At the Supreme Court **HCJ 6896/18**
Sitting as the High Court of Justice

In the matter of:

1. **_____ Ta'meh, ID No. _____**
   Palestinian resident of the Occupied Palestinian Territories
2. **_____ Ta'meh, ID No. _____**
   Palestinian resident of the Occupied Palestinian Territories
3. **_____ 'Abadi, ID No. _____**
   Palestinian resident of the Occupied Palestinian Territories
4. **HaMoked - Center for the Defence of the Individual founded by Dr. Lotte Salzberger**
   Registered Association No. 580163517

   Represented by counsel Adv. Tehila Meir (Lic. No. 71836) and/or Daniel Shenhar (Lic. No. 41065) and/or Benjamin Agsteribbe (Lic. No. 58088) and/or Nadia Daqqa (Lic. No. 66713) and/or Aaron Miles Kurman (Lic. No. 78484) and/or Maisa Abu Saleh-Abu Akar (Lic. No. 52763).
   of HaMoked - Center for the Defence of the Individual founded by Dr. Lotte Salzberger
   4 Abu Obeida ST., Jerusalem, 97200
   Tel: 02-6283555; Fax: 02-6276317

The Petitioners

- v –

1. **Military Commander in the West Bank**
2. **Head of the Civil Administration**
3. **Legal Advisor for the West Bank**

Represented by counsel from the State Attorney's Office, Ministry of Justice
of 29 Salah a-Din Marah, Jerusalem
Tel: 02-6466590, Fax: 02-6467011

The Respondents

Amended Petition

In accordance with the decision of the Honorable Court dated February 9, 2020, an amended petition is hereby filed, wherein the Petitioners move the Honorable Court to issue an Order Nisi which is directed at the Respondents and instructs them to appear and show cause:

A. Why they should not issue Petitioner 2 a fully valid permit to enter the seam zone with no restrictions on the number of entries into the seam zone, for the purpose of regular access to land belonging to his mother, Petitioner 1;

B. Why they should not issue Petitioner 3 a seam zone farmer permit, a fully valid permit to enter the seam zone with no restrictions on the number of entries into the seam zone, for the purpose of regular access to his land;

C. Why they should not cease to refuse issuing individuals permits to access land in the seam zone with full validity on the grounds that the size of the land they seek to cultivate is less than 330 square meters;

D. Why should the new directives instituted by the Respondents subjecting seam zone entry permits for farming purposes to a set quota of entries not be revoked;

E. Alternatively, why should the decision to close the seam zone to Palestinians should not be revoked as it is disproportionate.

Factual background

The permit regime

1. In 2002, the Government of Israel decided to build the separation fence. A number of petitions were filed regarding both the legality of building the fence as a whole and the legality of specific parts of its route. In the judgments given in these petitions, the court ruled that the legality of the route of the fence rests on whether it strikes a proper balance between the security considerations underlying it and protection for the human rights of the protected persons (see, e.g., HCJ 2056/04 **Beit Sourik Village Council v. Government of Israel**, IsrSC, 58(5) 807 (2004); HCJ 7957/04 **Mara'abeh v. Prime Minister of Israel**, IsrSC 60(2) 477 (2005); HCJ 5488/04 **A-Ram Local Council v. Government of Israel**, (reported in Nevo, December 13, 2006); and HCJ 8414/05 **Yasin v. Government of Israel**, IsrSC 62(2) 822 (2007)).

2. As is known, the route chosen for the separation fence resulted in significant sections of it being built inside the West Bank. Once these sections were built, the Respondents declared the areas that remained between the fence and the Green Line closed zones, referred to jointly as the "seam zone." Entry into this area and presence therein are prohibited without a special permit for this purpose. The access ban does not apply to residents of the State of Israel or tourists, who may enter the seam zone as they please.

3. Shortly after the first closure declaration regarding the seam zone, which was signed on October 2, 2003, petitions were filed against the permit regime. These actions challenged the legality of closing the seam zone to Palestinians and requiring them to obtain special permits in order to enter it. The ruling in these petitions was delayed for more than seven years, until judgments were delivered in the petitions against the separation fence, which were pending before the court at the time. As a result, the judgment in HCJ 9961/03 **HaMoked - Center for the Defence of the Individual founded by Dr. Lotte Salzberger v. Government of Israel** (reported in Nevo, April 5, 2011, hereinafter: the **permit regime judgment**) was penned while taking the separation fence for granted and looked at the harm the permit regime causes Palestinian residents distinctly from the harm caused by the fence itself.

4. The permit regime judgment examined the harm caused by the seam zone's closure to Palestinians given the arrangements the Respondents had put in place for issuance of permits to enter the seam zone to Palestinians, including the Seam Zone Standing Orders and Procedure for Addressing Exploitation of Seam Zone Permits, and given the Respondents'

contention that these arrangements would be applied permissively. The Honorable Court ruled that the harm caused to Palestinian residents was proportionate, barring several specific issues that were disqualified.

5. It was further clarified in the judgment that the findings on the proportionality of the harm the permit regime metes on Palestinians do not preclude the possibility that "in specific cases, severe injury is caused to the rights to property and livelihood of Palestinian residents who cannot adequately farm their lands or who encounter other access difficulties, and the Respondents, on their part do not take adequate measures to minimize said injury," and that, "these cases may be reviewed within the framework of specific petitions, in which the court will be able to examine the overall arrangements that apply to a certain area, and the specific balancing which takes place therein between the rights of the residents and other interests, as was previously done in similar petitions" (paragraph 34 of the permit regime judgment).

6. And indeed, after the permit regime judgment was delivered on the assumption that Palestinians with ties to the seam zone would not be denied access to it, more and more cases in which the Respondents deny Palestinians access to their lands and workplaces in the seam zone emerged.

7. According to information received from the Respondents, from 2014 to 2018, **the rate of refusals to issue seam zone permits to landowners spiked from 24% to 72%**, meaning the manner in which the permit regime is applied currently is distinctly different from that described in the arguments made before the court when it considered the legality of the permit regime.

   A copy of Respondents' letter dated November 26, 2018, is attached hereto and marked **P/1**.

8. In September 2019, a new and more injurious version of the Seam Zone Standing Orders was issued. According to this newer version, seam zone permits for agricultural purposes would be valid for a small number of entries to the seam zone each year only, even when the permit holder is the landowner.

The parties

9. **Petitioner 1** owns land in the seam zone. **Petitioner 2** is the son of Petitioner 1. Petitioners 1 and 2 applied for a seam zone permit for Petitioner 2, so that he may access his mother's land and cultivate it. The permit he received allows him no more than 120 entries to the seam zone over a period of three years.

10. **Petitioner 3** owns land in the seam zone. He applied for a permit for agricultural purposes in order to have regular access to his land. He also received a permit that allows him access to his land 120 times over three years. At all other times, he is effectively banned from accessing his own land, located in the West Bank rather than Israel, without any security reason.

11. **Petitioner 4** is a non-profit association working to promote the human rights of Palestinians in the Occupied Territories.

12. **Respondent 1 is the** Military Commander of the West Bank on behalf of the State of Israel.

13. **Respondent 2** is the Head of the Civil Administration, an agency established for the purpose of governing civilian affairs in the West Bank, "for the benefit of the population and in order to provide and operate public services, given the need for proper governance and public order (Section 2 of the Order regarding the Establishment of the Civil Administration (Judea and Samaria) (No. 947) 1981).

14. **Respondent 3** is the legal advisor for Respondents 1 and 2. He and the officers serving under him routinely tend to the legal aspects of the actions of Respondents 1 and 2, including with respect to all matters related to issuing permits to enter the seam zone.

The facts in brief and exhaustion of remedies

Petitioners 1-2

15. Petitioner 1, born in 1948, is a married mother of eight, including Petitioner 2. She lives in Qaffin.

    A copy of Petitioner 1's ID card is attached hereto and marked **P/2**.

16. Petitioner 2, born in 1981, is a married father of five, also living in Qaffin.

    A copy of Petitioner 2's ID card is attached hereto and marked **P/3**.

17. Petitioner 1 is part owner of a 17.5 dunam plot located on Qaffin land. The land was passed down from Petitioner 1's late grandfather, Mr. _____ Yusef, to her father, Mr. _____ 'Amarneh, and from Mr. 'Amarneh to Petitioner 1. The plot has olive trees. In the past, family members also cultivated wheat and barley, but due to difficulties obtaining seam zone permits, which prevented continuous cultivation, they abandoned these crops several years after the separation fence was built.

    A copy of the property tax bill for the land is attached hereto and marked **P/4**;

    A copy of the inheritance writs of the father and grandfather of Petitioner 1 is attached hereto and marked **P/5**.

18. Petitioner 1 is a 71-year-old elderly woman who suffers from high blood pressure and a heart condition. She is unable to engage in physical exertion and cannot cultivate her land. She is, however, naturally interested in exercising her right to access her land.

19. Petitioner 1 needs the assistance of her son, Petitioner 2, in order to cultivate her land. Additionally, it is extremely important for Petitioner 1 for her son to maintain his connection to land that has been passed down the generations in her family and that he has free access to the family land.

20. In October 2017, an application made by Petitioner 2 to access his mother's land was denied. After an inquiry with the head of the DCO, Petitioner 2 was given a permit for "personal needs," valid for three months only. The reason cited for this was that the plot owned by Petitioner 1 was smaller than 330 square meters and "presumed unnecessary for agricultural use."

    A copy of the transcript of the inquiry with the head of the DCO is attached hereto and marked **P/6**;

    A copy of the letter from the Civil Administration Civilian Liaison Officer dated January 29, 2018, is attached hereto and marked **P/7**.

21. This decision was appealed, but to no avail, hence the filing of the original petition.

22. The original petition challenged the Respondents' refusal to grant Petitioner 2 a fully valid permit as set forth in their protocols, as well as the Respondents' policy on the basis of which the decision was made. As part of this policy, the Respondents divide the area of the plots by the number of owners, and whenever the result of this division exercise is smaller than 330, the application is denied. As detailed below, farmland in the West Bank is, by law, passed down from a parent to their children, meaning every plot has several joint owners who are related. The Respondents' policy, whereby agricultural permits are not issued to anyone whose plot size turns out to be smaller than 330 once the total area has been divided by the number of owners means hardly anyone is eligible for this permit, and as such, cannot receive permits for their workers, their children and even themselves.

23. On May 15, 2019, the Honorable Court held a hearing in the original petition during which it voiced criticism of the Respondents' policy regarding "minuscule plots," the harm this policy causes to the right to property and the departure this represented from the Respondents' undertakings before the Honorable Court regarding the preservation of ties to

the seam zone. The Honorable Court instructed the Respondents to submit an updating notice with respect to unanswered questions as well as some staff work they had mentioned, which had not yet been completed.

24. On September 18, 2019, the Respondents announced their new protocols. The new protocols did not revoke the directives concerning the plot size required to warrant a permit for agricultural purposes, nor did it cancel the paradoxical definition of the term "plot size," whereby the term does not refer to the size of the plot but rather to the answer to the mathematical exercise of dividing the plot by the number of owners.

25. However, while the previous version of the Respondents' protocols provided an option (albeit theoretically and in a negligible fraction of the cases) to refute the presumption they established that there is no need to cultivate such land and obtain a permit for agricultural purposes, the new protocols provided that even if the presumption is successfully refuted, the applicant would not receive a permit for agricultural purposes, but "May file an application for a permit for 'personal needs' (Section 14.a.7.b of the section entitled 'Permits for Agricultural Needs). This is the type of permit previously given to individuals who were **unable** to refute the presumption their land did not need cultivation. As stated, the original petition was filed against such a decision.

26. Moreover, the new protocols institute an injurious provision on an unprecedented scale which effectively puts a blanket ban on entry to the seam zone by all farmers - hired laborers, relatives of individuals who own land in the seam zone, and **even landowners themselves** - throughout almost the entire year, other than an extremely small quota of entries the Respondents deigned to give them. These quotas were put in place by military officials, and they are classified by the type of crop grown in the plots (with no correlation to the amount of work their cultivation actually requires or practiced). The quotas apply to individuals whose permit applications **had been approved**. In other words, people whose proprietary ties to the land are undisputed, as is the fact that the land is located in the seam zone and the fact that there is no security preclusion. These are the people who, according to jurisprudence, are patently entitled to continuous access to land in the seam zone, and there is no relevant consideration that could justify denying them such access.

27. According to the Agriculture Staff Officer Table appearing in the Respondents' new procedures and instituting these quotas, landowners who grow olive trees may access their lands **forty times a year only - less than a month and a half per year.** As recalled, the preliminary response to the original petition, stated olive trees are grown in more than 95% of the land in the seam zone. In other words, according to the Respondents' own factual arguments, the quotas they put in place result in no more than forty entries for nearly all Palestinians with proprietary ties to land in the area. All of this, as Israeli citizens and residents, individuals covered by the Israeli Law of Return and tourists have free access to these lands, which they do not own and which are not located in their country (Paragraph 3 of the General Directives section of the Respondents' protocols).

28. In keeping with the aforesaid, Petitioner 2 was given a permit valid for three years, from January 19, 2020, to January 17, 2023, which stated it was "limited to 120 entries," or forty entries per year only. For the sake of comparison, the decision in respect of which the petition was filed stated Petitioner 2 would receive a permit for "personal needs" for three months, more than twice the number of entries permitted by his current permit. The decision cited the reason as "**presumed unnecessary for agricultural use**" (P/7).

29. The permit given to Petitioner 2 under the Respondents' new protocols limits his access to his mother's land to forty entries per year over three years, and in so doing, it more closely resembles a denial than a permit. In fact, this permit **prevents** Petitioner 2 from entering the seam zone much more than it allows it. According to this permit, Petitioner 2 would be barred from entering the seam zone and working his mother's land through most of the year, despite the fact that his mother's ties to the land, the land's location within the seam zone or the absence of a security threat emanating from Petitioner 2 are undisputed.

30. A permit that allows forty entries a year to family lands precludes maintaining a connection to the land that remains behind the separation fence and prevents successful farming. Such a permit is expected to cut the family off from its land, located on the "Israeli" side of the fence, and transform the once fruitful plot where olive trees, wheat and barley were grown to provide for the family, into a barren patch. This decision gravely impinges on the fundamental rights of Petitioners 1 and 2 and clearly defies the jurisprudence of the Honorable Court.

Petitioner 3

31. Petitioner 3, born in 1966, is a married father of six. He resides in Turah al-Gharbiya, Jenin District. He works as a painter and has a work permit for the settlement of Rehan.

    A copy of Petitioner 3's ID card is attached hereto and marked **P/8**.

32. Petitioner 3 is part owner of a plot in Barta'ah lands in the seam zone. He inherited the plot from his father, Mr. _____ 'Abadi, who passed away in 2004. The father inherited the plot from the grandfather of Petitioner 3, Mr. _____ 'Abadi, who passed away in 1967. The plot had been, until recently, registered in the name of Petitioner 3's late grandfather. In 2017, the Petitioner and his six siblings were registered as plot owners in the land registry, after they had difficulties obtaining permits to access it and were told they had to register the land in their names in order to receive the permits. The size of the plot belonging to Petitioner 3 is 42.135 dunams. The separation fence cuts through the plot, leaving 3.5 dunam s outside the seam zone and the rest of the plot inside it. The plot has young olive trees and tobacco. In the past, the family grew wheat, grass, watermelon, tomatoes and other seasonal crops in the plot, but they have been forced to abandon these as not enough family members received permits, and the permits received were not continuous. Currently, not a single member of Petitioner 3's family has a permit to access the plot.

    A copy of Petitioner 3's land registry extract is attached hereto and marked **P/9**.

33. Petitioner 3 has received multiple farmer permits over the years for the purpose of accessing his land. He began receiving permits about four years after the separation fence was built. He had a "permanent farmer in the seam zone" permit valid from May 27, 2009 to May 27, 2011 and from July 7, 2013 to July 7, 2015, followed by "farmer" permits, also valid for two years. The last of these was valid from August 17, 2017 to August 16, 2019.

34. In 2013, Petitioner 3 was initially given a permit valid for four months only, "in keeping with the recommendation of security officials," but after several letters were sent addressing the permit's validity period and the absence of a capsule reasoning for the decision, Petitioner 3 was summoned to the DCO and given a two-year permit with no further action.

    Copies of some of the permits given to Petitioner 3 over the years are attached hereto and marked **P/10**.

35. Petitioner 3 filed an application to renew his most recent farmer permit in August 2018, but erroneously enclosed a land registry extract for another plot which is not located in the seam zone. On September 21, 2019, he refiled the application with his local council, enclosing the correct land registry extract. The Palestinian coordination office states that the application was transferred to the [Israeli] DCO on September 22, 2019.

36. According to the Respondents' procedures, applications for agricultural permits must be answered within four weeks of receipt by the DCO (Paragraph 5.a. of the section entitled "Application Processing Times").

37. Thus, once four weeks had passed, and no response was received for the application submitted by Petitioner 3, HaMoked: Center for the Defence of the Individual filed an appeal in the matter on October 28, 2019.

    A copy of the appeal dated October 28, 2019, is attached hereto and marked **P/11**.

38. On November 11, Jenin DCO Seam Zone Officer, Suleiman, contacted a staff member of HaMoked: Center for the Defence of the Individual and informed her that according to the military's calculations, the size of Petitioner 3's plot is 181 square meters and for this reason, he would be issued a permit that would allow him entry into the seam zone forty times only.

39. HaMoked: Center for the Defence of the Individual conveyed this information to Petitioner 3, who replied he refused to accept a permit that limits the number of times he may access his own land. Petitioner 3 stated he had no intention of collecting the permit as such action would signify acceptance of the quota set for access to his land. Petitioner 3 stated such a permit is humiliating and stifling and that the disrespect it displays for him and his rights went beyond the pale.

40. Petitioner 3 explained that the value the land holds for him goes beyond the yield of the olive trees, or any other crop, but runs much deeper than that. Many of his childhood memories, and the memories of his late parents, are tied to the family land, and they always resurface when he comes to the land. To demonstrate, Petitioner 3 related that there is a rock in the plot on which his father made coffee and tea, and that he too, makes coffee and tea on that same rock to recall these moments with his family. The Respondents' decision that Petitioner 3 may access his land only forty times each year, because they determined that is what is needed for tending to olive trees severely impinges on his rights and emotional wellbeing and contradicts his world view. Ever since Petitioner 3 received news he would be issued a "punch card permit," he has been worried and ill at ease.

41. On November 24, 2019, HaMoked: Center for the Defence of the Individual appealed the decision to issue Petitioner 3 a "punch card permit." The appeal stated the following:

> As a person with proprietary ties to land that has been trapped in the seam zone, Mr. 'Abadi insists on his right to access his land whenever he so chooses. In the past, the Civil Administration provided him with permits that allowed access to his land for a period of two years with no limits on the number of times he may access the land. Mr. 'Abadi demands the stiffer restrictions enunciated in the "Procedures and Guidelines on Entry into the Seam Zone, 2019," which restricts the number of days he may access his land be rescinded. Mr. 'Abadi demands to be able to access his land whenever he wishes, as he had done since the separation fence was built and in keeping with the principles outlined in jurisprudence.

A copy of the appeal dated November 24, 2019, is attached hereto and marked **P/12**.

42. A reminder was sent on December 3, 2019.

A copy of the reminder is attached hereto and marked **P/13**.

43. A letter from the Civil Administration Public Liaison Officer dated November 5, 2019, was received on December 5, 2019, stating the following:

> The resident has been issued a two-year permit for 80 entries. Following your communication, a further review was undertaken, and a decision was made to amend the permit. The number of entries will be updated accordingly, as well as the validity period - to three years.

A copy of the Civil Administration Public Liaison Officer's letter of December 5, 2019, is attached hereto and marked **P/14**.

44. HaMoked: Center for the Defence of the Individual wrote to the Civil Administration Public Liaison Officer on December 24, 2019, stating the following:

> In your letter of December 5, 2019, you stated that Mr. _____ 'Abadi had been issued a three-year seam zone permit that restricts access to the seam zone and his land to several occurrences.

> We remind you that prior to this notice, we filed an appeal against your decision to furnish Mr. 'Abadi with the aforesaid permit. The aforesaid appeal was filed on November 24, 2019.
>
> The appeal is still pending, and it is our expectation that Mr. 'Abadi be called for a hearing before the appeals committee in keeping with procedure.

A copy of the appeal dated December 24, 2019, is attached hereto and marked **P/15**.

45. A letter from the Civil Administration Public Liaison Officer stating Petitioner 3 would be "called to appear before the appeals committee" was received on January 8, 2020.

    A copy of the letter of January 8, 2020, is attached hereto and marked **P/16**.

46. Another letter from the Civil Administration Public Liaison Officer stating Petitioner 3 was called to a hearing before the appeals committee on January 22, 2020, was received on January 14, 2020.

    A copy of the appeal dated January 14, 2019, is attached hereto and marked **P/17**.

47. During the hearing before the appeals committee, the undersigned stated the following:

> The Appellant objects to the policy of issuing permits that limit farmers' access to land in the seam zone to a certain number of days. He believes this policy is wrongful, humiliating and injurious; that the erection of the separation fence within the West Bank has already inflicted enough harm on farmers; and that the requirement they seek permits to access their own lands is wrongful and injurious. The current policy, whereby the military decides how many days a landowner should access his land goes beyond the pale, and the Appellant refuses to accept this injury. The Appellant wishes to add that his connection to the land is not limited to the type of crop grown in it, and that he has strong emotional ties to the land and the childhood memories associated with it. Every time the Appellant goes to the land, he recalls his father and mother. He recalls the rock on which his father would make tea and coffee, and he preserves this tradition, repeating the custom, making coffee and tea on the same rock, thus preserving his connection to the past and to his family. Reducing his connection to the land to the type of crop grown on it is extremely injurious to him and fails to address his profound connection to his land. We have filed a further appeal against this decision wherein we argued the Appellant has proprietary ties to land that has been trapped inside the seam zone and that he has a right to access this land whenever he pleases. This is the position arising from the consistent jurisprudence of the Supreme Court with respect to the seam zone. We ask that you understand the Appellant and allow him to access his land as he pleases.

48. To this, the chair of the appeals committee responded as follows:

> I would first like to thank the resident and his counsel for their openness and for expressing their sentiments. Entry to the seam zone proceeds as per usual and without changes or other thoughts, with each applicant meeting the criteria that permits access to their destination. The same holds true in this case, the resident may access his land as he had done with his elders. Access to the seam zone is conducted in keeping with procedures that are familiar to all. Question: Is the total size of the land, as cited, fully owned by the resident? What type of agriculture takes place in the land? Is the resident able to produce land ownership papers?

The undersigned responded as follows:

> Naturally, otherwise he would not have been given a permit. The plot... is fully owned by the Appellant, but ownership is shared by him and the other heirs.

He changed the plot's title from his predecessor to himself. The plot has young olive trees and tobacco. The entire plot is shared by all heirs. He does not possess a specific portion of it.

The committee chair made the following statement:

I would like to receive documents attesting to the Resident's share in the land (size of plot), within the 42 dunams. At my request, the Appellant and his counsel do not possess proper documents to attest to the size of the land owned by the resident.

The undersigned responded as follows:

The Appellant submitted a land registry extract citing the size of the plot, and his farmer permit application was approved based on this record. I presented this document to the committee chair.

At that point, counsel for the Legal Advisor stated:

Is the Appellant aware that the requested permit is a permit for personal needs since the need is agricultural, whereas the need presented seems to be a personal need to serve coffee in the plot, among other things. My question is whether forty entries per year for a period of three years are insufficient for cultivating the Appellant's tobacco and olive trees. Would it not suffice? Given that you mention the judgments issued by the court over the years which speak of seam zone permits being given according to need, we would appreciate a citation where the court states that permits will be issued freely, without limitation, to anyone who wishes to receive them without being required to cite a specific need.

The undersigned responded as follows:

We did not set the types and names of the permits. The various versions of the Seam Zone Standing Orders issued over the years stipulated that an agricultural permit is a permit given to a person with proprietary ties to land in the seam zone and that its purpose is to preserve ties to the land. While it is true that the new procedures do not contain a permit the purpose of which is preserving ties to the land, but the permit a landowner.... should apply for is an agricultural permit, and we believe that according to case law, he should receive a permit that preserves his ties to his land. With respect to cultivation, a permit providing for forty entries per year is, in fact, not enough for growing olive trees and tobacco. Tobacco, in particular, requires continuous daily cultivation throughout most of the year. Growing olive trees also requires more than forty workdays per year, as revealed, inter alia, by the fact that until the procedures were amended, olive harvest permits were issued for three months longer than the permits issued to landowners and their laborers. This also arises from a 2017 report by the agriculture staff officer, on which the previous standing orders were based. With regards to the requested citations from jurisprudence, I turn your attention to HCJ 9961/03, Paragraphs 33 and 34, HCJ 2056/04, Para. 82, HCJ 4825/04, Para. 16, for example. The entire jurisprudence on this issue has held that the separation fence had severely injured the residents, that the state must reduce the injury to the residents to the necessary minimum and allow farmers, to the extent possible, regular, free access to their lands in the seam zone. HCJ 9961/03, the judgment that upheld the permit regime, relied on an undertaking made by the state to allow continued farming by landowners, their relatives and their workers as it was prior to the erection of the fence and preserve the proprietary ties to the land, subject to security needs that compel denying same. Therefore, we believe that the appellant's appeal is justified according to jurisprudence.

Counsel for the Legal Advisor stated as follows:

> That very same judgment held that permits will be given according to need. In addition, other than farming permits, there are permits for personal needs. Olive harvest permits issued in the past did not indicate the number of entries because there was no distinction back then. This does not mean that the validity requires daily entry into the seam zone for the purpose of farming, but rather, gives the resident a choice as to when to enter, how often and in what way. I will just ask a final question, how many entries on top of the quota allocated for the resident does he need in order to access his plot and cultivate it. How many entries are you asking for? That is my question.

The undersigned responded as follows:

> The appellant is asking for 365 entries a year. He wants to access the land freely.

A copy of the transcript of the hearing before the appeals committee is attached hereto and marked **P/18**.

49. The decision of the appeals committee chair was received by HaMoked: Center for the Defence of the Individual on January 30, 2020.

> The introduction of "punch card permits" with a finite number of entries commensurate with the specific **farming need**, given the type of crop and the size of the plot - allows, on the one hand, granting permits for the purpose of tending to the farming need, while impeding abuse of such permits for the purpose of unlawful work in Israel, as the appellant had done in the past, since it does not permit daily entry. At the same time, where there is no sustainable farming need, including cases involving minuscule plots regarding which the presumption that no cultivation takes place has not been rebutted - a "personal needs" permits can be requested. Such a permit would allow access to the land according to the specific need presented by the resident.
>
> For this purpose, the agriculture staff officer prepared a table listing all crops in the seam zone, with a determination, following a professional review, of the number of days per dunam required by the plot owner to cultivate the land. So, for instance, the crop type olive, grown on a one-dunam plot, requires <u>40 entries</u> every year to cultivate the plot. The table further lists the number of workdays required to cultivate the plot. So, as an example, an applicant who has proprietary ties to four dunams of olive crops is eligible for a seam zone entry permit for 160 entries per year in order to work on his plot, and so on. As such, the argument made by counsel for the appellant that punch card permits preclude daily entry into the seam zone is erroneous as, depending on the type of crop and size of plot, permits with unlimited days are available. The larger the plot, the larger the number of entries, all the way to a permit that has no limits at all, allowing daily entry into the seam zone.
>
> I further note that the argument made by counsel for the appellant, to the effect that the punch card permit does not allow the petitioner [sic] to access his land whenever he chooses is erroneous, since it does not limit the appellant's access to specific or consecutive days, but only the number of entries.
>
> We note that most of the arguments presented to the committee by counsel for the appellant were generalized rather than specific to the appellant's need to access his land for farming purposes. When asked for the number of requested additional days, counsel responded the appellant wished access for 365 days consecutively. This response shows no attempt to explain or enter into dialogue (just so!). This is a demand I cannot accept, certainly given the fact that this appellant has not yet exhausted the number of designated entries to

his land and has not explained to the committee why the farmer permit issued to him was insufficient.

I shall further address the argument made by counsel for the appellant to the effect that forty entries per year are not enough for the appellant, citing the fact that three-month permits had been granted for the olive harvest in the past as proof. I shall first note that the permit's validity period was meant both to aid the Palestinian residents' fabric of life and reduce the need to file multiple, frequent applications as well as to reduce DCO workloads and increase their efficiency. The fact that in the past permits did not limit the number of entries into the seam zone or distinguish between agricultural plots and minuscule plots does not mean that a resident who owned a minuscule plot had need to access the seam zone daily, as evinced by the widespread, dangerous abuse of "seam zone" farmer permits for the purpose of illegally entering Israel.

If the appellant had a **genuine grievance** that the number of entries he has been allocated for his plot, the relative size of which is only 181 square meters, was insufficient for the agricultural cultivation he requires, he should have supported same with an agricultural expert opinion, or at the very least, pointed to a genuine, relevant agricultural need. We stress that preparing coffee and tea in the seam zone on a daily basis does not amount to a substantive "agricultural need."

I conclude by remarking on the unfortunate conduct of the appellant and his counsel, who appear to be attempting to have their bread buttered on both sides. This was evidenced by the evasive, oppositional responses to the questions posed by the committee during the hearing and the inexplicable insistence on receiving a "farmer permit" in circumstances even the petitioner [sic] does not consider indicative of any agricultural need.

Given all the above, and since no concrete agricultural need has been proven despite the fact that the plot in question is of minuscule size, there is no choice but to reject the appeal with respect to the annual number of entries allocated for the appellant. At the same time, I have seen fit to instruct the extension of the permit to three years, given the instructions contained in the seam zone orders which set forth, inter alia, that seam zone farmer permits will be issued for a period of up to three years (emphases in original, T.M.).

A copy of the decision of the chair of the appeals committee in the matter of Petitioner 3 is attached hereto and marked **P/19**.

50. It appears there is no need to elaborate on the gulf between this decision and the Respondents' assertion that they acknowledge landowners' rights to continue working their lands as they did prior to the construction of the separation fence, to the extent possible.

The preliminary response to the original petition

51. In the preliminary response to the original petition, the Respondents claimed that prior to the introduction of the provision that allows them to reject agricultural permit applications on the grounds that the plot in question is minuscule and requires no cultivation, "there was no compatibility between the permit issued by the Civil Administration and the permit applicant's needs, and DCOs had difficulty establishing clear criteria for application review" (Para. 18).

52. The Respondents contend that the provisions they put in place, whereby applicants in whose case the division of a plot by the number of heirs yields a result smaller than 330 would not receive a permit, "were designed to establish clear criteria to assist the work of the DCO when reviewing applications for farmer permits for 'minuscule plots,' thus reconciling the permit issued to the actual need contained in the application" (Para. 51). The Respondents claimed that, "the standing orders from 2014 did not provide DCO officials with sufficient

tools to review agricultural permit applications. The Respondents sought to rectify this in 2017 by introducing clearer instructions regarding the definition of plot size, the definition of the term agricultural need and a rebuttable premise regarding the plot size presumed to require cultivation (Para. 56).

53. However, this argument is implausible. Previous procedures had no clarity issues, nor did they lack criteria for application review. These procedures simply lacked a provision that allowed rejecting an agricultural permit application over the ratio of owners to plot size. In other words, until recently, the Respondents believed **they were precluded** from rejecting applications on these grounds. The preliminary response does not clarify what prompted the Respondents to change their position on this issue. It is always possible to introduce new grounds for refusal and then claim that there were previously no clear criteria for rejecting applications on these grounds. In truth, however, without these grounds for refusal, **there is no option** to reject applications on this basis. Claiming that there had been no clear criteria for reviewing applications is simply a way to misrepresent the fact that this rejection reason did not exist in the past.

54. In their preliminary response, the Respondents argued, briefly, that there was no "real" need to work the lands in the seam zone. The Respondents argued that more than 95% of the land in the seam zone is used for growing olives, and presented a string of factual arguments relating to olive tree yields to support their contention that cultivation of land used for olive tree growing is not financially feasible unless the plot is very large.

55. The Petitioners submitted their response to the preliminary response on May 12, 2019, stating the preliminary response indicates the Respondents' new policy, which severely and extensively violates the fundamental rights of local residents, is not based on security considerations, but rather, on an agricultural analysis.

56. In fact, the analysis used by the Respondents when they instituted the new protocols does not support their policy. According to paragraph 22 of the preliminary response, the amendment to the Seam Zone Standing Orders, on which the petition focuses, was made in 2017 based on the report of the agriculture staff officer from 2016. After the petition was filed, in January 2019, a new report was received, authored by the same person and stating there is no real need to cultivate plots with olive trees unless they are large. The original report from 2016 states the following:

> From a general viewpoint, **agriculture currently forms an important aspect of the Palestinian economy and a main source of income for many families** in the absence of other sources of income. Therefore, **it is essential to allow proper agricultural activity in the seam zone**.
>
> Continued proper agricultural activity would be expressed in **allowing proper entry by farmers to cultivate their lands.**
>
> Based on the above, and in the professional opinion of the undersigned, it is possible to estimate that the minimum plot size in respect to which there is a sustainable agricultural need that requires the provision of a farmer permit in the seam zone **is no less than** 300 square meters (a third of a dunam).
>
> Needless to say, this is only a professional opinion, and the plot size noted in paragraph 6 does not preclude landowners with smaller plots from using their ties to the land for other needs as requested by such landowners (emphases added, T.M.).

57. In other words, **first,** the professional report considered by the Respondents highlighted the importance of allowing regular access to land in the seam zone for local farming needs and for the Palestinian economy in general. **Second**, the agriculture staff officer was not the official who determined only plots larger than a certain size required cultivation, but rather, that was the presumption he was asked to use for his report. The question the agriculture staff officer was asked to answer was **what** the minimal size was. The opinion also did not

stipulate that there was no need to cultivate plots smaller than 300 square meters, but that **it was not possible to stipulate a minimum size larger than** 330 square meters (it appears, from the context, that there was a language error and that the intention was a size no larger than 330 square meters rather than no smaller). **Third**, the professional opinion referred to the actual size of the plots rather than a hypothetical division of the land by the number of owners.

58. In either case, the Respondents' supposition that they may prevent persons from accessing their lands but for short periods of time **because they grow olive trees rather than a more profitable crop** is inconceivable. It is clear from the preliminary response that the Respondents are not giving the appropriate weight to the landowners' proprietary rights. The latter is a radical understatement. The Respondents attach no importance to the preservation of local Palestinian residents' ties to their lands or to local agrarian traditions followed over the years, and, therefore, believe they may cut off the local population from its lands because they see no value in the crops locals grow.

59. The importance of the crops grown by protected persons is not part of the expertise of the military commander's employees, and the military commander has no authority to harm protected persons on the grounds that their crops are worthless. Those who have ties to the land know what value the land and the crops grown on it has for them, and the Respondents have no right to intervene. Even if their value is low, **the landowners' property rights remain fully intact.**

60. It is noted the population living in that area, in Area C, is not wealthy. Many locals have no permanent jobs or job security and rely on several sources of income for their living, including odd jobs and farming in family plots. The Respondents have no knowledge of the value farming holds for local residents - either financially or culturally – and attach no value to preserving their ties to the land. Preventing locals from accessing their lands because of the purported low value of their crops is a true mockery.

61. With respect to the extent of the harm the Respondents' policy causes protected residents, experience gained by HaMoked: Center for the Defence of the Individual in cases concerning seam zone permits indicates that almost all farmlands in the seam zone fall into the category considered by the Respondents as requiring no cultivation. Almost all of the lands are jointly owned by heirs who are family members, and as a result, fit the Respondents' definition of "minuscule plot," and olive trees are grown on almost all these lands, as stated in the preliminary response.

62. Many landowners (like Petitioners 1-3) did grow other crops in the past, but access difficulties arising from the permit regime have led many of them to abandon crops that require more continuous, intensive cultivation, since permits are often non-continuous and the work and resources put into these crops are lost. Now, the Respondents argue that more than 95% of the lands in the seam zone have nothing but olive trees, and there is not much value in these trees' yield. These figures simply serve to illustrate the harm the separation fence has done to local agriculture and prove the permit regime is neither an effective nor reasonable tool for preserving the fabric of life in the area.

63. At any rate, as is known, olive growing is a central and most important element of traditional Palestinian farming, so much so that it has come to symbolize local farming culture. Cultivation by several members of a family is also a deeply rooted and highly valued feature of Palestinian culture.

64. Since nearly all plots in the seam zone are considered "minuscule" and used to grow olives, the Respondents' policy will result in eliminating regular cultivation of plots in the seam zone, and locals will lose their ties to the land. As detailed in the preliminary response, Respondent's approvals for seam zone agricultural permits have dropped sharply, from 75% in 2014 to 26% in 2018, with further decreases to come. Of the 5,184 agricultural permit applications rejected in 2018, only 61 cited "ISA preclusion" as the reason, while 4,304 were rejected on the grounds of "failing to meet policy criteria."

65. The argument made by the Respondents in the response to the original petition, that short term "personal needs" permits may be obtained is unsatisfactory. The Respondents failed to demonstrate how their refusal to grant agricultural permits to landowners and their families falls in line with jurisprudence and international law. In addition, the experience gained by HaMoked: Center for the Defence of the Individual indicates that renewing seam zone permits takes months, often more than a year. These are the durations when the landowners are represented, and the large majority of them are not. Short term permits preclude consistent cultivation or reasonable access to the land.

66. As stated in the original petition, the permit regime judgment established that the Respondents must "preserve, to the maximum extent possible, the fabric of life which preceded the declaration, subject to security needs which require same" (paragraph 33) and that "prima facie, it indeed seems that the Respondents acknowledge the residents' right to continue to farm their lands and seek to enable those who have a connection to lands in the seam zone to continue to farm them, by enabling family members and other workers to assist them with their work." (paragraph 34).

67. The Respondents claim that since the 2014 version of the Seam Zone Standing Orders was published, they have come to realize there is no "real agricultural need" to issue permits to individuals who own land they consider to be of small size, or to issue such permits to their family members or employees. As stated, the lands in question make up almost all of the land in the seam zone.

68. Nevertheless, the size of the land, the number of owners or the manner of cultivation have not changed in any pertinent way since the permit regime judgment was handed down. Lands were cultivated by family members jointly at that time as well, and they were passed down the generations in keeping with the law. In other words, it was known at that time too that if the lands were divided by the number of owners, their size would be "minuscule" and that the number of owners would increase over time. Olive growing is also nothing new in the West Bank. This is a traditional crop grown in the area long before the separation fence was built. While it is true that farming in the area has deteriorated, the reason for this is the bureaucratic and substantive difficulties created by the permit regime, which preclude consistent, daily cultivation.

69. And so, there has been no relevant change since the permit regime judgment, except the Respondents' policy. When the legality of the permit regime was under scrutiny, the Respondents claimed they would preserve the fabric of life in the seam zone. However, after the permit regime was upheld by this Honorable Court, the Respondents changed course and declared a new policy that runs counter to their undertakings and to the judgment. The implementation of this new policy will cut off local residents' ties to their lands within the seam zone and leave these lands abandoned and uncultivated on the "Israeli" side of the separation fence. This process has already begun, as demonstrated below.

The hearing in the original petition

70. As stated, during the hearing of the original petition, on May 15, 2019, the Honorable Court voiced criticism of the Respondents' policy with respect to denying agricultural permit applications on the grounds that the plots in question were "minuscule."

71. For instance, Honorable Justice Barak-Erez remarked as follows:

> I speak for myself when I say that this petition raises a significant issue. The undertakings made by the State with regards to what takes place in the seam zone were clear. This is especially true given the fact that the plots in question are not small once the calculation is undertaken.

72. Counsel for the Respondents said: "Ultimately, when we look at the jurisprudence on the permit regime, the conclusion of it all is needs." To that, Honorable Justice Barak-Erez replied: "It is not just needs, but property rights as well."

73. Counsel for the Respondents claimed landowners could apply for personal needs permits in order to preserve their ties to the land. Honorable Justice Kara replied: "There is a difference between a permit given for personal needs, for three months, and a farmer permit, which is valid for two years."

74. Counsel for the Respondents said: "Individuals who have proprietary ties to lands in the seam zone and do not require daily cultivation are granted a 'personal needs' permit." We do not ignore the fact that this permit is valid for only three months, nor do we make light of it. We have written this… expressly. The Respondents' policy on this matter is being examined... The notion of the punch card permit is to give a permit for several years... In other words, this addresses the question posed by Honorable Justice Kara, that three months is a short duration. Nor are we trying to evade the fact that this creates a burden both for the people themselves and the DCOs."

75. To this, Honorable Justice Barak-Erez replied: "In other words, you admit that this is problematic," following up with: "Aside from this, and this already indicates there is something to this, can Madam Counsel explain why a plot of 17.5 dunams is considered minuscule, simply because of custom whereby ownership is shared by multiple individuals?"

76. Later in the hearing, Honorable Justice Barak-Erez remarked: "Looking to the future, there is a plot of 17.5 dunams here. In theory, anyone who applies, two years will go by, and according to this system, anyone who applies will come up against the same barrier? Perhaps some people will be prioritized over others?"

77. Counsel for the Respondents said, "It is inaccurate to say that no permits have ever been given... When an applicant proves they have a need to cultivate in a locality, they are given a permit. It is a rebuttable presumption." To this, Honorable Justice Barak-Erez replied: "Then why make the presumption at all? Do you apply it to large plots as well? If you say you do for fragments of plots, it would be different, but this is not the case."

78. The following decision was given at the conclusion of the hearing:

> During the hearing, many questions were raised, including with respect to the solution for plots that are not small but have numerous right holders, all with attention to the principles applicable to the preservation of ties to these plots, as laid out in the jurisprudence of this Court.
>
> On the recommendation of the Court, and in the specific circumstances of the case, subject to an undertaking on the Petitioner's part to comply with whatever terms prescribed for him, the Respondents agree to grant the Petitioner a "personal needs permit" pending submission of their updating notice, no later than August 15, 2019.

The Respondents' new protocols and the decisions issued based upon them

79. On September 18, 2019, the Respondents announced their new protocols. The new protocols did not revoke the directives concerning the plot size required to warrant a permit for agricultural purposes, nor did it cancel the paradoxical definition of the term "plot size," whereby the term does not refer to the size of the plot but rather to the answer to the mathematical exercise of dividing the plot by the number of owners

80. However, while the previous version of the Respondents' protocols provided an option (albeit theoretically and in a negligible fraction of the cases) to refute the presumption they established that there is no need to cultivate such land and obtain a permit for agricultural purposes, the new protocols provided that even if the presumption is successfully rebutted, the applicant would not receive a permit for agricultural purposes, but "May file an application for a permit for 'personal needs' (Section 14.a.7.b of the section entitled 'Permits for Agricultural Needs'). This is the type of permit previously given to individuals who were **unable** to rebut the presumption their land did not need cultivation. As stated, the original petition was filed against such a decision.

81. Beyond that, the new protocols institute a provision that is injurious to a degree never seen before, practically imposing a blanket ban on the entry of all farmers - hired help, landowners' family members and landowners themselves - to land in the seam zone almost year-round, with the exception of a negligible quota of entries the Respondents deigned to grant. These quotas were put in place by military officials, and they are classified by the type of crop grown in the plots (though with no correlation to the amount of work their cultivation actually requires or practiced). The quotas apply to individuals whose permit applications **had been approved**. In other words, people whose proprietary ties to the land are undisputed, as is the fact that the land is located in the seam zone and the fact that there is no security preclusion. These are the people who, according to jurisprudence, are patently entitled to continuous access to land in the seam zone, and there is no relevant consideration that could justify denying them such access.

82. According to the Agriculture Staff Officer Table appearing in the Respondents' new procedures and instituting these quotas, landowners who grow olive trees may access their lands **forty times a year only - less than a month and a half per year.** As noted, the preliminary response to the original petition, stated olive trees are grown in more than 95% of the land in the seam zone. In other words, according to the Respondents' own factual arguments, the quotas they put in place result in no more than forty entries for nearly all Palestinians with proprietary ties to land in the area. All of this, as Israeli citizens and residents, individuals covered by the Israeli Law of Return and tourists have free access to these lands, which they do not own and which are not located in their country (Paragraph 3 of the General Directives section of the Respondents' protocols).

83. Indeed, in all files handled by HaMoked: Center for the Defence of the Individual in which farmers were given punch card permits, the permits were limited to 120 entries only during the permit's validity period, which is usually three years (the same holds true for farmers who noted in their new applications that they have other crops in addition to olives, such as other fruit trees or tobacco, which necessitate daily, intensive cultivation for seven months of the year).

84. The same is true in the matter at hand. Petitioner 2 was given a permit valid for three years beginning January 19, 2020 and ending January 17, 2023. The permit bore the inscription "restricted to 120 entries), in other words, 40 entries per year only. Similar decisions were made in the matter of Petitioner 3 and in the matters of many other landowners who are represented by HaMoked: Center for the Defence of the Individual. To compare, the decision regarding which the original petition was filed stated Petitioner 2 would receive a permit for "personal needs" valid for three months - more than twice the number of entries available under his current permit, as the land was "**presumed unnecessary for agricultural use**" (attached to the original petition as Exhibit P/10).

85. Moreover, olive harvest permits, thus far issued to individuals who normally **do not** meet the criteria for agricultural permits, were also usually valid for three months. In other words, permits thus far issued for work in olive groves, **on top of** permits issued for landowners, their employees and their family members, allowed more access to lands than is now available to the landowners themselves.

86. As stated, the report of the agriculture staff officer dated September 28, 2016, which was added to the preliminary response as Exhibit R/3, together with a report by the same person, prepared after the petition was filed, stated:

> **Farming in the seam zone is considered traditional, family-based farming**, with most agricultural products designed for domestic use. The absence of mechanization and technology necessitates intensive labor agriculture. Under production: Small plots, dryland farming and relatively homogenous crop types. Shortage of infrastructure to support agrarian production. Shortage of marketing infrastructure and logistics. The seam zone (west of the fence) has about 58,000 dunams of farmland (according to Palestinian Authority figures) with continuous agrarian activity... From a general viewpoint, **agriculture**

> **currently forms an important aspect of the Palestinian economy and a main source of income for many families in the absence of other sources of income. Therefore, it is essential to allow proper agricultural activity in the seam zone. Continued proper agricultural activity would be expressed in allowing proper entry by farmers to cultivate their lands.** (first and last emphases added, T.M.).

87. Respondents' new policy completely contradicts these statements made by the agriculture staff officer as well. The only explanation for the discrepancy between the two (like the discrepancy between the two opinions released by the same agriculture staff officer, appended as R/3) is that Respondents' policy has nothing to do with agricultural needs and the position that purports to relate to agriculture was developed as a justification for it.

88. At any rate, there is no doubt that the new procedures put in place by the Respondents, which keep farmers away from their land for more than ten and a half months in a year make it impossible for them to continue their way of life as it was before the separation fence was built and preclude successful, sustainable farming. These procedures severely disrupt locals' connections to their land and their way of life, and they are expected to eradicate farming in the area and disconnect the lands on the "Israeli" side of the separation fence from their Palestinian owners. All this is being inflicted upon individuals who pose no security threat even according to the Respondents, otherwise, their permit applications would have been rejected.

89. The Respondents' new procedures, which yield these outcomes, are light years away from the impressions drawn by this Honorable Court that, "The Respondents acknowledge the residents' right to continue to farm their lands and seek to enable those who have ties to lands in the seam zone to continue to farm them, by enabling family members and other workers to assist them with their work" (paragraph 34 of the permit regime judgment), which was the basis for the ruling upholding the permit regime.

90. The Honorable Court has recently held a hearing in the matter of a farmer whose permit application was rejected, partly on the grounds of minuscule plot. Long after the petition was filed, the Respondents asked to instruct him to submit a new application under their new protocols. The Court ordered the decision rejecting the petitioner's application revoked and instructed he receive the permit for which he had applied, which is valid for a year, rather than a punch card permit (the petitioner was required to file a new application under the new procedures, but the judgment clarified that the decision made in this new application would not affect the permit he receives under his previous application). During the hearing of the petition, Justice Vogelman told Respondents' counsel: "Madam will not draw us in. Madam, in all fence cases, we remember everything, and madam will tell the Respondents" (HCJ 6411/18 **Yasin v. Military Commander of the West Bank**). It appears, therefore, that the Honorable Court believes the Petitioners' policy contradicts their undertakings before the Court, which were given to enable a ruling by this Honorable Court regarding the legality of the route chosen for the separation fence.

    The hearing transcripts are attached hereto and marked **P/20**.

91. Quite aside from the fact that punch card permits fail to address farming needs, they reflect an absolute lack of recognition of the landowners' property rights. The Respondents deny farmers regular access to their lands because the Respondents believe they have no real need of it. This approach cannot be accepted. The Respondents' policy reflects a concept whereby the farmers have no right to access their lands and can do so only thanks to the State's generosity. According to Respondents' new procedures, farmers are denied access by default, and anything else is a localized exception for just a few days a year because that, in their view, is all that is "needed."

92. This approach is wrong and entirely unacceptable. Permit applicants are not asking the state for anything. All they ask is that their access **to lands they own and are not located in Israel** not be denied. The Respondents' pretension to quantify the number of days landowners need in order to cultivate their lands and their refusal to give them access to their lands outside

these negligible quotas evince how little regard they have for these persons' right to property. Landowners should and are entitled to determine what their needs are, not the occupying forces of the occupying power, which, according to jurisprudence, must uphold the rights of the protected population, see that its needs are met and attend to security matters only. This is particularly true in the case of a person requesting to use their own property. **The onus is on the Respondents to justify their decision to deny a person access to their own land, and any such justification must be compelling and relevant to the powers vested in them. The landowners need not justify their wish to use their property.**

93. Restricting farmers' access to their lands to a quota of several days a year is a severe violation of the right to property of a great many people, inflicted in a sweeping manner and without any justification. This is a blatant and extreme case of lack of proportionality. No other population group would have been the subject of a decision that violates their right to property so severely, sweepingly, arbitrarily and frivolously, and without any compensation for the victims.

94. The Respondents are aware that their new procedures are incompatible with recognition of the landowners' right to property. This is clearly evidenced in the fact that when the procedures changed, the definition of the term "farmer permit" was changed from "a permit issued for a resident of the Judea and Samaria Area who has proprietary ties to farmland in the seam zone and designed to maintain ties to this land" (Paragraph 2 of the section entitled 'Permits for Agricultural Needs' in the 2017 standing orders) to "a permit designed to permit farming according to the farming need derived from plot size and crop type, while maintaining ties to this land" (Paragraph 2 of the new standing orders).

95. Another matter that is completely disregarded in the Respondents' procedures is the deep connection locals have to their lands. Farmland in the West Bank is passed down the generations by law. The connection a person has to their family's lands spans their entire life - from birth to death. Children visit family lands with their parents and siblings from a very young age. They take walks in the land with their families, eat, drink and farm together. Their connection to their family's lands is deeply rooted and intertwined with their connection to their families and childhood memories. This practice, cultivation by several members of a family, is an emotional and cultural value the local population holds dear. It is part of the foundation of their family ties and gives them a profound sense of belonging to their ancestral line and the place where they grew up. The Respondents' disruption of this tradition, on the allegation that there is no farming need, is completely out of place and extremely harmful to the communities and their traditions

96. In the matter at hand, Petitioner 1 attaches a great deal of importance to preserving her children's connection to the family land and the tradition of cultivating the land as a family, regardless of how much work is needed to grow olive trees. The decision to issue her son, Petitioner 2, a punch card permit, reflects a lack of recognition for these values, which are imperative for Petitioner 1 and many others in her predicament.

97. Petitioner 3 has also suffered a great deal of harm as a result of the decision to limit his access to his land for a set number of days determined by the Respondents, primarily the lack of recognition of his proprietary rights to his land and his deep connection to it. During a hearing in the matter of Petitioner 3 before the Respondents' appeals committee, the undersigned attempted to explain to the members that the connection Petitioner 3 has to the land is not confined to the yield of the olive trees grown in it. This connection is interwoven with his childhood memories, the memories of his deceased parents, his family's traditions, which he takes care to preserve and his connection to his past.

98. None of this affected the decision made in the matter of Petitioner 3 and to add insult to injury, the chair of the Respondents' appeals committee reprimanded the Petitioner and his counsel for these remarks, describing them in his decision as "evasive and oppositional," and as an "inexplicable insistence on receiving an 'agricultural permit' in circumstances even the petitioner [sic] does not consider indicative of any agricultural need."

99. The committee addressed the example given by the undersigned that Petitioner 3 remembers the rock on which his father would make coffee and tea and repeats this custom by making coffee and tea on the same rock to remember his father. Its decision states: "If the appellant had a genuine grievance that the number of entries he has been allocated for his plot, the relative size of which is only 181 square meters, was insufficient for the agricultural cultivation he requires, he should have supported same with an agricultural expert opinion, or at the very least, pointed to a genuine, relevant agricultural need. We stress that preparing coffee and tea in the seam zone on a daily basis does not amount to a substantive 'agricultural need.'"

100. Thus, the Respondents ascribe no weight to preserving locals' ties to their lands or the emotional and cultural meaning of cutting them off from lands passed down the generations within their families. The Respondents' new procedures cement this approach and apply it in a wholesale manner to all individuals with ties to lands in the seam zone with disastrous effects.

101. In another case in which HaMoked: Center for the Defence of the Individual provided assistance, the applicant also received a punch card permit with 40 entries per year to his land. The applicant in question grows olive, orange, lemon and fig trees and was planning to grow tobacco as well. **In the time in which he did not have a permit, an Israeli citizen took over his land, uprooted and took down about fifty of his olive trees and replaced them with his own fruit trees. The individual in question uses the plot as if it were his own.** The applicant was initially denied a permit on security grounds, which were later lifted, following which the appeals committee chair gave the decision to issue a punch card permit as part of the proceedings in a pending petition submitted in the matter (AP 18534-09-19 **Yasin v. Military Commander of the West Bank**). The chair found none of the aforesaid to justify allowing the applicant more than 120 entries over three years. According to the Respondents, even if a person was **dispossessed of their land in actual fact** because they were denied access to it as it lies beyond the separation fence, there is still no justification for "a departure from the rules governing the issuance of a farmer permit according to substantive farming needs. Inasmuch as such an invasion has indeed taken place, the appellant may file the appropriate complaint with the Israel Police as accepted" (no less!).

    A copy of the chair of the Respondents' Appeals Committee decision is attached hereto and marked **P/21**.

102. In conclusion, there is no doubt that the implementation of Respondents' new procedures is expected to cause massive loss of landowners' ties to lands beyond the separation fence and irreparable damage to their property, cultural tradition and freedom of movement within their country.

103. As for the Respondents' contention that people use seam zone permits in order to work in Israel - their own procedures make provisions for this occurrence, allowing the Respondents to confiscate and revoke permits in such circumstances and even withhold permits from eligible individuals for a year after a decision is made in their case (Section E, "Procedure for Cases of Seam Zone Permit Abuse). Punch card permits are not given to individuals suspected of illegal entry into Israel, but to people who meet all the conditions for a permit. HaMoked: Center for the Defence of the Individual represents individuals suspected by the Respondents of illegal entry into Israel (often despite the fact that they were not found inside Israel, but because of their clothing, the fact they had bills or pens in their pockets, their return from the seam zone was not recorded by the soldiers at the gate, etc.). These individuals are forced to file petitions against the confiscation of their permits or the Respondents' refusal to renew them, not against having received punch card permits.

104. Additionally, the claim that seam zone permits are used to enter Israel for work was made in the State's response to the permit regime petitions. At the time, the Respondents used this claim to justify the increase in the rate of refusals to seam zone permit applications filed by landowners' **second-degree relatives**:

> We argue that the security establishment had embarked on meticulous examinations prior to granting permits to enter the seam zone and that there is an increase in the number of denied applications. Specifically, we argue that the number of refusals of applications filed by second-degree relatives is particularly high due to a shift toward decreasing the circle of landowners' relatives who obtain a permit. It shall be noted that the security establishment did initially implement a very liberal policy regarding issuance of permits for the seam zone. However, there is a real concern that this policy would be used for the purpose of illegally entering Israel such that residents of the area who receive a permit to enter the seam zone would abuse these permits in order to enter Israel without a permit and not for the purpose of cultivating lands in the seam zone. As a result of the aforesaid concern, which is not at all insignificant, the Respondents now wish to ensure that applicants do indeed have substantive ties to farmlands in the seam zone, which would diminish the inherent concern that obtaining the permit was meant for the purpose of unauthorized entry to Israel.
>
> As a rule, in the context of granting permits to enter the seam zone, first degree relatives of landowners are given preference over other relatives or employees who are not relatives. However, in practice, permits are also granted to employees who are not relatives on the basis of an individual examination of the agricultural needs.

A copy of the relevant pages from the response in the permit regime petitions is attached hereto and marked **P/22**.

105. The fact that the Respondents are now using the same argument to justify denying access by the landowners themselves for the better part of the year demonstrates how far their recognition of their duty to allow life to continue in the seam zone has deteriorated.

The legal argument

106. The Petitioners will argue herein that the policy respecting issuance of seam zone entry permits that limit access by landowners, their family members and their workers to lands located in the West Bank to several days a year contravenes the jurisprudence of this Honorable Court; severely and disproportionately violates the rights to property, freedom of occupation and freedom of movement; and fails to ascribe appropriate weight to the cultural, emotional and familial meaning of the ongoing personal ties to lands passed down the generations. The same applies to the rules established by the Respondents concerning the division of plots by the number of heirs, and the determination that where the result is smaller than 330, the individual concerned will not be entitled to a permit for farming needs.

107. Hence, the decisions made in the matter of Petitioners 2 and 3 are wrongful and should be revoked. The Respondent should issue to Petitioners 2 and 3 permits enabling unfettered, regular access to the lands in the absence of a security preclusion.

The Normative Background

108. This petition concerns the Respondents' actions in occupied territory, wherein Respondents are empowered to protect the administration's legitimate security interests and the rights of the territory's residents:

> Israel holds the Area under belligerent occupation. As part of the military administration, the military commander applies powers deriving from both the rules of international law and principles of Israeli administrative law… The belligerent occupation in the Area is governed by the principal norms of customary international law enshrined in The Hague Convention respecting the Laws and Customs of War on Land of 1907 [25], while the humanitarian principles of the Geneva Convention relative to the Protection of Civilian

> Persons in Time of War, 1949 (hereinafter: the Geneva Convention) are applied by the state and the commander of the Area in practice (Iskan) [1], ibid., pages 793-794). **The Hague Convention empowers the commander of the Area to act in two major areas: the first – safeguarding the legitimate security interest of the administration holding the territory, and the second – securing the needs and rights of the local population in an area held under belligerent occupation**. The first is a military need. The second is a humanitarian-civilian need. The first focuses on concern for the safety of military forces and the maintenance of public order and safety and the rule of law in the Area. The second pertains to the responsibility to protect the safety and wellbeing of the local residents. **In protecting residents' wellbeing as aforesaid, the commander of the area is not only obligated to maintain order and safety but also to protect the residents' rights, particularly their constitutional human rights**. "Concern for human rights is at the center of the humanitarian considerations that the commander is obligated to consider" (HCJ 10356/02 **Haas v. Commander of IDF Forces in the West Bank** (hereinafter: Haas [4]), page 456). In performing his duties, the commander of the Area must uphold vital security interests on the one hand, and the rights of the civilian population on the other. A proper balance must be struck between these two main areas of responsibility (Y. Dinstein, "Legislative Power in the Held Territories" [23], page 509). In protecting the constitutional rights of the residents of the Area, the military commander is also beholden to the principles of Israeli administrative law, including fundamental principles concerning human rights (HCJ 7862/04 **Abu Daher v. Commander of IDF Forces in Judea and Samaria**, IsrSC 59 (5) 368, 375-376 (2005), hereinafter: **Abu Daher**, all emphases in the petition were added unless otherwise noted, T.M.).

109. The state of Israel decided to build a large part of the separation fence within the West Bank and to deny Palestinians access to the areas located between the separation fence and the Israeli border – the seam zone. Consequently, fundamental rights of protected persons have been and continue to be violated, particularly the rights of those who own land trapped in the seam zone. It is in this context that jurisprudence has provided that the Respondents must reduce the harm caused by the separation fence to landowners as much as possible:

> Having completed the examination of the proportionality of each order separately, it is appropriate that we lift our gaze and look out over the proportionality of the entire route of the part of the separation fence which is the subject of this petition. The length of the part of the separation fence to which these orders apply is approximately forty kilometers. It causes injury to the lives of 35,000 local inhabitants. 4000 dunams of their lands are taken up by the route of the fence itself, and thousands of olive trees growing along the route itself are uprooted. The fence separates the eight villages in which the local inhabitants live from more than 30,000 dunams of their lands. The great majority of these lands are cultivated, and they include tens of thousands of olive trees, fruit trees and other agricultural crops. The licensing regime which the military commander wishes to establish cannot prevent or substantially decrease the extent of the severe injury to the local farmers. Access to the lands depends upon the possibility of crossing the gates, which are very distant from each other and not always open. Security checks, which are likely to prevent the passage of vehicles and which will naturally cause long lines and many hours of waiting, will be performed at the gates. These do not go hand in hand with the farmer's ability to work his land. **There will inevitably be areas where the security fence will have to separate the local inhabitants from their lands. In these areas, the commander should allow passage which will reduce, to the extent possible, the injury to the farmers**. (HCJ 2056/04

> **Beit Sourik Village Council et al., v. The Government of Israel**, paragraph 82 (reported in Nevo, June 30, 2004)).*

And further:

> The conclusion there is no alternative, less injurious geographic route for the fence does not conclude, in and of itself, the examination of the second proportionality subtest. **In examining the proportionality of the injury inflicted by the fence, the geographic route, permit regime and access to lands located to its west are intertwined**. The Petitioners' groves and grazing fields were cut off by the separation fence. In this state of affairs, **the Respondents must institute reasonable crossing and access arrangements to Petitioners' lands, reducing the injury caused to them to the greatest extent possible**. (HCJ 4825/04 **'Alian v. The Prime Minister, paragraph 16** (reported in Nevo, March 16, 2006)).

And further:

> It is our view that the arrangements established concerning the issuance of permits to those who have a permanent or occasional interest, as detailed, also satisfy the second proportionality subtest. As indicated above, we agree that the injury inflicted on this group is severe. Individuals who have cultivated their lands in the seam zone, operated businesses there and established family and social relations, are forced at the present time, in order to preserve their way of life, to apply for an entry permit based on limited causes. The residents of the seam zone itself are also harmed by the regime that has been applied in it, since they are forced into a situation where their lives have become difficult and complex due to social and business isolation in their area of residence. **These injuries require the establishment of arrangements which preserve, to the maximum extent possible, the fabric of life which preceded the declaration, subject to imperative security needs**. It seems to us that, as a general rule, the arrangements that have been established satisfy this requirement. We shall address the arrangements concerning the different interest groups (permit regime judgment, paragraph 33).

110. As aforesaid, in the permit regime judgment, the Court held that the injury entailed in closing the seam zone to Palestinians was proportionate partly based on Respondents' argument that they would apply the permit regime in a manner that would preserve land cultivation as it was prior to the construction of the separation fence. The judgment specifically referred to the issue of land cultivation by family members and employees of the registered owners:

> In the circumstances of the matter at hand, it appears, on the face of it, that the Respondents do acknowledge the residents' right to continue farming their lands and that they seek to allow those who have a connection to lands in the seam zone to continue cultivating them, by providing an opportunity for family members and other workers to assist them with their work… It seems to us that this arrangement provides a reasonable solution, minimizing the violation of farmers' rights, and we presume, in said finding that the Respondents do indeed give real substance to their declarations concerning the importance of continuing to properly address the needs of the farmers in the Area. (paragraph 34)

111. It should be noted that the following statements were included in the State's response to the permit regime petitions:

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* English translation from Supreme Court website: https://supremedecisions.court.gov.il/Home/Download?path=EnglishVerdicts\04\560\020\A28&fileName=04020560_a28.txt&type=4, last accessed June 22, 2020.

In late June 2004, judgment was given in HCJ **2056/04 Beit Sourik Village Council et al., v. The Government of Israel**… In the judgment, Honorable President Barak discussed the difficulties created by the "permit regime" with respect to the Palestinian residents' "fabric of life" as follows:

> This state of affairs injures the farmers severely, as access to their lands (early in the morning, in the afternoon, and in the evening), will be subject to restrictions inherent to a permit system. Such a system will result in long lines for passage by the farmers themselves; it will make the passage of vehicles (which require their own permits and security check) difficult and will distance farmers from their lands.

Following the judgment in the Beit Surik case, existing procedures and guidelines regarding the regime of movement in the seam zone were re-examined and the Civil Administration's Seam Zone Standing Orders as well as the declaration and the orders issued pursuant thereto were amended, as detailed below…

(1) Extension of the maximum validity of "permanent seam zone resident certificates" and permits for farmers whose ties to lands in the seam zone had already been proven to two years. We note that in the past, these residents were issued short-term permits.

(2) Issuance of temporary renewable permits to farmers whose ties to lands in the zone have yet to be proven, valid for six months. It is noted that in the past no permits were issued for these residents.

(paragraphs 8-9)

The relevant page of the response is attached hereto and marked **P/23**.

112. In other words, at the time, the Respondents were of the opinion that they were obligated, under the judgment, to issue permits to farmers allowing them free and regular access to the lands, and that the issuance of permits allowing only sporadic and limited access to the lands was inadequate.

<u>The injurious implementation of the permit regime following dismissal of the petitions against it</u>

113. Unfortunately, after the petitions concerning the closure of the seam zone to Palestinians were denied, based on the assumption that the permit regime arrangements would be liberally implemented, the Respondents began practicing an increasingly restrictive policy with respect to granting entry permits into the seam zone.

114. Accordingly, for instance, HCJ 5078/11 **Abu Zer v. The Military Commander for the West Bank Area** (hereinafter: **Abu Zer**) concerned Respondents' refusal to issue a permit for the son of a landowner in the seam zone. In their response, the Respondents argued as follows:

> On November 23, 2010, the Petitioner submitted another application which was denied the next day… due to multiple seam zone entry permit holders for the purpose of cultivating the Petitioner's family land.
>
> It should be clarified that according to paragraph 29 of Part C of the Seam Zone Standing Orders, entry permits into the seam zone for agricultural purposes are issued according to the criteria presented in the Civil Administration Agriculture Staff Officer Table. The criteria include, inter alia, types of crops, plot size and number of workers employed, and determine standards for the number of workers required for a certain plot.

> As aforesaid, inquiries made by land officials at the DCO, Petitioner's father had inherited land the size of only 700 square meters. At the time the application was denied, five of Petitioner's family members had seam zone entry permits for the cultivation of this plot, whose area, as aforesaid, is only 700 square meters…
>
> It is noted that according to the Civil Administration Agriculture Staff Officer Table, one worker suffices to cultivate a six dunam olive plot or a 2.5 dunam wheat plot. It is further noted that according to the Petitioners, Petitioner's family grows olives and wheat in the relevant plot.

(paragraphs 6-7).

A copy of Respondents' response to HCJ 5078/11 is attached hereto and marked **P/24**.

115. On July 27, 2011, a hearing was held in the petition during which Respondents' counsel said:

> It is clearly easier to say security preclusion, but what can you do when there are administrative criteria, and there has been no file that has been examined so substantively, and I also don't think that a substantive examination is required here. I don't know if the method of calculation is correct.
>
> The Petitioner writes that his father is one of several heirs of four dunams, and we have already written that six dunams of olives require one person and I don't understand agriculture, and four dunams is a bit less than a football field, and **I don't know based on what professional criteria the arguments are made. The petition speaks of an heir, and no one is being disrespectful, and that is why I quoted from the judgment of the Honorable Panel, and it is clear that the family has a greater connection**. The Petitioner himself writes that his father is one of several heirs of four dunams, and it does not say that they cultivate. The application is from November 2010, and I suggest, and I do not wish it to be interpreted as if I am throwing the Petitioner, the application was denied eight-nine months ago, and there has been a harvest since, and so I refer him to file a new application. We argue that despite the absence of a preclusion, I found no flaw and the data are clear.

116. It should be explained that to HaMoked's best knowledge, at that time, and until the last two years, hardly any petitions were filed against denial of seam zone entry permit applications for reasons other than security, for the simple reason that such petitions were not required. At that time, a response to a petition concerning an entry permit into the seam zone that was not based on the position of security officials was an anomaly. Currently, it is a common occurrence, and security officials appear "liberal" compared to the Respondents, who are the main objectors to the issuance of seam zone entry permits. It is an absurd situation evincing the gap between the current implementation of the permit regime and its objective, as argued by the State, which is to enable the preservation of local Palestinian resident's ties to the lands which remained behind the separation fence to the maximum extent possible, subject to security needs.

117. In any event, Justice Vogelman made the following remarks with respect to Respondents' position in **Abu Zer**:

> It seems that the judgments should be less liberal with you and that you forget these are residents of the Area and that it is an area that we have accepted for practical reasons.
>
> In all fence cases, you explain to us that there is no problem. This is the seam line, and now we see reality, so stand behind what you have said. There is a family here, so either you say we will not grant passage in fence cases, but I am sensing a double message here, and I am not saying someone is doing this deliberately.

And President Beinisch added:

> Entering the Area should not be difficult.

A copy of the **Abu Zer** hearing transcripts is attached hereto and marked **P/25**.

118. In other words, in petitions concerning the route of the separation fence, the State argued it would allow life in the seam zone to continue as it was, and that, therefore, the harm caused to Palestinians by the route of the fence was proportionate. It was based on these arguments that the Court decided not to disqualify the route of the fence. However, thereafter, the State began treating the seam zone as Israeli territory and deny Palestinians entry, even when family members of landowners in the seam zone are concerned. Said policy undermines the basis of the decision upholding the rout of the fence.

119. In **Abu Zer** it was held by the court as follows:

> Respondents' response indicates that Petitioners' application has not been handled in a consistent manner. The notice indicates that there is no security preclusion for entry by Petitioner 1 into the agricultural plot, which was in the ownership and possession of his grandfather. It was also explained to us in the hearing that according to the criteria applied by the Respondent, entry permits are granted by dividing the area of the land by the number of family members in relation to cultivation needs according to the size of the land. The information provided to us did not clarify the basis for the decision to allow four members of Petitioner 1's family to enter the plot for its cultivation but deny entry to Petitioner 1. We are of the opinion that on its face, this decision cannot be upheld. **We refrain from granting an Order Nisi since we assume that following our recommendation in the hearing today, and in the spirit of our recommendations in the judgment in HCJ 9961/03 HaMoked, Center for the Defence of the Individual, founded by Dr. Lotte Salzberger v. the Government of Israel (unreported, April 5, 2011), the Respondents will reconsider their position and allow Petitioner 1 to enter the agricultural plot held by his family.**

120. However, not only have the Petitioners failed to soften their policy following the remarks made by the Court, but rather, they have dramatically aggravated it by updating the seam Zone Standing Orders in 2017, and even more so with the most recent update of September 2019.

121. In **Abu Zer**, the Court considered the decision to deny a seam zone entry permit application made by the son of a landowner, based on an argument pertaining to the number of permits per dunam a landowner is entitled to receive for the purpose of **employing agricultural workers** in an olive tree plot, according to the "Agriculture Staff Officer Table," and the number of permits which had actually been issued for the cultivation of the same plot. Honorable Justice Vogelman and Honorable President Beinisch made their remarks about said decision. Currently, the Respondents do not even recognize the right of the **landowner himself** to receive a permit that would give him regular access to his land. The Respondents argue, sweepingly and on the basis of arbitrary formulas they devised, that the plots do not need cultivation, or that they do not need cultivation for more than several days per year. On this basis, they also argue that the landowners themselves do not have a **right** to access their lands other than several times per year, much less should regular access be given to their relatives and workers.

122. Life in the area cannot resemble what it was before the construction of the separation fence, as not only are farmers subjected to the permit regime, but rather, said regime does not recognize their ownership of lands in the seam zone as sufficient cause for granting them permits for agricultural purposes, and the permits which are granted are limited to quotas of just several days per year.

<u>Refusal on the grounds that the plot is smaller than 330 square meters and does not need to be cultivated</u>

123. The Respondents established in their procedures a presumption **whereby plots smaller than 330 square meters do not need cultivation:**

> Examining applicant's share in the plot – farming employment permits will be issued for the farmer's relative share of the plot, according to documents. It should be emphasized that:
>
> … in general, there is no sustainable agricultural need where the size of the plot for which a permit is requested is minuscule, not exceeding 330 square meters. If entry is required to land of a minuscule size, the resident may apply for a permit for "personal needs." The application will be examined according to the provisions of Section C of this Part (14.a.7 of the "Permits for Agricultural Needs in the Seam Zone" Part).

124. The term "agricultural need" was defined by the Respondents as a "need to cultivate land for sustainable production of agricultural produce" (ibid., paragraph 12).

125. In other words, **the Respondents decided that landowners do not need the crops produced on their lands – their private property**, unless the size of the plot exceeds a random figure they selected - 330 square meters, despite the fact that said landowners are interested in the yield produced on their lands and request the Respondents grant them permits for their production.

126. If this is not enough, according to Respondents' procedures, the term "plot size" does not refer to the actual size of the plot as registered in the land records but rather defined as follows:

> **<u>Plot size</u>** – for the purpose of this part, the size of the plot shall be equal to the area of the entire plot multiplied by the applicant's relative share in the ownership in the plot (paragraph 6).

127. In other words, **a plot will be deemed smaller than 330 square meters** even when it is larger than 330 square meters, if, when its total area is divided by the number of owners the resulting theoretical parts are smaller than 330 square meters. It is clear that each part of the plot will be deemed smaller than 330 square meters, and hence, no permit to enter the plot will be issued, even if it is a very large plot. HaMoked: Center for the Defence of the Individual has filed numerous petitions on behalf of landowners whose applications were rejected for this reason, although their lands spread over dozens of dunams. The applications were denied since the land could theoretically be divided into parts that are smaller than 330 square meters.

128. Many agricultural lands in the West Bank are passed down to the children of the landowner upon the landowner's death by law, pursuant to Section 54 of the Ottoman Land Law, 1274 (April 21, 1858):

> Upon the death of the holder of Miri or Mukafa lands, their lands shall be passed down to their sons and daughters for no consideration, in equal parts, whether they are where the lands are located or in another country.

129. The land is not divided into specific parts when it is passed down, but rather, the heirs jointly own the entire land. Hence, many lands in the seam zone, if not all of them, have multiple owners who are family members. The definition of "plot size" assumes that the plot is actually divided between its owners, thus dramatically increasing the number of plots deemed "minuscule" and, as such, according to the Respondents, do not require cultivation, to the extent that almost all plots in the seam zone are deemed "minuscule." These are plots that

would have been cultivated if it were not for Respondents' above determinations and were recognized by the Respondents as much larger until their owners perished.

130. Naturally, in future, lands located in the seam zone will continue to be passed down from landowners to their children by law, thus constantly increasing the number of owners of each plot. The combination between the presumption that plots smaller than 330 square meters do not require cultivation, and the broad definition of the term "plot size," is expected to, sooner or later, result in **all lands in the seam zone being deemed lands not requiring cultivation**.

131. In fact, until the construction of the separation fence, a large proportion of the plots in the seam zone were intensively cultivated and yielded rich, diverse crops. Landowners and their family members were able to rely on farming their lands for their livelihoods. The construction of the separation fence between the villages and their lands severely disrupted agriculture in the area, as has been acknowledged in jurisprudence. In the past, many landowners grew, in addition to olive trees, different seasonal crops and vegetables, but stopped several years after the construction of the separation fence because the permit regime denied them and their family members regular, consistent access to their lands, and time and again the work and resources they invested in their crops were lost.

132. Accordingly, for instance, in the past, Petitioners 1 and 2 and their family members grew olive trees, wheat and barley, but stopped growing wheat and barley a few years after the separation fence was constructed due to the permit regime. Petitioner 3 grows young olive trees and tobacco. In the past, the plot was also used for growing wheat, freekeh, tomatoes, watermelons and other crops, but those were abandoned as the permit regime precluded continuous access to the land and did not allow for enough family members to receive permits.

133. In other words, it is not that the lands do not require cultivation, but rather, the Respondents preclude sustainable cultivation of the lands.

134. Currently, however, we face a policy that is even more restrictive than the policy that drove the farmers to stop growing crops requiring continuous access to the lands. Absurdly, the current policy makes it impossible to cultivate lands on an even smaller scale than thus far possible under the permit regime, using the argument that the crops grown on the lands do not require intensive farming. As noted above, farmers stopped growing crops requiring more intensive work **because the permit regime made it impossible to do so**.

135. Respondents' new policy extends the harm the permit regime causes the residents even further, preventing the continuation of what little local farming has survived after nearly seventeen years of being subjected to a military licensing regime rife with obstacles, errors and prolonged delays. Farmers who have not yet given up on submitting permit applications, filing appeals for failure to respond to their applications, filing petitions for failure to respond to their appeals or against rejections eventually received, and so on and so forth, will most certainly give up now, when the criteria for granting farming permits stipulate that farmers whose lands are located in the seam zone and are not barred access due to security reasons do not need permits allowing them access to their lands other than for extraordinary and specific purposes, and are not entitled to them.

136. It should be noted that the provisions concerning "minuscule plot" do not apply, according to their language, to landowners, but only to their workers. Paragraph 14.a.7 of the section entitled "Permits for Agricultural Purposes in the Seam Zone": provides that "**Farming employment permits** will be issued according to farmer's relative share in the land" (emphasis added, T.M.) and provide nothing with respect to farmer permits.

137. A farming employment permit is a permit given to Palestinians "hired by a farmer in his land, at the request of the farmer who is the applicant, for the cultivation of said lands" (paragraph 3 of the section entitled "Permits for Agricultural Purposes in the Seam Zone"). Farming employment permits have been granted for years according to quotas determined by the Respondents based on the size of the land and type of crops, since the purpose of said permits

is not to maintain the landowners' proprietary ties to their lands, but rather to cultivate the land.

138. For instance, Respondents' procedures, in their different versions throughout the years, provide as follows:

> Farming employment permit holder checks: The permit quota for the employer's plot will be checked per the criteria listed in the Agriculture Staff Officer Table (Annex 4): check for existing workers according to the "seam zone plot" list and the computer database, and select the first candidates on the list of farming employment permits submitted by the farmer (paragraph 13.a.9.c. of the section entitled "Permits for Agricultural Purposes" in the Seam Zone Standing Orders 2017).

139. However, immediately thereafter, the following is stated:

> The farmer and workers' quota –
>
> The farmer, who **has** the proprietary ties to the agricultural land, **shall not be included in the quota of workers**…
>
> the Head of the DCO may order permits be issued for **first degree relatives** (parent, spouse or child) in excess of the laborer quota as needed, according to his assessment of the circumstances, and for special reasons which shall be recorded (ibid., paragraph 13.a.10).

140. In other words, landowners should receive permits regardless of the number of permits required for the cultivation of the land, and in addition thereto.

141. These provisions were not deleted from the updated versions of Respondents' procedures, although it is almost impossible to receive permits for agricultural purposes, and it is difficult to think of a situation in which permits will now be given to landowners as well as to the workers they employ.

142. At any rate, the Respondents apply their directives regarding "plot size" to farmers permit applications as well, rather than just applications for farming employment permits, and do so as a matter of policy, rather than as a result of oversight.

Permits limited to quotas of a few entries per year

143. Respondents' new procedures provide as follows:

> **Annual number of entries** – will be determined according to agricultural need, the size of the land and the type of relevant crop, all according to the provisions of the procedures herein and the Agriculture Staff Officer Table attached as Annex 4 to these procedures (paragraph 5 of the section entitled "Permits for Agricultural Purposes in the Seam Zone").

And:

> **Entry quota** – review of number of entries required for the landowner and laborers with respect to each permit issued according to agricultural need. The review shall be made according to the Agriculture Staff Officer Table with attention to the size of the land, the type of crop and the number of workers in the plot. However, as far as the landowner is concerned, the entry quota shall not fall below 40 entries per year (ibid., paragraph 14.a.10).

144. Accordingly, the definition of "farmer permit" was changed from "permit issued to a resident of the Judea and Samaria area having proprietary ties to agricultural lands in the seam zone for the purpose of preserving the connection to said lands (paragraph 2 of the section entitled "Permits for Agricultural Purposes in the Seam Zone," Seam Zone Standing Orders, 2017);

to permit "issued to a resident of the Judea and Samaria area having proprietary ties to agricultural lands in the seam zone, for the purpose of cultivation of agricultural land according to the agricultural need deriving from the size of the land and type of crop, while preserving the connection to said lands. The number of permits and entries shall be determined according to the provisions of these procedures (paragraph 2 of the section entitled "Permits for Agricultural Purposes in the Seam Zone," in the new procedures).

145. As aforesaid, the previous versions of Respondents' procedures also included an "Agriculture Staff Officer Table," which referred to the size of the plot and the type of crop grown in it. However, until now, the table referred to the number of permits for laborers issued to landowners **over and above** the permits issued to the landowners themselves. Landowners were always entitled to receive permits regardless of their crops and without any quotas.

    The Agriculture Staff Officer Table, Seam Zone Standing Orders 2017, is attached hereto and marked **P/26**;

    The Agriculture Staff Officer Table, Seam Zone Standing Orders 2014, is attached hereto and marked **P/27**;

    The Agriculture Staff Officer Table, from Respondents' new procedures, is attached hereto and marked **P/28**.

146. According to the new Agriculture Staff Officer Table, henceforth, landowners will be given permits that do not allow them access to their lands more than several times per year. According to the procedures, the entry quotas for farmers, including landowners, will be determined by the type of crop (but without any regard to the amount of work that is actually required or used to grow it). Farmers growing olive trees may access their land only **forty times per year**. As aforesaid, according to the data presented by the Respondents in their preliminary response to the original petition, olive trees are grown in more than 95% of seam zone lands (according to HaMoked's experience, in practice, all permits issued by the Respondents are limited to quotas of forty entries per year, regardless of crop type).

147. According to the Agriculture Staff Officer Table, persons growing other crops, such as fruit trees and vegetables, will also only be able to access their lands for less than two months per year. Accordingly, for instance, a person growing almonds, grapes, figs or prunes may access their land fifty times per year; a person growing vegetables such as beans, pepper, okra, cabbage, cauliflower and tomatoes may also access their land only fifty times per year; a person growing wheat, barley, sesame, lentils or hummus may access their land only thirty times per year, and a person growing tobacco may access their land only fifty times per year.

148. There can be no doubt that these quotas were not put in place in order to allow farmers to cultivate their lands as needed, let alone as they wish, and they do not allow it in practice. These quotas are sure to eradicate whatever local agriculture is left.

149. However, more than anything else, the fact that the permits granted to landowners are limited to quotas of several days per year demonstrates that the Respondents give no weight to the landowners' fundamental rights, primarily their right to property, and that the State has forgotten its obligation to refrain from causing harm to protected persons and to preserve their fabric of life in the area, particularly after the State decided to build the separation fence deep within the occupied territory, rather than in its territory and on its border.

Lack of authority

150. As aforesaid, according to case law, the Respondents may act to ensure the legitimate security interests of the administration holding the area, and the needs and rights of residents of the occupied territories. The rules established by the Respondents, whereby landowners have no need of the crops produced in their lands and are, therefore, not entitled to receive permits given for the purpose of cultivation – thus preventing farmers from accessing the lands almost throughout the year, despite the fact that security officials do not object to their entry into the seam zone – do not protect security interests and most certainly do not protect the rights and needs of the protected persons. Hence, said rules were established without authority.

151. As a result of said rules, lands in the West Bank which have been cultivated for many years will no longer be cultivated; landowners will no longer be able to receive help from family members and workers to cultivate their lands, and if they are unable to cultivate the lands by themselves, like the petitioner, their lands will remain uncultivated; and the longstanding tradition of joint cultivation of lands by family members will be destroyed. These results are inhuman. They are in direct conflict with Respondents' obligations towards the protected population and completely contrary to the case law referred to above, as well as Respondents' obligations.

Violation of the right to property

152. The right to property is a fundamental right, enshrined in section 3 of Basic Law: Human Dignity and Liberty, which protects the rights of all human beings, as well as international covenants relevant to occupied territories:

> Basic human rights include the right to property. This right was recognized as a fundamental right which should be protected in the judgments of this Court (see, for instance, HCJ 390/79 **Dweikat v. Government of Israel**, IsrSC 34(1) 1, 14-15; HCJFH 4466/94 **Nuseibeh v. Minister of Finance**, IsrSC 49(4) 68, 83-85). It has also been expressly constitutionally enshrined in section 3 of Basic Law: Human Dignity and Liberty. This right is also recognized in international law, and with respect to the territories held under belligerent occupation, it is enshrined, inter alia, in The Hague Convention and the Fourth Geneva Convention. (HCJ 1890/03 **Bethlehem Municipality v. State of Israel Ministry of Defense**, paragraph 20 of the judgment of Honorable Justice (as was her title) Beinisch (February 3, 2005; hereinafter: **Bethlehem Municipality**)).

153. Violating the property rights of protected persons is prohibited unless meant to protect human lives and essential for this purpose:

> The obligation to protect security may, at times, **inevitably** involve violation of the right to private property… Protecting life and bodily integrity ranks at the top of the matters of which the commander of the area is in charge … the Area resident's right to property stands alongside this right, and it is also recognized as a protected fundamental constitutional right. It is recognized as such by virtue of Israeli constitutional law under section 3 of Basic Law: Human Dignity and Liberty. It is also protected from violation under international law. **Violating property rights, including the property rights of individuals, is prohibited under the laws of war within international law, unless it is essential for imperative military needs…**
>
> **The commander of the Area must exercise discretion in an extremely prudent and careful manner prior to issuing an order that violates the property rights of civilians in held territories**. This obligation is imposed by virtue of the laws of war under international law as well as by Israeli constitutional law, which defines the right to property as a fundamental constitutional right (**Abu Daher**, pages 376-378)

154. As specified above, the Respondents currently apply rules that virtually eliminate landowners' ability to access their lands located in the occupied territory, receive help cultivating the lands from their children or from laborers or foster their children's connection to the lands.

155. The Respondents established a presumption that plots smaller than 330 square meters do not require cultivation, by defining the term "plot size" such that plots larger than 330 square meters are also deemed smaller than 330 square meters. These rules produce a situation wherein almost every plot in the seam zone is considered as not requiring cultivation.

156. If this were not enough, the Respondents further determined that the farming permits that are issued would no longer allow regular and continuous access to the lands, and that henceforth, permit holders would be able to access their lands only about forty days per year, or **less than six weeks per year**. These rules severely violate landowners' property rights, and in practice, effectively expropriate their lands. None of this is required for security reasons, let alone "imperative military needs."

157. The violation of the protected persons' property rights caused by Respondents' new rules is certainly not inevitable, since these are new rules that have never been applied before. The rules concerning "plot size" were initially established in the Seam Zone Standing Orders of 2017 and the provisions concerning seam zone entry quotas were initially established in September 2019. The separation fence was built in 2003. Many individuals who currently do not receive permits or receive permits that limit access to their lands to forty entries per year, repeatedly received permits throughout the years without any quotas for entry into the seam zone. There has been no change in these individuals' connection to the lands, their needs or their rights since that time.

158. Nor is there any security justification for this blanket, grievous violation of the property rights of so many people who are subjected, against their will and best interests, to the rule of foreign military bodies that give no weight to their basic rights. When security officials oppose a person's entry into the seam zone, their application is denied whatever the case may be. Respondents' criteria are not intended to prevent dangerous people from entering the seam zone, but rather, to deny entry to people **who are not dangerous** and in whose matter there is no objection from security officials.

159. We recall that judgments on the separation fence and permit regime were given in the context of the second intifada and referred to mass casualty terrorist attacks in city-centers inside Israel. Even in that context, the court found no grounds to prevent people in whose matter there was no security preclusion from accessing lands they own that are located in the West Bank, or to disrupt local residents' way of life and agricultural work by denying the landowners' family members and agricultural workers access to the lands, in the absence of specific a security preclusion overriding the fundamental rights being violated.

160. At any rate, the Respondents themselves do not argue that their policy is based on security considerations, and since it is not based on considerations relating to the welfare of the protected inhabitants either, it is clearly not based on any relevant consideration, and the violation of the right to property it produces is neither proportionate nor permitted.

161. Respondents' rejection policy is based on nothing but the general desire of state officials to limit, to the maximum extent possible, Palestinian presence in the seam zone **within the West Bank**, instead of facilitating, to the maximum extent possible, the continuation of the fabric of life in the area, as directed by the Honorable Court. There can be no doubt that said violation is not "necessary for imperative military needs" and that it is not proportionate. It is, therefore, clear that the directives that are the subject of this petition are completely contrary to international law and the jurisprudence of this Honorable Court with respect to the right to property.

Violation of the right to freedom of movement

162. The right to freedom of movement within a state is recognized as a fundamental right in international law. This right is enshrined in the Universal Declaration of Human Rights which was drafted following the second world war:

> Everyone has the right to freedom of movement and residence within the borders of each State (Article 13(1), https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf)

And in the International Covenant on Civil and Political Rights of 1966:

> Everyone lawfully within the territory of the State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

(Article 12(1) https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx)

163. Israeli jurisprudence has also recognized the right to freedom of movement as a fundamental right. It was so held in paragraph 15 of the judgment of Honorable Justice Beinisch in **Bethlehem Municipality**:

> **Freedom of movement is one of the most basic human rights**. We have noted that in our legal system, freedom of movement is recognized as a fundamental right both independently and as a derivative of the right to liberty. Some contend that it is a right which derives from human dignity (see paragraph 15 of the judgment and the citations therein). Freedom of movement is also recognized as a fundamental right in international law, and it is entrenched in a host of international conventions.

164. In Israeli law, the right of movement within the state is recognized as more powerful than the right of movement between states:

> Freedom of movement – the violated right – is one of the most basic rights. This is the case in comparative law. This is the case in our law. Referring to "the citizen's freedom to travel from Israel abroad," Justice Zilberg noted that this right:
>
> "… is a natural, recognized, self-evident right in any democracy…" (HCJ 111/53 **Kaufman v. Minister of Interior et al.**, [42], page 536).
>
> **The above applies, even more forcefully, to freedom of movement within the state**. Indeed, freedom of movement within the borders of the state is mostly perceived as having greater constitutional force than the freedom to travel abroad (see Daher [23], page 708). Freedom of movement within the borders of the state **is often placed on a similar constitutional level as freedom of speech.** Accordingly, for instance, in Daher [23] Deputy President Justice Ben-Porat regarded freedom of movement and freedom of speech as "rights of equal weight" (ibid.) (HCJ 5016/96, **Horev v. Minister of Transportation et al.**, IsrSC 51(4) 1, 49 (1997)). `

165. In HCJ 9593/04 **Morar v. IDF Commander in Judea and Samaria**, IsrSC 61(1) 844, 863 (2006) (hereinafter: **Morar**), the Court held that the right to freedom of movement is particularly compelling when a person is denied access to a place they own:

> It is important to emphasize that in our case, we are not speaking of the movement of Palestinian residents in nonspecific areas throughout Judaea and Samaria but of the access of the residents to land that **belongs to them**. In such circumstances, **where the movement is taking place in a private domain, especially great weight should be afforded to the right to freedom of movement, and the restrictions imposed on it should be reduced to a minimum.** It is clear that restrictions that are imposed on freedom of movement in public areas should be examined differently from restrictions that are imposed on a person's freedom of movement within the area connected to his home and the former cannot be compared to the latter.[*]

166. On the matter of balancing between the right to freedom of movement and security considerations, it was held in the above case as follows:

> There is no doubt that in cases where the realization of human rights creates **a near certainty of the occurrence of serious and substantial harm to public**

[*] Official Israel Law Reports Translation: Available at https://versa.cardozo.yu.edu/sites/default/files/upload/opinions/Morar%20v.%20IDF%20Commander%20in%20Judaea%20and%20Samaria.pdf last accessed June 25, 2020.

> **safety**, and when there is a **high probability of harm to personal security**, then the other human rights yield to the right to life and physical integrity… Notwithstanding, the balance between the various rights and values should be made in such a way that the scope of the violation of the rights is limited to what is essential. **The existence of risks to public safety does not justify in every case, an absolute denial of human rights,** and the correct balance should be struck between the duty to protect public order and the duty to protect the realization of human rights.
>
> (paragraph 16).

167. According to the literature, "the more important the purpose of the movement, the greater the constitutional protection that should be afforded to the right to freedom of movement" (Yaffa Zilbershatz, "On Freedom of Movement within the Country – Following HCJ 5016/96 Horev et al. v. Minister of Transportation et al. (unreported)," **Mishpat u'Mimshal** D 793, 815 (5758)).

168. Petitioner 1, like many landowners, needs her son, Petitioner 2, to be able to move in the West Bank, so that he can cultivate her land in the seam zone. Petitioner 1 herself cannot cultivate her lands due to her age and medical condition, and it is common practice in Palestinian society that the family members of the registered owner of the land take part in the cultivation of the land. Respondents' refusal to grant Petitioner 2 a permit that would allow him to assist in the cultivation of the lands registered in his mother's name violates his right to freedom of movement within the country, in a manner involving his family relations, his mother's right to property, deeply rooted local customs and his connection to the land as one of its future heirs. Considering all of the above, the violation of the right of Petitioner 2 to freedom of movement is particularly severe.

169. With respect to Petitioner 3, the Respondents decided to prevent him from accessing the land he owns for three years, with the exception of forty times per year – despite the fact that it has never been argued that the land does not belong to him; that the land is not in the seam zone; or that he poses a security threat. Preventing Petitioner 3 from accessing his privately owned land in the West Bank severely violates his right to freedom of movement.

170. Petitioners' case is not unique. On the contrary, this is the norm, resulting directly from directives deliberately added to Respondents' procedures as of late. These directives intentionally and deliberately produce a far-reaching, entirely unjustifiable and certainly disproportionate violation of the right of many protected persons to freedom of movement in their country.

Disproportionality

171. As is known, a decision that violates fundamental rights is deemed proportionate if it meets three tests; the test of rational connection between means and purpose; the less injurious means test and the proportionality test in the narrow sense.

172. The onus of demonstrating the decision meets the three proportionality tests lies with the military commander (paragraph 29 of the permit regime judgment).

173. In the case at hand, the Honorable Court has accepted the State's position that the procedures for entry into the seam zone were put in place in order to minimize the harm inflicted on the Palestinian residents as a result of the decision to close the seam zone area:

> The decision to make an order to close the zone for security reasons is found on one end of the axis of the considerations to be taken into account in the circumstances of the matter at hand, while the measures taken to minimize the injury to Palestinian residents as a result of the decision to close the area is found on its other end. The core of these measures is the collection of arrangements established under the permit regime, which – according to the State – should provide an adequate solution for the population that has a vital interest in accessing the seam zone, alongside practicable aspects concerning

> the manner in which the permit regime is applied de facto, beginning with the application processing procedure and ending with the prevailing crossing regime.
>
> (permit regime judgment, paragraph 23).

174. However, according to the new provisions incorporated into the seam zone entry procedures, applications made by farmers to access their lands are denied over the result reached by dividing the size of the land by the number of owners. In addition, the permits that are issued to farmers for the cultivation of their lands, in fact, prevent them from accessing the lands most of the year.

175. These provisions do not meet any one of the proportionality tests, and are, in fact, miles away from meeting them.

176. With respect to the rational connection test, it is clear that there is no connection between the new directives and the purpose of the seam zone entry procedures as presented to the Honorable Court in the past. The new provisions incorporated into the procedures certainly do not minimize the harm the closure of the area caused to the Palestinian residents. On the contrary, they cause nothing but harm to Palestinians who have ties to the seam zone, unnecessarily and without any connection to the security purpose for which the area was closed.

177. With respect to the less injurious means test, since the new provisions established by the Respondents do nothing to promote the objective the Respondents ascribe them and only serve to frustrate it, there are certainly less injurious means for achieving this objective, the most obvious of which is revoking the new provisions, which had not existed until recently, and apparently not considered necessary by the Respondents.

178. To HaMoked's best knowledge, the Respondents have never applied such injurious procedures in connection with entry into the seam zone. At least, no such injurious procedures were made public when the lawfulness of the permit regime was considered by the Honorable Court, and in the same context, the Respondents argued that the procedures they had presented were applied leniently. Therefore, the purpose of the permit regime can be achieved in a much less injurious manner. If it was done in the past, it can certainly be done now, some seventeen years after the second intifada, which spurred the closure of the area originally.

179. With respect to the proportionality test in the narrow sense, the new provisions incorporated into the procedures critically undermine the connection between the local Palestinian residents and their lands, effectively cutting them off from their lands entirely without any security reason and without any connection to the alleged purpose of the procedures. The tremendous, blanket harm the procedures cause to the population for whose benefit the State claims they were designed, is certainly not properly proportioned against their purpose.

180. Hence, it cannot be said that the harm caused by the provisions against which this petition is directed is proportionate.

181. Moreover, we recall that the permit regime judgment held that the proportionality of Respondents' procedures cannot be divorced from the proportionality of the decision to close the area:

> We shall analyze the proportionality of the military commander's decision to close the area on three interrelated levels – (a) the decision to close the area itself; (b) the various rules established under the "permit regime" applied thereto; (c) aspects concerning the actual implementation of these arrangements – from the processing of the various applications, through the lived reality of what the State refers to as the "crossing regime." This multi-layered examination is required by logic, and also in view of the State's position that the proportionality of the injury inflicted on the residents is ascertained by a multi-layered examination of the unique body of

> arrangements put in place in the seam zone, which constitutes a comprehensive system consisting of various measures designed to minimize the injury caused by the closure of the area – both in terms of procedures developed and in terms of actions taken by the State to ensure the lives of the residents are not burdened beyond the extent required by the security need.
>
> (ibid., paragraph 29).

182. If it is so when associating the procedures with the decision to close the area serves the state, then it is so now as well. The harm the Respondents' new procedures inflict on local Palestinian residents cannot be divorced from the harm these residents suffer as a result of the decision to build the separation fence within the occupied territory, deny them access to the area where their village lands are located, and subject access to lands they own in their own country to a military licensing regime administered by the occupying power. All of the above affect the proportionality of the procedures governing entry into the seam zone.

Unreasonableness

183. As known, an administrative decision is reasonable if it properly balances the relevant considerations for the realization of the decision's legitimate purpose:

> The same set of facts and the same administrative decision can be reasonable when they are designed to achieve one purpose, and unreasonable when they are designed to achieve another… the reasonableness of administrative discretion cannot be determined without examining the legitimate purpose, which said discretion intends to realize. Often, the administrative authority, while striving towards its legitimate purpose, must decide between different and conflicting interests. Sometimes, the decision is simple and easy since the authorizing law prefers one interest over the other, and the administrative authority simply carries out the legislative enactment. In many cases, however, the principal legislation does not choose between interests, but rather provides a general formula for balancing between them. In this state of affairs, the administrative authority must balance the different interests in the framework of the general norm established by the legislator. Such balancing is reasonable if the competent authority gives proper weight, namely, the weight which is required according to the interpretation of the legislative norm executed by the administrative authority, to the different interests considered. Such balancing is not reasonable if the competent authority does not give proper weight to the different interests (HCJ 389/80 **Yellow Pages Ltd. v. Broadcasting Authority**, IsrSC 35(1) 421, 445 (1980)).

184. As aforesaid, the Honorable Court accepted the State's position whereby the procedures governing entry into the seam zone were established with a view to minimizing the harm caused by the decision to close the seam zone area to Palestinians.

185. Hence, the Respondents may not change the procedures governing entry into the seam zone such that they are no longer based on the purpose of minimizing the harm caused by the decision to close the seam zone area to Palestinians, but rather on foreign purposes that may even conflict with said purpose. The Respondent's argument that the harm caused by closing the seam zone to Palestinians was proportionate was predicated on their contention that their procedures were designed to minimize the harm caused to Palestinians. It is impossible to uphold a permit regime that is not intended to minimize the harm to Palestinians, but rather strives to achieve the opposite while keeping the area closed to Palestinians.

186. There can be no doubt that establishing provisions that prevent landowners from accessing their lands in the seam zone, without any security justification, is contrary to the alleged legitimate purpose of the seam zone entry procedures, which is **to limit** the harm caused to said people.

187. The provisions impugned in this petition – namely the provisions concerning the division of the area of the lands by the number of heirs with the associated "minimal" bar under which there is no "agricultural need" to cultivate the lands; as well as the provisions concerning annual entry quotas by landowners and their workers into the seam zone – cannot be interpreted as having been designed to promote the purpose of minimizing the harm caused to Palestinian residents. These provisions have no connection to the alleged security purpose underlying the closure of the seam zone, nor did Respondents attempt to present this argument in their responses to the original petition. The above provisions put in place by the Respondents do not give proper weight to the legitimate purpose of minimizing the harm inflicted on the Palestinian residents. On the contrary, they unnecessarily harm them. Moreover, the provisions impugned in the petition do not advance the alleged purpose of the procedures.

188. The provisions established by the Respondents give no weight, let alone proper weight, to many important considerations that are relevant to this matter – the fundamental rights of individuals who own lands in the seam zone to property, freedom of occupation and freedom of movement and the Respondents' obligation to preserve their fabric of life, local agriculture, the culture and traditions of the local population and their emotional ties to their lands and family history. The same applies to the specific decisions made in the cases of Petitioners 1-3 by virtue of said inappropriate provisions.

Conclusion

189. The Respondents have incorporated into their procedures provisions that prevent Palestinians with connections to lands in the seam zone from accessing their lands on a mass scale with rare, specific exceptions. They have set forth, inter alia, that permits will not be given for the purpose of cultivating lands in the seam zone unless the plot area exceeds 330 square meters, and that lands larger than 330 square meters are deemed smaller than 330 square meters if they are jointly owned. Nearly every plot in the seam zone is jointly owned by family members according to local inheritance laws, and therefore almost every plot is considered "minuscule" by the Respondents.

190. In addition, the Respondents have set forth in their procedures that local farmers, including the landowners themselves, are entitled to access their lands only subject to quotas of a few days per year. On all other days, they are denied access to their lands, without any legitimate reason.

191. These provisions were put in place arbitrarily, with sweeping effect, and they give no weight to the fundamental rights of local residents to property, to freedom of occupation and to freedom of movement. They also unnecessarily disrupt their way of life and family traditions. In addition, said provisions run counter to the undertakings Respondents' made before the Honorable Court to enable, to the maximum extent possible, the continuation of the fabric of life in the area after its closure. They breach the obligations Respondent 1 has towards the protected population, and they exceed his authority.

192. Therefore, these provisions should be revoked, as well as the specific decisions made by virtue thereof in the matters of Petitioners 1-3.

193. In view of all of the aforesaid, the Honorable Court is moved to issue an Order Nisi as requested at the beginning of the petition, and after receiving Respondents' response, render it absolute.

194. In addition, the Honorable Court is moved to instruct the Respondents to pay Petitioners' costs and legal fees.

195. This petition is supported by affidavits signed in the presence of a lawyer in the West Bank and sent to HaMoked: Center for the Defence of the Individual by fax. The Honorable Court is requested to accept these affidavits and the powers of attorney, also delivered by fax, given the objective difficulties to hold meetings between counsel and client.

February 27, 2020

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Tehila Meir, Adv.

Counsel for the Petitioners