruct the military to grant a “seam zone” permit. However, even after a petition is filed, the military still does not inform petitioners about the nature of the threat



they allegedly pose or the basis for the allegation. In the rare cases in which the State does not claim the intelligence information is classified, it is presented to the petitioners for the first time in the State's response to the petition. However, the State's responses often include a general summary of the allegations, such as the vague phrase "terror activist." Individuals facing such allegations cannot challenge or refute them. In this instance, unlike in criminal proceedings, the State is not required to prove anything. The petitioners are the ones required to prove that they are not "terror activists" or that the balance the military has struck between their needs and the general allegation "terror activist" was disproportionate.

Petitioners are forced to take their case to Court without the ability to hold a substantive review. The only choice they have is to consent to have the justices review the material, along with counsel for the State in a classified hearing and *in camera*.<sup>134</sup> Neither the petitioners nor their counsel may attend this session (petitioners do not attend the sessions anyway, as the courts are located inside Israel and the petitioners require a special permit to enter). This practice undermines the basic tenet of the Israeli legal system whereby by both parties may present their arguments before the court. In this state of affairs, the petitioners' ability to receive a fair trial and safeguard their rights, as is the case in almost any other judicial proceeding, is diminished.

In a classified, *ex parte*, hearing, the Court must serve not only as the adjudicator, but also as the petitioners' "mouth and ears." However, even in this capacity, it is still restricted by the evidence presented by the State and has very little ability to dispute it as it has no access to contradictory evidence, alibis, information about the reliability of the individuals cited in the evidence, etc. This means that the classified material presented by the ISA is almost always the premise

**134.** According to case law, petitioners have no obligation to consent to this, though withholding consent effectively culminates in the dismissal of the petition. The HCJ has recently ruled that a petition should be dismissed only if the State has presented arguments that sufficiently support a dismissal in the presence of both parties. Otherwise, in order to rely on classified material, the State must obtain a "classified material certificate" signed by the Minister of Defense. The petitioners may challenge the granting of the certificate, but if they fail, the Court is unable to review the classified material and the petition will most likely be dismissed. See HCJ 5696/09 **Mughrabi v. OC Home Front Command**, Judgment, February 15, 2012. Note that the question of how to enable a fair trial in the presence of both parties, yet refrain from exposing sources or the modus operandi of the security agencies is complex, and seemingly, unsolvable, as has been the experience in both Israel and in other countries. In the UK and Canada, whose legal systems are also adversarial, there is a mechanism that allows lawyers with a certain level of security clearance to represent petitioners, under some restrictions, and attend the sessions. This has not been done in Israel, despite calls made by local human rights organizations for a similar arrangement.

for the discussion and the chances of refuting it are minute. In this case, the Court has no choice but to accept the claim that the petitioner poses a security risk and balance this risk against the petitioner's rights. It is safe to assume that in the absence of humanitarian grounds or special circumstances, the Court would hesitate to intervene in this balance.

Thus, the chances of refuting allegations regarding a security or criminal threat are extremely low even in court. Once the ISA or police formulate an assessment that there is a risk in issuing a certain individual a permit, regardless of the information on which this assessment is based, be it rumors, a desire to please an ISA agent, etc., the applicants' ability to fight it and insist on their rights is extremely weak ■

## **Permit Restrictions**

The difficulties the military causes to Palestinians who are trying to lead normal lives under the permit regime does not end with the obstacle course they face on the way to getting a permit or getting it in time. Even those who have received permits find out that the permits are restricted to specific times and areas, that they are precluded from taking equipment, commercial goods or vehicles across and that using the permits is often subject to the whim of the soldiers staffing the gates in the separation wall. All this is in addition to the serious and direct harm done to the daily lives of Palestinians and their rights, leading to despair and resulting in the declining number of individuals who apply for permits over the years.

### **Validity period**

Since permit renewal is a long and complicated process which requires a significant amount of time, and often also money, the validity period of the permit is of utmost importance. The longer permits are

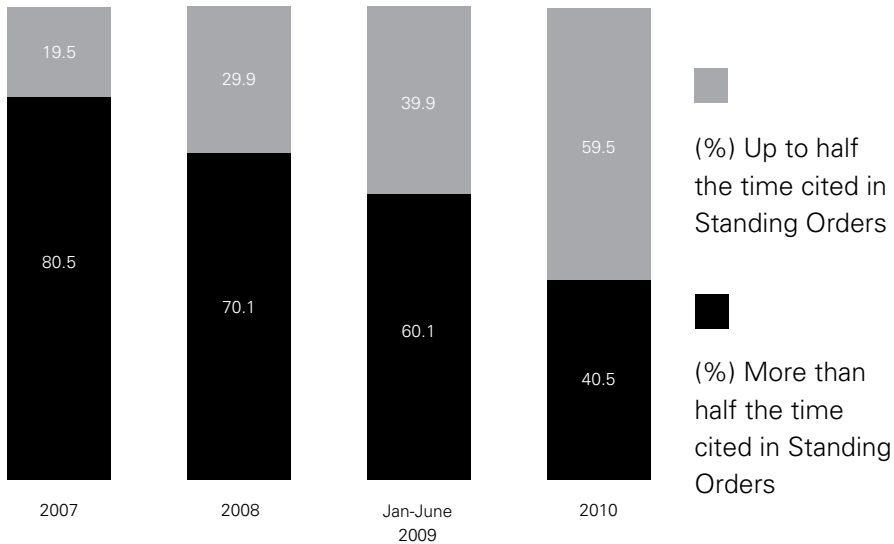
valid, the longer before their holders must file a new application, with all the attendant difficulties, and the better able they are to make (relatively) long term plans.

The maximum validity period of the various types of permits is stipulated in the Standing Orders, yet, in practice, most are given for shorter durations. The military decreases the validity periods using various excuses: sometimes the DCO decides that the short validity period satisfies the applicant's "needs," sometimes the "balance" between the applicant's "need" and the classified intelligence information about him or her is cited as the reason, sometimes it is an error, and sometimes, and this seems to apply in most cases, it is sheer arbitrariness. Whatever the reason may be, over the years, fewer and fewer long-term permits have been issued. The following chart presents the change in the military's policy with respect to issuing the five main types of "seam zone" permits – "permanent resident" (maximum validity according to the Standing Orders – two years); "permanent farmer" (two years); "business" (one year); "temporary farmer" (six months); "employment" (six months) – and the significant decrease over time in the relative percentage of the permits issued by the military for the full or almost full period cited in the Standing Orders.<sup>135</sup> In 2007, for instance, 15,030 permits of these five types were issued for periods exceeding half the maximum validity period cited in the Standing Orders, as opposed to 3,653 issued for less than half that period. In contrast, in 2010, only 9,513 permits were issued for a period exceeding half the time cited in the Standing Orders, as opposed to 13,990 permits issued for shorter durations.<sup>136</sup>

**135.** HaMoked communicated the difficulties that result from this fact to the military. In a response from March 21, 2012, the Civil Administration Public Liaison Officer stated that "The Civil Administration tends to issue permits for the maximum time, while taking into account the overall relevant considerations."

**136.** See *Supra* note 132.

## Decrease in Long Term Permits



These figures indicate that individuals who have received permits can expect to have to renew them within a short period of time. They will again be required to invest time and money in order to be able to continue their routine lives and will refrain from making long term plans such as purchasing property, making changes to the types of crops they grow, etc. In cases in which permits are given for just a few months – numerically, these are most of the permits – applicants must begin the renewal process just a short time after they receive the permits. These figures lead to the probable conclusion that the number of permit holders (as opposed to the number of permits) is declining because each person requires more permits.

### Checkpoints and gates

In February 2004, in the proceedings held in the

general petitions filed by HaMoked and ACRI against the permit regime, the State Attorney's Office told the Supreme Court that Palestinian farmers would be able to enter the "seam zone" freely through "crossings that are open 24 hours a day, seven days a week, in case they wish to enter or leave the seam zone in order to cultivate their land."<sup>137</sup> This pledge has remained a dead letter.

The "seam zone" is not a contiguous territory. It is composed of areas separated by the wall. Traveling from these areas to the rest of the West Bank and back is done via different types of gates that were inserted in the wall. None but two of the gates are open throughout the day or the week. It is no coincidence that the only two gates that do operate continuously are the only two serving Israelis in general and settlers in particular. Most gates (in fact, all but five, defined as "fabric of life" gates) lead to Palestinian agricultural land in which settlers have no interest. In the course of the general petitions, the State argued that the gates could not remain open 24 hours a day for operational reasons and for the safety of the soldiers staffing them, who are under increased danger during the night.<sup>138</sup> The reliability of this claim can be measured by the fact that despite these dangers, the military does open the gates used by Israelis 24 hours a day.

Moreover, some of the gates are not open continuously even throughout the day, but rather open two or three times a day for short periods. In November 2006, in response to the general petitions, the State clarified that the gates could be opened outside their regular hours of operation in case of a "humanitarian necessity," but in order to do so the military must be contacted and notified.<sup>139</sup> According to UN reports, many Palestinians living in the "seam zone" are concerned that the military will not respond quickly enough in emergencies and that the gates will not be opened as necessary.<sup>140</sup>

**137.** HCJ 639/04, Response on behalf of the State, February 4, 2004, Para. 36.

**138.** HCJ 9961/03, Response on behalf of the State, November, 13, 2006, Paras. 50-51.

**139.** *Ibid.*, Para. 49.

**140.** OCHA 2009, p. 16; OCHA 2011, p. 10.

## “Seam Zone” Gate Opening Times<sup>141</sup>

141. For the types of gates, their names, objectives and hours of operation, see website of the Coordinator of Government Activities in the Territories, <http://www.cogat.idf.il/1039-en/IDFG.aspx>; OCHA 2011, p. 9.

Gate type	Number of gates	Number of gates open per week	Daily hours of operation
“Fabric of life” gates, used by Palestinians and Israelis	2	7 days a week	24 hours a day
“Fabric of life” gates, used by Palestinians only	3	One gate is open 7 days a week; two are open 6 days a week	One gate is open from the early morning until 9:00 p.m., the other two open between 7:00 and 8:00 a.m. and close in the afternoon
“Daily” agricultural gates	12	7 days a week	Two to three times daily (early morning, late afternoon and sometimes early afternoon). Maximum opening time: 90 minutes
“Weekly” gates	10	1-3 days a week	Undetermined
“Seasonal” gates	44	October to December only, numbers of days per week unknown	Undetermined

All gates, with the exception of “fabric of life” gates and exceptional cases, are closed on Jewish holidays.

The restricted opening hours of the gates impacts the ability to use the permits and lead a normal life in the “seam zone,” in terms of access to hospitals or fire department services, for instance. The military theoretically opens the gates in case of an emergency, but in practice, the inability to reach soldiers and the bureaucratic complexity do not allow for a swift response, which may cost lives.

On April 23, 2009, a four-year-old boy was brought to burial in Dhaher al-Malih. Palestinian residents contacted the military and coordinated the opening of the gate during the funeral. However, the mourners who arrived at the gate found that it was closed. After HaMoked intervened, soldiers arrived and opened the gate. (E. 7876)

On June 20, 2006, soldiers prevented a Palestinian physician from crossing the gate in the separation wall on her way to Khirbet Um a-Rihan, though she had a medical personnel permit. An inquiry conducted by HaMoked revealed that the preclusion was due to what the military calls an “unclosed circle,” meaning that the military has a record of the physician crossing the wall into the closed zone, but no record of her returning. The military’s automatic conclusion in such cases is that the person in question entered Israel without a permit. Following HaMoked’s intervention, the military called the physician back to the gate and allowed her to cross. The preclusion was removed from the military’s database. (E. 8248)

Palestinians living west of the separation wall are in effect constantly under curfew because they must

return home before the gates close. This “curfew” has grave ramifications especially for “seam zone” residents whose jobs do not allow them to return home during gate opening hours. They must sleep away from home, somewhere east of the wall. As stated, absence from the “seam zone” during the night may affect Palestinians’ eligibility to continue living in their homes.

**142.** Overnight permits for the “seam zone” are granted in rare cases, mostly to shepherds who sleep with their herd in the “seam zone.” See OCHA 2011, p. 9.

The restricted opening hours also affect the ability to enter the “seam zone” for work purposes, mostly harming agriculture. Since the agricultural gates are only open for short periods of time, and only two or three times a day, they are often very busy and there are long queues of people waiting to cross. Farmers who miss the opening time cannot reach their land for the day. Any delay in opening the gate means long waits and the ability to respond to damage that occurs suddenly and requires rapid response, such as a fire or flood, depends on how quickly the soldiers respond.

The fact that the gates remain closed for most of the day also harms the farmers who do reach their plots in the “seam zone.” They are essentially “trapped” in their plots of land until the gate opens again. They cannot return home at will. In emergencies such as work accidents, they cannot reach hospitals in time. They are forced to work in inconvenient times, such as the hottest hours of the day during the summer, and they must arrive at the gate before nightfall or else they will remain trapped in their land, which is a violation of the terms of the permit and may lead to confiscation, or even criminal charges.<sup>142</sup>

Use of the gates is not just limited to certain times of day, but also to certain gates. Every permit specifies the name of a single gate, the one closest to the community in which the applicant lives. The permit holder is permitted to cross the separation wall only through this gate. Individuals who have “needs” in



various parts of the “seam zone” must file a special application for two different permits allowing them to cross at two different points (as previously stated, the military requires separate applications for every need, even in cases in which a person’s needs are concentrated in one area, let alone when they are far away and the various parts of the “seam zone” are themselves separated by the wall). Limiting the permit to a specific gate does not just prevent access to other parts of the “seam zone.” It also prevents access to the same part, using alternative gates and more convenient routes. So, for example, individuals whose work requires them to travel throughout the West Bank sometimes need to cross a gate that is not necessarily the closest to their community, yet because of the gate restriction, they must divert and travel longer in order to arrive at their assigned gate. Since most gates are not open 24 hours a day, they must do so during the opening times of their specific gate. In addition, though different gates operate at different times, permit holders are prevented from using alternative gates in case their gate does not open during its usual hours of operation as a result of delays or malfunctions. In response to the general petitions, the State announced that when the gate listed on a permit is not one that operates on a 24-hour basis, an additional gate that allows daily access would be listed as well.<sup>143</sup> Up to the time of writing, this pledge has not been implemented.

**143.** See *Supra* note 138, Para. 48.

**144.** See *Supra* note 9, Para. 36.

In April 2011, the HCJ ruled that holders of “permanent resident certificates” are entitled to enter and leave the “seam zone” through any gate.<sup>144</sup> The rationale is that if these individuals are allowed to be present in their homes west of the wall, there is no reason to restrict them to a specific gate. Though this statement is true for all permit holders, it referred only to “permanent residents.” In any event, as far as HaMoked knows, the military does not uphold this court instruction either. At the time of writing,

“permanent residents,” like all other Palestinians wishing to enter or leave the “seam zone” may do so only at the gate listed on their permit.

### **Crossing conditions**

As a rule, a permit to enter the “seam zone” allows crossing on foot only, namely, without vehicles, including agricultural vehicles. Crossing in a vehicle requires a specific application (which may be filed with or separately from the application for an entry permit). Use of such permits is permitted only to the owner of the vehicle.<sup>145</sup> So, for example, relatives of the owner of the vehicle may cross the gate in the vehicle only if the owner is driving it. Otherwise, they must cross on foot. When the vehicle in question is an agricultural vehicle, this restriction interferes with people’s ability to cultivate the land and make a living.

Military orders do not require a special permit for taking agricultural equipment and commercial goods into the “seam zone,” yet Palestinians who have contacted HaMoked reported difficulties bringing equipment or commercial goods through the gates in view of the soldiers’ arbitrary demands and requirements. They are often told they cannot bring their goods into the “seam zone” for fear they intend to take it into Israel and compete with Israeli products. Israel’s right to build a wall on its border and the unlawfulness of using a wall built inside the West Bank for its internal needs have been addressed above.

**145.** Standing Orders, Ch. 5, Sect. 70(c). An exception is made for “seam zone residents” crossing gates in vehicles registered to a first degree relative who also lives in the “seam zone.” See Standing Orders, Ch. 5, Sect. 71(c).

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**On August 31, 2008, soldiers refused to allow a Palestinian to cross the separation wall en route to Khirbet al-Ra’adiya with his donkey, which was carrying eight bags of flour on its back. The soldiers claimed that this was a commercial quantity that required prior coordination and that no more than two bags could be brought in at a time. After HaMoked intervened, the**

soldiers allowed the man to cross along with the donkey and all eight bags of flour. (E. 7712)

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On November 11, 2009, a resident of Khirbet Um a-Rihan wanted take a digger across the gate in the separation wall for repair in Jenin. He attempted to coordinate this with the DCO but received no response. HaMoked contacted the military in an attempt to find out why no response was provided. Military officials initially claimed that the man must file an application in writing, but ultimately settled for coordination over the telephone. After this was done, the resident arrived at the gate with the digger, but the soldiers refused to let him through. The digger eventually did go through, and two days later, with further coordination, returned to the village. (E. 7976)

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Travel through the gates is subject to security screening. Palestinians who live west of the wall have complained to HaMoked about lengthy checks and delays lasting up to three hours. Many have reported being strip searched. Searches and delays routinely take place at every gate for no apparent reason. These searches and delays at the gates have led many “permanent residents” to limit their travels to the parts of the West Bank located east of the wall, and, in the other direction, many West Bank residents refrain from traveling to the “seam zone.” In all of HaMoked’s petitions regarding the security checks performed at the separation wall gates, the State declared that the petitioners would henceforth be checked using ordinary methods. A change was indeed felt following these announcements. Yet, this leads to the conclusion that there was no justification for the delays and harassment in the first place, certainly no security justification.

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On January 4, 2010, a Palestinian who crossed a wall gate complained that during the search of his car, the soldiers disassembled some of its parts and did not return them to their proper places. The man did not know how to reassemble the parts. It took an hour and HaMoked's intervention for the soldiers to reassemble the parts. (E. 8045)

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R.K. lives in Barta'a, a village inside the "seam zone." He has a "permanent resident certificate" and owns a cell phone shop, also located in Barta'a. Since he lives west of the wall, R.K. has to cross the Barta'a (Reihan) crossing every day in order to reach other parts of the West Bank and return to his village before nightfall. In early 2010, he was summoned to an ISA questioning session, in which an agent who introduced himself as "Captain Zohar" suggested he cooperate with the ISA and provide it with information on illegal aliens in Barta'a. In return, "Captain Zohar" offered any kind of assistance R.K. could want, for example, a permit to enter Israel. R.K. refused. In May 2010, security personnel at the Barta'a checkpoint began detaining 30-year-old R.K. for anywhere between 30 minutes and three hours every time, whether on his way into the "seam zone" or out. When detained, R.K. was told to go inside a small room, strip down to his underwear and wait for security personnel. Only after the latter conducted a body search using a hand held device, was he permitted to carry on. When he asked the security personnel what the reason for the delay was, he was answered that these were ISA orders. Sometimes he was not answered at all. In July 2010, HaMoked contacted the Legal Advisor to the West Bank Military Commander on behalf of R.K., requesting his intervention.

As no answer was given and in view of the daily violation of R.K.'s right to freedom of movement and to a livelihood and after R.K. reduced the frequency of his travels outside Barta'a, HaMoked petitioned the court.<sup>146</sup>

In the response to the petition, the State insisted on the military's right to conduct security checks at the checkpoint and noted that "there is concern that the petitioner would use his travels through the checkpoint in order to smuggle weapons."

This concern was soon shown to be baseless.

In early September, the State Attorney's Office requested the cancellation of the scheduled hearing and said that the petitioner's daily harassment at the checkpoint would stop and that "no special searches will be done at the checkpoint."

Since then, until the time of writing, R.K. has been crossing the separation wall checkpoints without special screening. (Case 65780)

146. HCJ 6156/10 **Kabha et al. v. Military Commander of the West Bank.**

### **Permit confiscation**

The Standing Orders allow security officials to confiscate "seam zone" permits if they believe the holders to be in breach of their terms, for example, exceeding the hours specified in the permit or the purpose for which it was given. The permits are confiscated on sight, with no judicial oversight. HaMoked's experience has shown that contrary to the provisions of the Standing Orders, individuals whose permit was confiscated do not usually receive a document attesting to this fact. They are not always informed of the reason for the confiscation or of the possibility of challenging it at a hearing. In practice, the officials empowered to confiscate permits appear to have extremely broad, in fact, unlimited discretion. The question whether the confiscation was warranted or not is clarified at the DCO and, as stated, permit holders can present their case only if they file an application for a hearing.

The process of returning a confiscated permit is extremely lengthy, often longer than the process for obtaining the permit itself. According to the Standing Orders, the military is required to uphold or revoke the confiscation within no more than 30 days from the time it occurred. In this time, permit holders may request a hearing on the issue. If, at the end of this period, the confiscation is upheld, permit holders have the right to appeal it within 30 days and receive a decision on the appeal within 45 days.<sup>147</sup> The process of reinstating the permit may, therefore, take more than three months, during which the applicants are not permitted to reach their land or home, though these are located, as stated, in the West Bank.

**147.** For details regarding the process, see Chapter 6 of the Standing Orders.

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M.M., a farmer from the northern West Bank, entered his land in the “seam zone” at 5:30 A.M. on November 30, 2011. Shortly after 3:00 P.M., at the end of the workday that was adjusted to coincide with the gate opening hours, M.M. started on his way home. When he arrived at the wall crossing, an officer detained him for an hour and a half and confiscated his permit, making a vague accusation that he had been in Tel Aviv. Contrary to military orders, the officer did not provide M.M. with any record of the confiscation or any other document.

M.M. contacted the Palestinian Liaison Office to complain about the confiscation but was told that the office does not handle such matters. HaMoked then contacted the military on M.M.’s behalf, attempting to find out the reason for the confiscation. The response was that M.M. must go to the Israeli DCO and file an application for a hearing.

M.M. went to the DCO to ask for a hearing, but the officer there refused his application and told him to file a lost permit report with the Palestinian Liaison Office. M.M. went to the Liaison Office

once more, where he was instructed to produce an affidavit signed by a court of law that the permit had been lost, although the permit was confiscated by an Israeli officer at the wall crossing.

On December 29, 2011, HaMoked urgently contacted the Civil Administration Public Liaison Officer requesting M.M. be given back his permit immediately. A month later, and two months after the confiscation, HaMoked received a brief answer from the military that M.M.'s permit was ready for pick up at the Palestinian Liaison Office ■ (Case 69331)

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# Conclusion

Indeed, it is difficult to disagree that the closing of the seam zone, as well as the construction of the security fence, are a great burden on the Palestinian residents, and the harm caused is particularly severe when it is inflicted upon innocent residents who have found themselves in the seam zone against their will because they reside in the area or work there, after their businesses or fields and farmlands remained trapped in the area. The application of the permit regime, with the requirement to receive permits in order to enter and exit the area, constitutes a clear restriction of the freedom of movement of West Bank residents in this area, limiting their access to their homes, lands, and businesses located inside the seam zone. As we shall describe below in detail, this situation creates a reality in which it is difficult both for the residents living in the seam zone and the people with whom they are connected and who live outside the area to maintain ordinary family and social lives as well as business and employment relationships.

Then Supreme Court President, Dorit Beinisch<sup>148</sup>

The permit regime contradicts many tenets of Israeli and international law and its implementation by the military denies Palestinians the possibility of leading normal lives. The permit regime constitutes collective punishment and violates Palestinians' right to freedom of movement in general, and the right to travel freely within their own country in particular. The



impingement on the right to freedom of movement leads to other human rights violations including the rights to family life, health, education, property, a livelihood, culture and community life, all accompanied by a severe violation of the right to equality and dignity.

The human rights violations caused by the permit regime have a destructive affect. It is, in effect, a situation of creeping dispossession of West Bank lands under the cover of a bureaucracy that operates pursuant to military law with the Israeli Supreme Court's seal of approval.

This report sought to shed light on the reality created by the permit regime and show how the military bureaucracy works. Despite some changes, the permit regime remains, in essence, a blanket restriction on freedom of movement based on nationality. Those who wish to use the narrow openings left by this regime must stand firm, and weather lengthy, Sisyphean procedures that culminate in the granting of short-term permits with limited usability.

Over the years, evidence of the severe harm caused to the Palestinian population by the permit regime has mounted. The military's narrow "criteria" for entering "seam zone" lands and its near impenetrable bureaucracy inevitably lead to a drastic drop in the number of Palestinians who arrive at the part of the West Bank located west of the wall and result in the transformation of this area.

The permit regime reverses a basic premise in international law, the premise that individuals enjoy freedom of movement within their own countries. The premise of the permit regime is that Palestinians who wish to enter this part of the OPT must prove that it is "necessary" for them to do so. Proving this "necessity" is restricted to the manner in which the military defines the term, but even those who manage

to prove "necessity" enter a process that ends with a time-limited permit that can only be used in specific localities, for specific needs and often during specific days and hours. These permits are under a constant threat of being revoked or confiscated through a mechanism that appears to be arbitrary, at least on its face. In addition to all this, residents of the "seam zone" are under constant surveillance. Every exit to the part of the West Bank that is east of the wall may be used against them as "incriminating evidence" and may ultimately result in the confiscation of their permit.

Due to the limited validity period of the permits, Palestinians who wish to enter or remain in the "seam zone" must renew their permits frequently. This process, like the initial application process, is also lengthy and while it is underway, applicants are prohibited from entering the "seam zone." The human rights violations are, thus, exacerbated by a bureaucratic obstacle course in which applications are often rejected, whether out of hand, after review or without review at all. A third to a quarter of all applications are not approved and the applicants must launch complicated appeal processes that often fail to be exhausted.

The results of Israel's policy are clear and immediate: a decrease in the number of individuals who are permitted to be present in the "seam zone"; physical separation between Palestinians living in the "seam zone" and the rest of the West Bank and their economic, familial, social and cultural isolation. Another effect is a change in agricultural practices in the area, including a sharp decrease in cultivated farmland in the "seam zone" which severely harms about 150 communities that are located east of the wall with farmlands trapped to the west of it.

It seems that the permit regime expands and perpetuates itself in what appears to be bureaucracy for the sake

of bureaucracy. This permit regime, at least in part, serves no security purpose whatsoever. It is mostly used to prevent illegal presence in Israel, while Israel refuses to build a wall on the Green Line for this purpose, for political reasons. There is concern that the declining number of Palestinians who enter the “seam zone” and the reduction in the scope of cultivated farmland in the area are a desired outcome in the eyes of those who make land policy in the West Bank.

Notwithstanding all this, in April 2011, the justices of the Supreme Court rejected the general petitions against the permit regime, though they recognized in the judgment the severe harm this regime inflicts on the Palestinian population. The justices expressed their hope and wish that this is a “temporary situation which results from a temporary harsh reality.” More than a year has passed since then and the permit regime is about to enter its tenth year.

In view of the daily human rights violations and the alarming figures on the situation of the population in the part of the West Bank Israel calls the “seam zone,” which are a direct result of the permit regime described in this report, HaMoked: Center for the Defence of the Individual once again calls on the authorities to adopt the advisory opinion of the International Court of Justice and revoke the permit regime in the West Bank ■

# The Separation Wall and the Permit Regime: Timeline<sup>149</sup>

## 18.07.2001

**The Ministerial Committee for National Security, headed by Prime Minister Ariel Sharon, endorses the “seam zone” plan, defined at this point as an area located on both sides of the Green Line.** The plan purports to prevent infiltration and illegal presence in Israel by Palestinians from the West Bank.

## 14.04.2002

**Israel announces the immediate start of construction of the separation wall: the Cabinet clarifies that “this plan and its implementation do not amount to a drawing of national boundaries.”** The military and the police are responsible for preventing the passage of Palestinians from the West Bank into Israel and Jerusalem – other than in humanitarian and exceptional cases.

## 20.04.2002

**First petitions against the wall filed by villagers whose lands were requisitioned for the construction of the separation wall by virtue of military orders.** The villagers assert that the seizure defies the norms of international law, and constitutes an attempt to

annex lands and establish permanent boundaries outside of negotiations. The HCJ rejects the petitions in May 2002. The justices accept the State's position that the route of the wall was determined by security needs, free of any political considerations.

#### **24.04.2002**

**The military issues land seizure orders and requisitions dozens of dunums of farmland belonging to Palestinian villages along the route of the wall "for military purposes and given the special security circumstances." Construction of the separation wall begins.**

#### **01.04.2003**

**B'Tselem publishes a position paper warning that the separation wall will violate the human rights of more than 210,000 Palestinians living in the West Bank.**

According to B'Tselem, the military's plans to build the separation wall inside the West Bank will trap dozens of Palestinian communities between the wall and the Green Line and cut off many others from their farmland.

#### **21.08.2003**

**The UN Human Rights Committee calls on Israel to stop the construction of the separation wall within the OPT.** The UN states that the separation wall has all encompassing repercussions on the life of Palestinians, in particular, their right to freedom of movement and rights concerning land, livelihoods, water, health and education.

#### **01.10.2003**

**Israel resolves to proceed with the construction of the separation wall.** The government proclaims "every effort will be made

to reduce, as much as possible, disturbances to the daily life of Palestinians following the construction of the barrier.”

### **02.10.2003**

**The permit regime: The “seam zone,” now defined as the part of the West Bank that is trapped between the separation wall and the Green Line, is declared a closed military zone. Entry into this area and presence in it are reserved for Israeli residents and citizens as well as any Jew.** Palestinians who live in the enclaves formed in the “closed zone,” must obtain “permanent resident certificates” in order to continue living in their homes. Palestinians who seek to enter the “seam zone” – to visit their family, farm their land or for any other purpose – must obtain a special permit from the military. On the same day, the military issues a **general permit to enter and remain in the “seam zone.”** The permit applies to three “classes” of people (this is the original language of the permit) – tourists, Palestinian holders of an employment permit for Jewish settlements in the West Bank and Palestinian holders of a permit to enter Israel.

### **06.11.2003**

**HaMoked petitions the High Court of Justice to instruct Israel to desist from building the separation wall inside the West Bank and revoke the permit regime.** In the petition, which relies on the provisions of international law relating to belligerent occupation, including the Fourth Geneva Convention, the Hague Convention and the Rome Statute, HaMoked argues that the construction of the wall inside the occupied territory contravenes the principles

of international law and that the permit regime effectively institutes apartheid and subjects West Bank Palestinians to blatant inhuman, immoral and unlawful discrimination.

#### **24.11.2003**

**UN Secretary-General's report on the separation wall: the construction of the wall contravenes international law. Israel must stop building the wall and dismantle the segments already erected inside the OPT.**

#### **28.12.2003**

**ACRI petitions the HCJ to instruct the military to keep the separation wall crossings open 24 hours a day, seven days a week.** ACRI asserts that the intermittent opening of the gates infringes on the fundamental rights of tens of thousands of Palestinians, making their lives intolerable.

#### **2004 and onwards**

**HaMoked and others file about 150 individual HCJ petitions against the route of the separation wall.** The petitioners request the Court instruct Israel to dismantle segments of the wall which violate the residents' rights and expropriate dozens of dunums of Palestinian farmland in order to expand settlements, unrelated to any security need.

#### **21.01.2004**

**ACRI petitions the HCJ to instruct the military to revoke the permit regime.** ACRI asserts that the military closure of the area infringes on Palestinians' basic rights, particularly the rights to freedom of movement, dignified existence and family life.

**30.06.2004**

**HCJ voids the separation wall route in the Beit Sourik area (“the Jerusalem envelope”).** The HCJ rules that under the test of proportionality, the harm to the local residents outweighs the security benefit gained from constructing the wall. However, the Court holds that the reason for constructing the wall is security related rather than political. In light of the ruling, other petitions are granted on the grounds that the route of the wall disproportionately infringes on the rights of the Palestinian residents. Israel is compelled to dismantle parts of the wall and rebuild them on an alternative route which is less injurious to the residents.

**09.07.2004**

**The International Court of Justice (ICJ) in the Hague rules that the construction of the wall inside the OPT and its associated regime contravene international law.** The ICJ rules that Israel must dismantle the wall and compensate the Palestinians injured by its construction; and that the UN General Assembly and the Security Council should consider further action to put an end to the illegal situation.

**20.02.2005**

**Israel announces its decision to proceed with the construction of the separation wall on a revised route.** The government determines that the wall will be constructed “with diligence, to minimize to the utmost ability its impact on the daily life of Palestinians, following the criteria prescribed in the HCJ decisions.”

**30.06.2005**

**Israel admits for the first time: the wall’s route was intended to expand the area of settlements.** During the proceeding in



HaMoked's petition against the segment of the separation wall near the villages of 'Azzun and An Nabi Elyas, the State admits that the route was chosen according to the expansion plan of the Zufin settlement. This contradicts the State's earlier position, given in the framework of the initial petition on this matter, that the route was dictated only by operational security considerations. The Court grants HaMoked's petition, orders to dismantle a segment of the wall, and condemns the State's conduct.

### **15.09.2005**

**The HCJ rules that the route of the wall in the Qalqiliya area (the Alfei Menashe enclave) disproportionately infringes on the rights of the Palestinian residents and orders Israel to dismantle the wall in the area and plan a route which is less injurious to the Palestinian residents.** However, the Court also rules that according to international law, the military commander is authorized to erect the wall inside the occupied territory for the purpose of protecting settlers.

### **06.04.2006**

**HaMoked's amended HCJ petition: Israel's permit regime in the "seam zone" is a legal apartheid.** HaMoked amends the petition following the HCJ ruling of September 15, 2005 that the military commander is authorized to erect the wall inside the occupied territory in order to protect settlers. HaMoked argues that this regime is a legal apartheid that establishes a distinction between two classes of residents: Israelis and tourists, who freely travel in, around and out of the zone; and local Palestinians, for whom the area is closed and who must obtain various permits in order to enter, leave, work and sleep in the area. This regime contravenes international humanitarian and

human rights law and its implementation may be considered a war crime.

#### **04.09.2007**

**The HCJ invalidates the route of the segment west of Bil'in.** President Beinisch: "This route can only be explained by the desire to include the eastern part of 'East Mattityahu' west of the fence."

#### **30.07.2009**

**As part of the response to HaMoked's petition, the military releases the "Standing Orders for the Seam Zone," which solidify and specify the rules pertaining to entry, presence and residency in the area.** The Standing Orders, which span dozens of pages and are published in Hebrew only, detail the criteria and protocols to which Palestinians who wish to obtain "seam zone" permits are subjected.

#### **17.03.2010**

**HaMoked petitions the HCJ regarding Palestinians' entry to the "seam zone" to cultivate their lands, asserting Israel unreasonably and disproportionately violates the farmers' rights to freedom of movement, property and freedom of occupation.** After the construction of the separation wall, thousands of Palestinian farmers ended up with their homes on one side of the wall and their farmland on the other. Many who filed applications for "seam zone" entry permits in order to farm their land were refused or received no answer.

#### **September 2010**

**The military issues the second version of the Standing Orders.** It contains no material changes in the military's orders in the "seam zone."

### **05.04.2011**

**The HCJ legitimizes the permit regime, rejects the general petitions and rules that the closure of the “seam zone” and the permit regime applied therein meet the tests of legality.** The petitions are dismissed despite the Court’s ruling that “the application of the permit regime, with the requirement to receive permits in order to enter and exit the area, constitutes a clear restriction of the freedom of movement of West Bank residents in this area, and restricts their access to their homes, lands, and businesses located inside the seam zone.”

However, the Court does rule that the military must relax the rules pertaining to relocating to the “seam zone” and visiting its residents. The justices also instruct the State to establish a clear and effective timetable for processing permit applications with the objective of maintaining a reasonably normal life.

### **November 2011**

**Following the recommendations of the HCJ, the military releases the third version of the Standing Orders.** The main changes relate to timetables for processing applications for “seam zone” permits and the appeal process. In practice, the timetables have largely remained as they were, at least with respect to issuance of permits to Palestinians who are not “seam zone permanent residents,” but who wish to cross the wall as part of their daily activities.

### **30.05.2012**

**HaMoked files the 75th petition in a series of petitions on behalf of farmers whose land remained beyond the wall. In about 90% of the petitions that were concluded, the petitioners received the permits.**

## **Currently – August 2012**

**Following dozens of individual petitions against the route of the separation wall, parts of it have been dismantled and rebuilt closer to the Green Line. However, the separation wall, still built mostly inside the West Bank, on land that was expropriated from Palestinians, continues to severely violate the basic rights of residents of the West Bank. Israel continues to implement a draconian permit regime in the “seam zone,” a regime that violates Palestinians’ human rights and constitutes a breach of Israel’s obligation under international law to allow residents of the OPT to lead normal lives ■**