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

1. **____ Ta'meh, ID No. _____**
2. **____ Ta'meh, ID No. _____**
3. **____ 'Abadi, ID No. _____**
4. **HaMoked - Center for the Defence of the Individual founded by Dr. Lotte Salzberger**

Represented by counsel, Adv. Tehila Meir (Lic. No. 71836) et al., 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 the State Attorney's Office, Ministry of Justice,
29 Salah-a-Din Street, Jerusalem
Tel: 02-6466590; Fax: 02-6467011

The Respondents

Petitioners' Response to the Updating Notice

1. As recalled, the original petition discussed provisions established in respondents' 2017 procedures, according to which lands in the seam zone are defined by the respondents as "miniscule plots" due to an artificial division made by them, whereby the size of the plot is divided by the number of its owners. Respondents' procedures provided further that a person whose land was defined as a "miniscule plot" could not receive an entry permit into the seam zone for agricultural purposes, and that at most, he would receive a permit "for personal needs", the validity of which is shorter. The petitioners explained that as a result of said rules almost every plot in the seam zone is defined by the respondents as "miniscule", even if it extends over dozens of dunams, and that almost no one is entitled any more to receive a farmer permit or agricultural work permit according to said procedures, contrary to the consistent judicial precedent in that matter.

2. While the petition was pending, the respondents notified of the publication of new procedures, *in lieu* of the procedures which had been challenged in the original petition. However, the new procedures did not solve the problem that is the subject matter of the petition. The new procedures included the provisions which had been challenged in the original petition, alongside new provisions limiting the entry permits into the seam zone

for agricultural purposes to a set quota of entries. The new procedures provided that permits for personal needs issued to persons whose applications for agricultural permit were denied based on the argument that their plots were "miniscule" would, from that date onwards, be valid for three years instead of three months, as was the case until that date. However, in fact, the respondents continued issuing permits for personal needs valid for three months at the most.

3. Hence, the petitioners filed an amended petition, which discussed the provisions concerning "miniscule plot" as well as the provisions concerning "punch card permits".

4. In their updating notice dated October 25, 2020, the respondents informed that a decision was made to cancel the "punch card permits" provisions, arguing that the procedures which had been published in September 2019 were nothing but a pilot, and that after its termination the respondents concluded that the pilot did not meet its goals (an unreasonable argument to a large extent in view of the history of these proceedings and respondents' adamant defense of the procedures including in the last hearing, on July 1, 2020, only some two months before the meeting in which they had decided to cancel the procedures).

5. The respondents argued in their updating notice that "the main issue with which the Amended Petition is concerned, namely, the punch card permit, was revoked as aforesaid" and requested the honorable court to give instructions as to how the parties should proceed in the matter (paragraph 6).

6. However, it is unclear what the basis is for the argument that this is the main issue with which the amended petition is concerned. The petitioners have, ab initio, contested the "miniscule plot" provisions, but these were not canceled. The provisions which were canceled were only the new provisions which were added to the procedures after the original petition had been filed, due to which the petitioners were required to file an amended petition referring to the "miniscule plot" provisions as well as to the "punch card permit" provisions. Hence, we are back to the point when the original petition had been filed, more than two years ago.

7. The difference is that now, after respondents' pleadings have been filed, it is already clear that the policy which was attacked in the petition is not based on security considerations and is not supported by security sources, and that it was only intended to enforce the entry into Israel laws, which it does in a most indirect, sweeping and harmful way.

8. Secondly, it is currently clear, in view of the updating notice, that respondents' argument that there is a wide spread phenomenon of misuse of seam zone entry permits for the purpose of entering Israel illegally, and that as a result of said phenomenon the need to establish more rigorous procedures arose, has no basis, and that the decision to drastically tighten the seam zone entry procedures based on the above alleged phenomenon, was not based on sufficient factual basis, if it was based on any facts at all. The same also applies to the argument concerning inflation in the number of permits issued by the respondents and discrepancy between the number of permits and the area of the plots.

The purpose of closing the seam zone to Palestinians

9. It should be reminded that the decisions to erect the separation fence and to close the seam zone were made against the backdrop of terrorist attacks in the second Intifada. According to judicial precedent, the seam zone was closed for the purpose of preventing Palestinians from entering Israel and committing terrorist attacks therein (HCJ 9961/03 **HaMoked Center for the Defence of the Individual founded by Dr. Lotte Salzberger v. Government of Israel,** paragraphs 12-13 (reported in Nevo April 5, 2011, hereinafter: the "**Seam Zone Judgment**")). In its response which was filed in the Seam Zone Judgment, the state emphasized that the closure of the seam zone to Palestinians such that only persons with specific connection to the seam zone could receive entry permits thereto, realized the above security purpose. This was the basis for the state's argument that the harm caused to Palestinians as a result of the closure of the seam zone to Palestinians satisfied the rationale connection test (paragraphs 75-79 of the state's response).

A copy of the state's response in HCJ 9961/03 is attached and marked **R/1**.

10. In said period, and until 2017, seam zone entry permits were given to land owners in the seam zone, their family members and their employees in the absence of security preclusion, without needlessly dividing the size of the plot by the number of its heirs, and without establishing a minimal bar of "need" to access the land.

The assumption was that inhabitants whose lands were inaccessible due to the separation fence which was built in the occupied area have a **right** to access their lands, and that the state has an **obligation** to provide them such access, unless weighty security considerations mandated that said right be deprived of them. As aforesaid, this was the assumption which was made against the backdrop of the security circumstances of the second Intifada – security circumstances much harsher than the current circumstances.

11. The closure of West Bank areas to Palestinians was not at all simple from a legal standpoint. The state understood that such an injury would not be easily accepted and that to facilitate the acceptance thereof the state must ensure that at least persons having connection to lands which became inaccessible as a result of the erection of the separation fence were not harmed by the closure of the area, and if harmed, the harm should be minor. Currently, these things were totally forgotten, and the state argues that the limitations which were found to be effective and successful for coping with mass casualty terrorist attacks are insufficient for coping with the alleged phenomenon of permit holders entering Israel for work purposes. It is inconceivable that in 2017, or 2019, more rigorous procedures are required than those which were required in the midst of the second Intifada and throughout the years which followed it, to prevent a phenomenon which does not pose a security risk, and which the state has the power to handle directly.

Entering Israel and the right to seam zone entry permits

12. The respondents do not argue that stricter policy is required for preventing attacks, but rather, that it is required for the purpose of preventing individuals from entering Israel

unlawfully. It is **the only reason** which was presented for the severe limitations being the subject matter of the amended petition – the refusal to give permits to land owners in the seam zone, to their family members and their employees, based on the argument that if the areas of their plots are divided by the number of the heirs the outcome is less than 330; and limiting seam zone entry permits to a set quota of entries into the seam zone.

13. We shall later discuss the argument's factual weakness as to the mere existence of the phenomenon underlying respondents' harsh policy. We shall now explain that even if said phenomenon exists, there is no room to sweepingly deny individuals having connection to the seam zone from accessing seam zone lands due to the fact that there are individuals who misuse their seam zone entry permits to enter Israel unlawfully (and it has not even been proved that they enter Israel using their permits, but rather only that permits were given to them).

14. Firstly, as stated in petitioners' response dated June 25, 2020, respondents' procedures include an entire chapter regulating the manner by which suspected entry into Israel of seam zone permit holders should be handled. The procedures enable the respondents to confiscate and cancel permits under such circumstances and to even prevent a permit holder from obtaining another permit for a period of one year from the date of the decision in his matter ("Chapter E – handling misuse of seam zone permits procedure"). The procedures do not require that the permit holder be apprehended in Israel to have his permit confiscated and canceled, and it is sufficient that a soldier suspects that the permit holder entered Israel earlier, or intends to enter Israel in the future. The permits are confiscated by the soldiers at the separation fence gates – located in the West Bank, rather than within Israel – such that they are taken from their holders and are canceled before the permit holders enter Israel. It is unclear why the respondents are not satisfied with that. Subjecting entry permits to stricter criteria precisely harms persons who were suspected of nothing and that no other reason was found to reject their application or to confiscate their permit. Not to mention that there is no evidence that said persons had acted contrary to the law.

    "Handling misuse of seam zone permits procedure" is attached and marked **R/2**.

15. Secondly, we are not concerned with a security issue or with a unique problem, but rather with enforcing the entry into Israel laws. The state has adequate powers and means to handle the entry into Israel issue and to guard its borders, which should be used by it, rather than the extreme and offensive measure of denying access from Palestinian land owners to their lands which **are not** located in Israel, as specified in petitioners' response date June 25, 2020.

16. According to the state comptroller's audit report regarding the seam zone, the separation fence should have been one of six components of the "seam zone" plan, and all six components are required to realize the purpose of preventing perpetrators from entering Israel. The state is responsible for implementing all components of the plan:

    > "In July 2001 the Ministerial Committee for Security Matter (the Cabinet) approved a comprehensive plan for the seam zone (the seam zone plan) in a

> bid to provide solution to security threats from Judea and Samaria towards the state of Israel…
>
> The main components of the seam zone plan are: establishing a special purpose headquarters; allocating human resources for security activities; operational coordination between the IDF and Israel Police; building barriers and checkpoints; declaration of a closed military area; and handling the problem of Palestinians staying illegally in Israel (illegal aliens) and those who assist them.
>
> Security bodies are of the opinion that the components of the seam zone plan are intertwined, and that the success of the plan depends on the combined implementation of all components thereof; the absence of any one of these components, or its partial execution, affects the efficacy of the entire plan. The audit indicates that most components of the plan were only partially implemented while other components were canceled. Under these circumstances it was impossible to accomplish the objectives of the plan and to make a significant change in the ability to cope with the threats in the seam zone. It should be noted that from the date of the Cabinet's decision and until the termination of the audit, no significant change has occurred in the seam zone's security reality (State Comptroller **Audit Report regarding the Seam Zone** (2002)).

A copy of the report is attached and marked **R/3**.

17. That is to say, there is no grounds for imposing stricter requirements for seam zone entry permits issued to individuals having connection to the land and there is no need to do so. The state can implement the other components of the seam zone plan, and in so doing prevent entry into Israel from the West Bank.

18. In the hearing of the amended petition, the honorable court noted that even if there were persons who had received seam zone entry permits and entered Israel, it did not justify harming persons who **did not** do it, and that it constituted collective punishment.

The circumstances in which protected residents may be denied access to their seam zone lands

19. As specified in the amended petition, the fields in which the respondents are authorized to act in the occupied territory are: safeguarding the legitimate security interest of the administration, and securing the rights of the residents of the occupied territory (HCJ 7862/04 **Abu Daher v. Commander of Military Forces in Judea and Samaria**, IsrSC 59 (5) 368, 375-376 (2005)).

20. Judicial precedent concerning the separation fence is consistent and uniform, and it was held in one judgment after another, simultaneously with the holding regarding the proportionality of the route of the fence, that where the separation fence separates the residents from their lands, the state must secure access arrangements, reducing to the maximum extent possible the harm caused to the local residents, enabling them to

maintain their fabric of life (for instance HCJ 2056/04 **Beit Surik Village Council et al. v. Government of Israel**, paragraph 82 (reported in Nevo, June 30, 2004), HCJ 4825/04 **Alian v. The Prime Minister**, paragraph 16 (reported in Nevo, March 16, 2006) and the HCJ Permit Regime Judgment, paragraph 33).

21. The amended petition noted that according to judicial precedent "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 (HCJ 7862/04 **Abu Daher v. Commander of Military Forces in Judea and Samaria**, IsrSC 59 (5) 368, 376-378 (2005), emphases added, T.M.).

22. In petitioners' response dated June 25, 2020, we stressed that according to judicial precedent, the military commander is obligated to protect Palestinian residents' property rights, by refraining from harming their property, as well as by actively protecting the residents from harm caused to their property by others (HCJ 1308/17 **Saluwad Municipality v. The Knesset**, paragraphs 55-56 (reported in Nevo, June 9, 2020)).

23. We have noted that in said judgment it was held that "The ownership right in private land, such as exists and even if maintained, has no real practical or economic meaning if the rights to use and possess it are deprived even for a period defined as "temporary" but the end of which is unknown" (paragraph 105).

24. It was further noted in the response that in HCJ 390/79 **Dwikat et al., v. Government of Israel et al**., IsrSC 34 (1)1, 4 (1979) it was held that "where the property rights of the individual are concerned, the matter may not be dismissed with the argument of the "relativity" of the right. According to our jurisprudence, the property right of the individual is an important legal value protected by both civil and criminal law, regardless of whether, with respect to a land owner's right to protection of his property according to the law, the land is cultivated land or rocky land".

25. As stated in the amended petition, the burden to prove the argument that the violation of the fundamental rights of the protected residents is proportionate lies with the respondent (paragraph 29 of the HCJ Permit Regime Judgment).

26. Hence, the clear and unequivocal starting point is that protected residents whose lands became inaccessible as a result of the erection of the separation fence have the right to access their lands as they please. Preventing this from them is permitted only when it is "imperative for military needs". Questions concerning the scope of their "agricultural need", the number of work days required for each agricultural crop, and whether it suffices that one family member shall cultivate the land for the entire family, are not the correct questions according to the clear and consistent judgments of this honorable court. The relevant question, according to judicial precedent is whether there is a

security necessity to violate the property right of the land owners and the ways of life which were maintained by them prior to the erection of the separation fence. If not – **the violation is prohibited**. This is the law.

27. In the case at hand there is certainly no security need requiring the new rules which were established by the respondents regarding "miniscule plots" and "punch card permits". No security opinion was presented to justify said rules, and no security reason was provided to the above which were only supported by general statements regarding the entry of individuals to Israel, with no security ramifications. There is no doubt that judicial precedent does not allow violation of proprietary rights of protected residents for these reasons, which are not security reasons and which do not relate to the protected residents themselves. We are concerned with extremely harmful entry arrangements which **do not come anywhere near** meeting the standards established by judicial precedent, and it doesn't seem that they even aim for it.

The history of the proceeding

28. The original petition was filed on October 4, 2018, in which *order nisi* was requested directing the respondents to show cause:

> A. Why they should not issue Petitioner 2 a permit to enter the seam zone, valid for two years, to enable him to cultivate land belonging to his mother, Petitioner 1, located in the seam zone in the West Bank;
>
> B. Why they should not cease to refuse issuing individuals permits to access land in the seam zone on the grounds that the size of the land they seek to cultivate is less than 330 square meters;

29. The preliminary response to the original petition noted that "Administrative work is being currently performed for an additional amendment of the Collection of Standing Orders enabling the issue of a "punch card permit". A punch card permit shall allow a finite number of entries into the seam zone over a longer period than currently given under most permits. According to the respondents, said permit shall improve the correlation between the defined need of the permit applicant and his entries into the seam zone" (paragraph 75).

30. In the hearing which was held on May 15, 2019, 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… these are not only needs but also property rights.

Thereafter it was stated:

> Honorable Justice Barak-Erez: "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…
>
> 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?
>
> Adv. Hoash Eiger: It is inaccurate to say that no permits have ever been given. I asked the representatives here. When an applicant proves they have a need to cultivate in a locality, they are given a permit. It is a rebuttable presumption.
>
> Honorable Justice Barak-Erez: 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. After consultation we understand from Madam that the administrative work here has not yet been completed. There are also arguments which have not been answered. How do you treat relatively large plots and it is unclear who receives or not… there are many practical questions which were not answered. We shall be satisfied to have an updating notice filed with respect to all questions which were raised here and with respect to the punch card permit, all of the above without taking a position…

31. A decision given later that day stated as follows:

> 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.

32. An updating notice on behalf of the respondents dated August 15, 2019, stated that no family member of petitioners 1 and 2 was holding an entry permit to the plot other than petitioner 1 (paragraph 10). As stated in the petition, petitioner 1 is an elderly woman suffering from high blood pressure and coronary problems. She cannot do physical work and cannot cultivate her land, but she wishes to exercise her right to access the land owned by her.

33. It was further stated in the updating notice that "according to an examination conducted by the civil administration from the beginning of 2019 until August 6, 2019, 633 public servant certificates were issued for Israel Police specifying the types of permits held by

the resident, this following the apprehension of residents holding "seam zone" permits for agricultural purposes (farming permit, farmer relative permit, and agricultural work permit) within the territory of Israel… against the above backdrop we shall explain the changes which were made in the seam zone Collection of Standing Orders as a result of the current administrative work – one major change in the current amendment of the Collection of Standing Orders relates to extending the permits' validity… another major change relates to adapting seam zone entry permits to the resident's defined agricultural need ("punch card permit")" (paragraphs 12-5 of the updating notice).

34. On September 18, 2019, an updating notice was filed on behalf of the respondents stating that the "amended" Collection of Standing Orders had been published.

35. On October 10, 2019, the petitioners filed a response and clarified that the policy which had been contested in the petition has not been canceled in the framework of respondents' amended procedures and that the petition was still relevant and necessary. The response clarified that the respondents had indeed added new provisions to the procedures, but the problem being the subject matter of the petition was not solved thereby, but rather to the contrary, they only prevented farmers from accessing their lands in additional ways, without any security justification.

36. On February 27, 2020, an amended petition was filed requesting an order nisi directing the respondents to 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 the decision to close the seam zone to Palestinians should not be revoked being disproportionate."

37. The amended petition explained that the refusal to give entry permits into the seam zone for agricultural purposes to persons having connection to agricultural lands in the seam zone, to their family members and their employees, severely and disproportionately violates their fundamental rights to property, freedom of occupation and freedom of movement and is contrary to holdings regarding the preservation of connection to the seam zone after the erection of the separation fence. It was explained

that the violation of the fundamental rights of protected residents is disproportionate, inter alia, since it is contrary to the purpose attributed by the respondents to the seam zone entry procedures – limiting the harm caused by the closure of the area to Palestinians. The same applies to the limitation of the permits to quotas of entries into the seam zone.

38. On July 1, 2020, a hearing was held in the amended petition. During the hearing, Honorable Justice Barak-Erez said that the entry arrangements into the seam zone should be adapted to real life and to the changes which have occurred since the HCJ permit regime judgment had been given in 2011, and therefore the questions whether in fact too many permits are given and whether persons indeed use the permits for the purpose of entering Israel may be relevant. The undersigned said in response that the major changes which have occurred after the judgment had been given were that the security reason underlying the closure of the seam zone dissipated, and that the number of permits issued by the respondents has significantly decreased. Honorable Justice Barak-Erez said: "The argument concerning the figures has a certain power, so Madam counsel says that it was before the court, the court gave its constitutive judgment, now there are three hundred, how does that accord? But what would have happened if it turned out that according to the system of Madam counsel 20,000 persons were given? In that case, does Madam counsel think that such an event each one should be given?" The undersigned said in response that according to judicial precedent the proportionality of the route of the separation fence and of the closure of the seam zone depends on whether the connection of the protected residents to their lands is maintained, and if factual reality has changed and permits may no longer be given in a manner enabling persons having connection to the seam zone to access their lands, then the holding regarding the proportionality of the permit regime was no longer valid.

39. During the hearing, the honorable court asked what was actually the need as a result of which the procedures were changed, and why the rules which had been previously in place should not be reinstated – without the new rigorous provisions and without the new "benefits".

40. With respect to respondents' argument that many people use their seam zone entry permits to enter Israel, Honorable Justice Kara said: "Why is it necessary to change the policy? Assuming there are fifty, they should be punished, why should a person who did nothing wrong be punished? It's collective punishment… Why should this drastic "five-kilogram sledgehammer" measure be taken when other measures may be used, where is the proportionality here?"

41. In addition, all justices of the panel remarked that the data presented by the respondents concerning 633 public servant certificates which had been issued, did not attest to the number of persons who had received seam zone entry permits and were apprehended in Israel, and that the meaning of said data was unclear. Respondents' counsel requested that complete data in that regard be presented by the respondents.

42. In the decision issued that same day, the following was determined:

"Following the hearing held before us in the Amended Petition we hereby direct that the state supplements its response by way of filing an updating notice, as follows:

1. The state shall submit data regarding the number of farmer permits and the number of permits for personal needs which were issued to residents of the area having connection to the land commencing as of 2016 – segmented annually. In this context the scope of applications of each type submitted each year should be specified, clarifying with respect to the distinction applied to each year, how many applications were accepted and how many applications were denied. The state can provide an elaborate explanation concerning previous years, if it deems fit. In addition, the respondents shall clarify the scope of permits issued in 2011 when the judgment in HCJ 9961/03 **HaMoked Center for the Defence of the Individual founded by Dr. Lotte Salzberger v. The Government of Israel**, was given (April 5, 2011)(hereinafter: the **Seam Zone Judgment**).

2. The state shall specify the factual data concerning misuse of seam zone entry permits for the purpose of entering Israel illegally and the data in that regard which were considered by the respondents while making the decision regarding the new policy.

3. The state shall explain whether and how the current policy reconciles with the position and statements of the state concerning the seam zone as presented in that regard.

4. During the hearing the state advised, in response to our questions, that the following statements were confirmed by the state:

    a. A person having a farmer permit can also receive a permit for personal needs at the same time.

    b. A person having a permit for personal needs which was issued for the purpose of maintaining connection to the land may also cultivate the land whenever he stays therein by virtue of said permit.

    c. Permit for agricultural purposes is also given based on a "scheme" of rights of several right-holders whose joint share in the land reaches the 330 square meter bar – to one of them at their choice (also with respect to larger plots of land, where additional right-holders exist).

The updating notice shall include explicit reference to the provisions of the Collection of Standing Orders clarifying the above, and alternatively – according to the statements made – to amending provisions incorporated therein and explicitly clarifying the above

The updating notice on behalf of the state shall be filed by August 31, 2020. The petitioners may file notice on their behalf within 15 days thereafter. We shall thereafter decide how to proceed with the petition.

43. We shall now review the data provided in the updating notice and show what is missing from the updating notice and what may be learnt therefrom.

Data regarding the number of agricultural permits issued in recent years

44. As recalled, the respondents argued in their response to the amended petition that: "there is no basis for Petitioners' argument whereby the above amendments to the Standing Orders violate Petitioners' property rights, their livelihood or other rights, and that in general we are not concerned with an application of a policy the purpose of which is to limit the grant of permits, but rather, its purpose is to improve the correlation between the permit which was granted and the applicant's actual needs, in a bid to enhance the military commander's ability to supervise and control those entering the seam zone while providing solution to the needs of the population" (paragraph 83).

45. In their response to the amended petition the respondents described a situation in which dozens of individuals receive entry permits to the same plot, and the number of individuals entitled to receive permits is multiplied over and over again (paragraph 96). In view of the above, the honorable court asked in the last hearing whether in a situation in which the number of permit holders is huge and disproportionate to size of the lands, there was room to regulate the matter. As aforesaid, the undersigned responded and said that if the respondents were of the opinion that there was such a significant change of circumstances requiring to change the rule whereby individuals having connection to the seam zone were entitled to receive seam zone entry permits, then the judgment given in HCJ Permit Regime Judgment was no longer valid, since it referred to a situation in which individuals having connection to the seam zone did receive permits, as a general rule.

46. However, the data presented in the updating notice indicate, as had been argued by the petitioner from the beginning, that **no** such change has actually occurred, but that rather, the contrary was true. In recent years, **far fewer** permits were issued compared to previous years. Hence, there is no need to change the rule and there is no need to deviate from the generally accepted case law in that matter.

47. According to the data presented by the state, in 2017 the number of permits which were issued has significantly declined, and since then the figures continue to drop, as the petitioners had argued.

48. In 2007, 9,977 farmer permits were issued; 1,487 temporary farmer permits; and 9,309 agricultural work permits, and in total **20,773 permits for agricultural needs**.

49. In 2008, 2,601 farmer permits were issued; 2,308 temporary farmer permits; and 13,429 agricultural work permits, and in total **18,338 permits for agricultural needs**.

50. In 2009, 1,640 farmer permits were issued; 2,445 temporary farmer permits; and 9,935 agricultural work permits, and in total **14,020 permits for agricultural needs**.

51. In 2013, 2,831 farmer permits were issued; 1,214 agricultural work permits, and in total **4,045 permits for agricultural needs**.

52. In 2014, 3,120 farmer permits were issued; and 16,916 agricultural work permits, and in total **20,096 permits for agricultural needs**.

53. In 2015, 2,694 farmer permits were issued; and 14,247 agricultural work permits, and in total **16,941 permits for agricultural needs**.

54. In 2016, 4,286 farmer permits were issued; and 13,703 agricultural work permits, and in total **17,989 permits for agricultural needs**.

55. In 2017, 2,409 farmer permits were issued; and 9,947 agricultural work permits, and in total **12,356 permits for agricultural needs**.

56. In 2018, 2,161 farmer permits were issued; and 4,983 "farmer relative permits", and 2,235 agricultural work permits, and in total **9,379 permits for agricultural needs**.

57. In 2019, 2,741 farmer permits were issued; and 4,481 "farmer relative permits", and 1,467 agricultural work permits, and in total **8,689 permits for agricultural needs**.

58. In 2020, 1,581 farmer permits were issued; and 3,384 "farmer relative permits", and 513 agricultural work permits, and in total 5**,478 permits for agricultural needs**.

59. Hence, there is no need to change the rule established by judicial precedent, that individuals having connection to the seam zone are entitled to enter the seam zone, in the absence of security preclusion. The respondents should act according to case law on this matter.

60. As aforesaid, even if a significant change had occurred in the number of individuals having connection to the seam zone, it could not have severed the tie between maintaining the connection of the local residents to their lands, and the lawfulness of the permit regime. If indeed it was clarified that currently it was no longer possible to maintain the property rights of the protected residents by giving them permits, the conclusion therefrom was not that they were not entitled to access their lands, but rather, that the permit regime could no longer stand, because this was the basis for the decision that the harm inflicted by it was proportionate.

The data regarding the number of agricultural permits issued in 2011

61. In the decision of the honorable court dated July 1, 2020, the respondents were required to clarify "the scope of permits issued in 2011 when the judgment in HCJ 9961/03 **HaMoked Center for the Defence of the Individual founded by Dr. Lotte Salzberger v. The Government of Israel**, was given (April 5, 2011)".

62. It is unclear whether the decision referred to the number of permits which were issued in 2011 or to data regarding the number of permits which were valid on April 5, 2011. Anyway, the respondents did not present any of the above.

63. In paragraph 8 of the updating notice on behalf of the respondents the following was stated:

> According to the data stored in the computerized systems, the following are the details concerning the scope of seam zone farmer permit applications and personal needs permit applications for the years 2013-2020 (it should be clarified that the earliest year with respect of which information exists in respondents' computerized systems is 2013).

64. However, the state has data regarding the number of permits issued in 2011, even if they were not typed and uploaded to respondents' computerized systems.

65. In a number of responses to petitions filed with the Honorable Court sitting as a High Court of Justice regarding seam zone entry permits the respondents wrote as follows:

> We wish to note that contrary to the presentation that the petitioners are trying to present in the petition, the mechanism by which applications are filed and seam zone entry permits are issued, which is entrenched in the Collection of Standing Orders, works in a very reasonable manner.
>
> A. Accordingly, for instance, in 2011 approx. 55,960 applications for permits and certificates allowing entering and staying in the seam zone were filed. Approx. 50,047 of the applications were approved and the requested permits or certificates were issued to the applicants. Namely, **approx. 89.4% of the applications were approved**.
>
> Photocopy of the table summarizing the status of the applications for permits and certificates in the seam zone in 2011 is attached and marked **RS/1**.

A copy of respondent's response in HCJ 8083/12 dated December 16, 2012 is attached and marked **R/4**.

66. The same statements appear in the state's responses in HCJ 8283/12 and in HCJ 2518/12, and possibly in responses to additional petitions.

67. A table was attached to the above response, specifying the types and number of permits which were approved and the number of applications which were denied, of each type. Half of the fields in said tables are dark and quite illegible, but the fields referring to permits for personal needs and permanent farmer permits are legible. According to said table, in 2011, 9,543 permits for personal needs were issued and 450 applications for permits for personal needs were denied, such that in total 9,993 applications for permits for personal needs were processed and **approx. 95.5% of the applications were approved**.

68. In said year 2,255 permanent farmer permits were issued and 95 applications for permanent farmer permits were denied, such that in total 2,353 applications were processed and **approx. 95.8% of the applications were approved**.

69. According to the procedures which were in force at that time, 2010 Seam Zone Collection of Standing Orders and 2011 Seam Zone Collection of Standing Orders, two types of permits were given to land owners – "permanent farmer permit" which was valid for two years and was given after ownership of land in the seam zone had been proven, and "farmer permit" which was valid for six months and was given until ownership of land was proved. In addition, "work permits" were given to the family members of the land owners and their employees.

70. Due to the fact that half of the fields in the table were dark, it was impossible to see whether the table also included data regarding farmer permits and work permits. In any event, it is clear that the number of "farmer" permits and number of work permits should be added to the number of "permanent farmer" permits. It is assumed that the state holds in its possession the original document, or a clearer copy thereof, and the honorable court is requested to direct the state to submit it, if said data are required.

A copy of the table which was attached to the preliminary response in HCJ 8283/12 as RS/1 is attached and marked **R/5**.

71. In any event, according to the data provided in the updating notice on respondents' behalf, the percentage of farmer permit applications currently approved by the respondents cannot be compared to the percentage of applications approved by them in 2011 – 59% in 2013; 71% in 2014; 60% in 2015; 45% in 2016; 45% in 2017; 27% in 2018; 37% in 2019; and 24% in 2020.

72. The above data clearly reflect the severe implications of the recent "amendments" of respondents' procedures.

73. It should be recalled that the response to the permit regime petitions stated that "approximately 11,000 Palestinian farmers have connection to agricultural lands located in the seam zone" (paragraph 16), and that **10,037 permanent farmer permits** and 214 temporary farmer permits had been issued for them (paragraph 31).

74. According to the data specified in the updating notice on respondents behalf, in recent years the number of farmer permits issued by the respondent **does not come anywhere close to that** – in 2013 2,831 farmer permits were issued; in 2014 3,180 farmer permits were issued; in 2015 2,694 farmer permits were issued; in 2016 4,286 farmer permits were issued; in 2017 2,409 farmer permits were issued; in 2018 2,161 farmer permits were issued; in 2019 2,741 farmer permits were issued; and in 2020 1,581 farmer permits were issued.

<u>The data concerning the number of permits for personal needs</u>

75. Firstly, as specified in petitioners' response dated June 25, 2020, respondents' argument that land owners in the seam zone receive permits for personal needs valid for three years instead of farmer permits, when their plots fall within the definition of "miniscule plots", is incorrect. It was clarified by the petitioners in their response that as of the publication date of respondent's new procedures on September 18, 2019, and until the

response filing date, HaMoked handled 170 cases of individuals having connection to the seam zone who had applied for permits, and none of them had been given a permit "for personal needs" valid for three years. Similarly, in 21 administrative petitions filed by HaMoked in the framework of which "punch card permits" had been issued to the petitioners – land owners in the seam zone and their family members – they have all received permits for agricultural purposes rather than permits for personal needs.

76. Most permits "for personal needs" which were received in cases handled by HaMoked were valid for three months, while others were valid for shorter periods of one or two months. In the context of applications submitted by land owners and farmers for seam zone entry permits, permits for personal needs are given as a sort of "interim decision", when the respondents are of the opinion that an additional action is required for approving the permit application for agricultural needs. Permits for personal needs are not issued *in lieu* of permits for agricultural needs, as things were presented by the respondents, but rather *in lieu* of a denial.

77. Moreover, a large part of the permits for personal needs is not at all relevant to the case at hand. Respondents' procedures provide that a permit for personal needs is a permit "issued to a Judea and Samaria resident whose presence in the seam zone is required for special or humanitarian reasons, and was invited to the seam zone by a resident having connection to the seam zone, who is the applicant submitting the application" (paragraph 1 of the chapter "Permit for personal needs in the seam zone"), and that "as a general rule, the term of the permit and the number of entries shall be determined according to its purpose, at the discretion of the authorized body and according to the specific circumstances of the case" (*Ibid*., paragraph 2).

78. Paragraph 6 of the same chapter provides as follows:

> Criteria for eligibility:
>
> a. There is a special need requiring his entry into the seam zone, including, for instance: wedding; funeral; visit of family members; birth; illness; professional convention; social events.
> b. Another humanitarian reason requiring applicant's presence in the seam zone.
> c. Proprietary connection to a plot with respect of which permit for agricultural or commercial needs cannot be obtained. Permit issued due to proprietary connection to a plot according to this sub-paragraph, shall be issued to a maximum period of three years. The number of entries shall be determined according to the specific needs of the applicant and according to the entire circumstances of the case.

The chapter ""Permit for personal needs in the seam zone" in respondent's procedures is attached and marked **R/6**.

79. As recalled, the preliminary response to the original petition stated that petitioner 2 had been issued ten personal needs permits for "wedding, funeral, family visit, and the like" and three personal needs permits for "agricultural cultivation" (paragraph 32).

80. Hence, not much can be concluded from the data regarding permits for personal needs which were issued by the respondents, since many of said permits have no connection to agriculture or to any proprietary connection to lands in the seam zone.

81. The updating notice argued that "parallel to the decline in the number of farmer permits the number of personal needs permits has increased" (paragraph 12). However, firstly, the number of personal needs permits which had been issued this year has also dramatically declined and not only the number of farmer permits. The percentage of applications for personal needs permits approved by the respondents has also declined and had not increased.

82. Secondly, an increase in the number of personal needs permits cannot compensate for the decline in the number of permits for agricultural needs, when personal needs permits are not given for farming purposes, but rather for other purposes, and when they are valid for a short period of time.

The data regarding misuse of entry permits into the seam zone for the purpose of entering Israel

83. As recalled, the respondents argued in their response to the amended petition that as of the beginning of 2019 until August 6, 2019, 633 public servant certificates were issued for Israel Police following the apprehension in Israel of Palestinians holding farmer permits, farmer relatives' permits and agricultural work permits. Said data served as the basis for respondents' argument that "there is a widespread phenomenon of illegal use of agricultural permits to the seam zone for the purpose of entering and working in Israel" (paragraph 99).

84. During the hearing of the amended petition, the honorable court clarified that said data was insufficient since it was unclear how many **people** were referred to.

85. Respondents' counsel said that "complete data shall be presented" and Honorable Justice Barak-Erez said: "we shall enable you to present the data. If there are data they have not been transparently presented to us, the question is whether you understand the data." Respondents' counsel said: "Persons engaged in respondents' agencies are familiar with these data and with the phenomenon itself." Honorable Justice Barak-Erez said: "We highly respect them, can they currently tell us how many people were apprehended each year?" and respondents' counsel said: "It requires a thorough examination."

86. In a decision given following the hearing it was held that "the state shall specify the factual data concerning misuse of seam zone entry permits for the purpose of entering Israel illegally".

87. The "factual data" which were specified in the updating notice are as follows:

a. Respondents' general estimate based on the soldiers' alleged experience, that there is a widespread phenomenon of illegal use of seam zone entry permits for the purpose of entering Israel unlawfully.

b. Data regarding the number of public servant certificates which were issued with respect to persons apprehended in Israel who had received seam zone entry permits of all types in the years 2016-2020;

c. The conclusion of an alleged investigation conducted in the first half of 2018 – without the data collected in the alleged investigation.

Respondents' general estimate

88. The updating notice alleges that respondents' soldiers notice thousands of people pass through the seam zone gates in the mornings. However, a patrol discovered that in fact only a small number of people were found in their lands during the day. The updating notice clarified that "**Naturally, the respondents do not have full data** regarding the scope of illegal passage of holders of seam zone entry permits into Israel. Nevertheless, the respondents estimate, given all of the above that **a considerable part** of permit holders using their seam zone permits to enter the seam zone, misuse their permits to illegally enter Israel for work purposes" (paragraph 20, emphases added, T.M.).

89. The updating notice continues to state that: "The data specified above as well as the above daily experience of respondents' bodies and the observations identifying each day the entry of thousands of people crossing the Judea and Samaria border line from the seam zone and entering the state of Israel, show that the phenomenon of illegal use of the permits is a widespread phenomenon **which, although it cannot be accurately quantified**, the respondents insist that **a considerable part** of seam zone permits are misused for the purpose of entering Israel illegally. This conclusion was also reinforced by additional data that were collected and studied after the 2017 amendment of the Collection of Standing Orders being the subject matter of the case at hand" (paragraph 23 of the updating notice). It is unclear what are the "additional data" which were collected and studied, and why they were not presented, if they exist.

90. Hence, the respondents do not have factual data regarding the widespread phenomenon alleged by them – they were unable to present the number of people who used their seam zone entry permits to enter Israel, and were unable to delineate the scope of said alleged phenomenon by pointing at a certain range of figures. Nothing was provided here other than respondents' estimate, an estimate which in and of itself is extremely vague – instead of a figure or a range of figures, the words "a considerable part of seam zone permits" were used, words which tolerate almost any possible figure.

91. In addition, no detailed and clear information was presented regarding the tour or tours in the seam zone, serving as the basis for respondents' argument. No dates or protocols were presented but things were just alleged in a general and off-hand manner. To the best of knowledge of HaMoked Center for the Defence of the Individual, the soldiers opening the separation fence gates daily, do not belong to the Civil Administration but rather to other regiments. Occasionally DCO officers arrive to the gates but not on a regular basis.

92. Either way, as known, each person is a separate individual having rights. If a certain individual does not enter Israel illegally there is no justification to prevent their access to land owned by them, or by their family, based on the estimate that a certain number of other individuals have indeed acted in this manner.

93. The updating notice stated that "An extreme expression of said estimate has been recently reflected in examinations conducted by the respondents following HCJ 8084/19 **Radad et al., v. The Military Commander et al**…. In the context of establishing their response to said petition…, the respondents initiated certain examinations with respect to permit holders who were using the gate. Said examinations have unequivocally shown that all individuals who passed through said gate in the month of September and in the first half of October 2020, have sweepingly said that they were on their way to Israel to work there, while in most cases – they did not have in their possession work permits; or argued that they were going to cultivate their lands in the seam zone, but a real time examination revealed that in fact they have crossed the seam zone and entered the territory of the state of Israel for work purposes" (paragraph 21).

94. This answer is outrageous.

95. The backdrop of the above is as follows: the undersigned filed an updating notice on behalf of the petitioners in HCJ 8084/19 on December 24, 2019, which stated as follows:

> This petition concerns serial delays in the opening of one of the seam zone gates in the West Bank.
>
> The petition was filed on December 5, 2019. Shortly after the petition had been filed, HaMoked Center for the Defence of the Individual was contacted by several farmers, complaining that on December 10, 2019 and December 11, 2019 two incidents had occurred of mass confiscation of permits from farmers who had been waiting for the gates to open. In total, in said days, about 50-70 permits were confiscated from farmers who had arrived to the gate.
>
> The farmers said that they had arrived to Magen Dan gate in the morning and were waiting, as usual, for the gate to open. Around 06:30 two DCO officers arrived to the gate – Shadi Salah and Ali. Officer Shadi took away the permits of all farmers and asked each farmer where they were going to. **All farmers said that they were going to their lands and the officer confiscated the permits of all farmers, but one, who said that he was going to Israel. The officer told him that he was telling the truth and would therefore allow him to pass through (just like that!)**
>
> Officer Shadi spoke to the farmers aggressively and offensively and said that they were all lying and that they were working in Israel rather in their lands and had therefore decided to confiscate their permits. He

> did not give any of the farmers a confiscation form specifying the reason for the confiscation, as required according to respondent's procedures.
>
> The MachsomWatch organization advised that according to reports received from farmers from Masha and A-Zawiya the same incident had also occurred on December 12, 2019, and in total permits of about **100 farmers** had been confiscated.
>
> This is despicable conduct, demonstrating disrespect for the law, for human beings and for their rights, on both material and procedural levels. Harassment of individuals by respondent's representatives due to the fact that a petition had been filed on their behalf, is offensive conduct not befitting a public body purporting to act according to the law, and to supposedly enforce it.
>
> Several attempts were made to receive respondent's position in connection with the filing of the updating notice but to date no response has been obtained.

A copy of the updating notice is attached and marked **R/7**.

96. On February 9, 2020 a preliminary response was filed in the above proceeding along with a letter of the civil administration public liaison officer which was attached thereto concerning the confiscation of the permits, which stated as follows:

> The Eyal representative body acts vigorously to maintain farmers' ability to go and cultivate their lands… However, efforts are made to eliminate the illegal use of seam zone permits. In this context the DCO had carried out several operations in the districts of Tul Karem, Qalqiliya and Salfit which are under its responsibility. **In most cases seam zone permits are used to enter Israel while, at the same time, work permits in Israel are held.** Hence, illegal entry is made through crossings which are not border crossings, using seam zone permits for purposes other than the agricultural purposes for which they were given (emphasis added, T.M.).

A copy of the letter dated January 5, 2020 is attached and marked **R/8**.

97. Namely, even according to respondents' factual version, these are persons who are allowed to enter Israel according to the law since they hold work permits in Israel, in addition to their seam zone entry permits.

98. Moreover, paragraph 3.D. of the chapter "General Instructions" in respondent's procedures provides as follows:

> **A person entitled to enter the seam zone without a specific permit is**:
> a. A citizen of the state of Israel.

b. A resident of the state of Israel registered in the population registry in Israel according to the Population Registration Law, 5725-1965, as in force in Israel from time to time.
c. Anyone entitled to emigrate to Israel according to the Law of Return, 5710-1950, as in force in Israel from time to time.
d. **Palestinians holding entry permits into Israel, only for the purpose of passing through**.
e. Anyone who is not a Judea and Samaria resident holding a valid stay permit in Israel (the second emphasis was added, T.M.)

The relevant page of respondent's procedures is attached and marked **R/9**.

99. Namely, **entering Israel through the seam zone is permitted by law, with or without a seam zone entry permit**.

100. On September 9, 2020, another updating notice was filed on behalf of the petitioners in said case which informed, inter alia, that the respondents had changed the opening times of the gate being the subject matter of the petition, such that it was no longer opened every day of the week.

101. On September 13, 2020, notice was filed on behalf of the petitioners, stating, inter alia, as follows:

> On September 9, 2020, an updating notice was filed on behalf of the petitioners regarding the limitation of Magen Dan gate's opening times.
>
> On September 10, 2020, one of the farmers informed HaMoked Center for the Defence of the Individual that on that morning Ali, a DCO officer, had arrived to the Magen Dan gate. The officer asked each farmer where they were going to. The farmers said that they were going to their lands and the officer confiscated their permits. About fifteen permits were confiscated in said incident. The officer ordered all farmers to arrive to the DCO today, September 13, 2020. Additional farmers were taken to their land on tour with the officer.
>
> As specified in petitioners' updating notice dated December 24, 2014, the same thing occurred after the petition had been filed…

A copy of petitioners' notice is attached and marked **R/10**.

102. The petition was deleted on that day, following respondent's notice regarding the implementation of an arrangement that should have solved the problem of delays in the opening of the gate as of the date of respondent's notice (September 10, 2020) and the opening of the gate every day of the week.

103. There was no room for mass confiscation of the permits of the farmers who were waiting for the gate to open, and the timing of things – shortly after the filing of the petition, in the first instance, and shortly after the filing of the updating notice on behalf of the petitioners, in the second instance – was no coincidence.

104. Respondents' argument that "examinations have unequivocally shown that all individuals who passed through said gate in the month of September and in the first half of October 2020, have sweepingly said that they were on their way to Israel to work there, while in most cases – they did not have in their possession work permits; or argued that they were going to cultivate their lands in the seam zone, but a real time examination revealed that in fact they have crossed the seam zone and entered the territory of the state of Israel for work purposes", is not true.

Number of public servant certificates issued by the respondents in the years 2016-2020

105. As aforesaid, the decision requiring the respondents to clarify "the factual data concerning misuse of seam zone entry permits for the purpose of entering Israel illegally" was given because the court did not consider the data regarding the number of public servant certificates which had been issued over a certain period of time with respect to persons who were holding seam zone entry permits and were apprehended in Israel, as providing sufficiently clear and substantiated factual infrastructure for establishing the policy being challenged in the petition.

106. Hence, it is unclear how the number of public servant certificates which had been issued over additional years can be of any help. It is clear that the data concerning the years 2016-2020 raise the same exact problem raised by the data concerning 2019 – they do not provide any indication of the number of people apprehended in Israel.

107. Worse than that, the figures specified in the updating notice differ from the figures which had been specified in respondents' prior pleadings (higher, off course), since this time the figures relate to the number of public servant certificates which were issued with respect to people who were holding seam zone entry permits of all types, while in the past, the figures referred only to people who were holding farmer permits, farmer relatives permits and agricultural work permits (the use of said figure was also unfair, since the respondents compared said figure only with the number of people who were holding farmer permits – and not with those who were holding farmer relatives permits and agricultural work permits – and then argued that it was a large number relative to the number of permit holders, as specified in petitioners' response dated June 25, 2020).

108. In any event, it is clear that the presentation of larger numbers of public servant certificates or the presentation of the number of public servant certificates which were issued over several years, does not solve the problem of relying on the number of public servant certificates which were issued. Said data present the same exact problem due to which the additional data were required in the first place.

109. Moreover, the respondents did not compare the number of persons who entered Israel illegally holding seam zone entry permits with the number of persons who entered Israel illegally not holding seam zone entry permits. According to the minutes of the discussion held by the State Audit Committee on August 16, 2016, the phenomenon of illegal entry into Israel without permit is widespread, **and there is no connection between said phenomenon and seam zone entry permits**.

110. On August 16, 2016, a discussion was held by the State Audit Committee on the issue of "Request for the State Comptroller's Opinion on the issue of: The Handling by State

Authorities of Illegal Aliens." During said discussion then Chief of Staff, Lieutenant General Gadi Eizenkot, asked the Deputy Inspector General of Israel Police Major General Zohar Dvir "how many illegal aliens do we currently have while we are sitting here and talking? According to my estimate we are talking about tens of thousands". Deputy Inspector General of Israel Police responded: "About 50,000". The Chief of Staff attributed the problem to breaches in the separation fence, and did not tie it to persons holding seam zone entry permits. Accordingly, the following was said, for instance, by the Chief of Staff:

> I wanted to say between 30,000 to 50,000-60,000, because I don't know the exact number but it means that currently in an uncontrolled manner there are approximately 50,000 illegal aliens. The situation which was actually created is that individuals who passed the entire security check and received a permit must get up at two-three in the morning and go to the crossing after they have passed the check. From our experience we know that from the 80,000 who received permits there was not a single perpetrator in the last year, and to the best of my knowledge there was not a single perpetrator in the last decade.
>
> Conversely, 50,000 illegal aliens entering through breaches take a short cut. They are not required to stand in our crossings. We eventually should create a fit between market needs, the needs of the Palestinians and the manner by which we enable them to make a living fairly, without obligating them to stand for hours in our crossings.
>
> Therefore, I attach great importance to closing all breaches. From a security stand point as Chief of Staff I would like to see all breaches closed, the entire surrounding fence which is a security fence, closing Judea and Samaria, with sophisticated crossing allowing the quick passage of 60,000, 80,000 or 140,000 people per day.

Minutes of the discussion in the State Audit Committee dated August 16, 2016, is attached and marked **R/11**.

111. Hence, the increased figures currently given by the respondents do not reflect a special problem arising from the "liberal" policy (according to respondents' current understanding) which had been applied in the past with respect to seam zone entry permits. It is rather a negligible phenomenon compared to the general phenomenon of illegal entry to Israel from the territories without permit. This problem does not arise from the "liberal" policy concerning access of individuals having connection to the seam zone to their lands, but rather from the fact that the fence is not maintained by the state and individuals pass through breaches in the fence, which are not repaired.

112. HaMoked: Center for the Defence of the Individual has been recently informed, after the updating notice on behalf of the respondents had been filed, that the military has started repairing breaches in the separation fence. It is obviously a much more sensible and reasonable way to handle the issue of illegal entry into Israel, than establishing rules preventing land owners in the seam zone from accessing their land in the West

Bank, while individuals having no connection to the seam zone can still enter Israel through breaches in the fence.

Investigation conducted in the first half of 2018

113. The updating notice on behalf of the respondents stated as follows:

> In addition to the above estimates, the above conclusion is also supported by an investigation conducted by the civil administration on the permit regime in the seam zone (**it should be clarified that said investigation was conducted after the 2017 amendment of the Collection of Standing Orders concerning the "miniscule plot").** Said investigation was conducted following a stabbing attack which was committed on December 10, 2017 at the central station in Jerusalem by a West Bank resident from Nablus, who held an entry and work permit in the seam zone, and worked in Harish Regional Council in construction works…
>
> Following said attack, the Head of the Civil Administration directed to conduct an investigation concerning the permit regime in the seam zone. The investigation was conducted in the first half of 2018, in the framework of which meetings were held with the regional councils in the zone, field tours were carried out in the seam zone including field tours with land owners in the zone, and different areas in the zone were mapped. Said mapping indicated that the scope of agriculture in the seam zone did not reconcile with the number of permits issued for said areas in a manner giving rise to the concern that a considerable number of permits were used to illegally enter the territories of the state of Israel. (paragraph 22, emphasis appears in the original)

114. As recalled, the original petition in this case was filed on October 4, 2018 – a few months after the "first half of 2018".

115. Since the original petition had been filed, the respondents filed, inter alia, notice on October 31, 2018; preliminary response on May 1, 2019; updating notice on August 15, 2019; second updating notice on September 18, 2019; third updating notice on January 22, 2020; and response to the amended petition on June 9, 2020. In addition, two hearing took place in the proceeding, the first on May 15, 2019, and the other on July 1, 2020. No stabbing attack or permit regime investigation were mentioned in any of the pleadings filed by the respondents until October 25, 2020, and in any of the hearings which took place in said proceeding. Namely, it is doubtful whether the investigation had indeed been conducted, and even if it was conducted it seems that the respondents did not think it was relevant for the revisions in their procedures until now, or else they would have mentioned it.

116. The argument regarding the stabbing attack and the permit regime investigation was mentioned for the first time in the state's response to the petitions regarding the

registration demand with the land registration office (HCJ 3066/20; HCJ 3067/20; HCJ 3068/20' HCJ 3070/20; HCJ 3071/20; HCJ 5131/20; HCJ 5133/20; HCJ 5329; HCJ 5331/20 and HCJ 5816/20). The responses were filed on September 14, 2020 – more than two years after the alleged investigation and after approximately **seventy petitions** had been filed regarding the more rigorous seam zone entry procedures. Neither the stabbing attack nor said investigation was mentioned in any one of them.

117. The petitioners filed a response to the said responses which stated as follows:

> The state argued that "In the first half of 2018 an investigation had been conducted which was followed by administrative work of the DCO's responsible for the seam zone, led by the Jenin DCO, which included, inter alia, a meeting with the local councils in the zone, tours in the seam zone, including a tour of the head of the DCO with land owners in the zone, tour of DCO officers in the different crossings and mapping of the different areas in the zone. Said mapping indicated that the scope of agriculture in the seam zone did not reconcile with the number of permits issued for said areas in a manner giving rise to the concern that **a considerable number of permits were used to illegally enter Israel**. The conclusions of said administrative work were presented to the head of the civil administration who decided to hone the procedures among the DCOs, strictly requiring all DCOs to apply uniform examination standards. Meanwhile it was decided to enforce the registration demand with the Land Registration Office, to ensure the credibility of the applications and to increase supervision and control."
>
> Despite the above arguments, **not even one document** has been attached to the state's responses, verifying that the alleged investigation, administrative work, meetings, tours or mappings had been actually carried out. No date of any meeting, tour, mapping or decision has been specified; No minutes or summary of any of the above has been presented, and no mention has been made of the persons who attended any of them, with the exception of one tour which had allegedly been conducted by the head of the Jenin DCO (who had allegedly "led" the administrative work). Accordingly, the date of the decisions allegedly made by the head of the civil administration to conduct the investigation has not been mentioned, but only that it occurred "in the first half of 2018", and no written document in that regard has been introduced; it has not been clarified who conducted the investigation which was allegedly followed by the above administrative work and no document has been presented with respect to said investigation, its conclusions and their formulation; no document has been presented explaining how the information obtained from all the meetings, tours and mappings alleged by the respondent was processed and analyzed, and how respondent's conclusion was formulated based on all of the above; who "decided" to enforce the registration demand with the Land Registration Office (it is unclear whether it is argued that the decision was made by the head of the civil administration or that it was deduced

from his decision to "hone the procedures"), and on which date – and most importantly – it has not been clarified **where the decision to enforce the registration demand with the Land Registration Office was published and what did it say. And the above, for good reason**.

The petitions include a chapter captioned "Respondent's policy explanations", and a sub-chapter captioned "The explanations given in 2017". The chapter concerns a letter of the head of Crossings and Seam Zone Department, Major Amos Zuaretz, which was forwarded to HaMoked Center for the Defence of the Individual on October 17, 2017 attempting to respond to HaMoked's arguments regarding the invalidity of the policy challenged in said petitions. The same arguments which had been specified in the letter dated October 17, 2017 were also raised in respondent's responses filed yesterday – the same responses which attempt to attribute the policy to the conclusions of a comprehensive and complex administrative work which was carried out after an investigation conducted in the **first half of 2018**, following an attack which had occurred in **December 2017**
Namely, **all incidents and acts which according to respondent's current arguments have led to the formulation of his policy, occurred after said policy had been challenged by HaMoked Center for the Defence of the Individual and after the respondent responded to the arguments which had been raised by HaMoked Center for the Defence of the Individual in that regard**.

With respect to the administrative work and mapping argued by the respondent, an application according to the Freedom of Information Law was submitted by HaMoked Center for the Defence of the Individual to the civil administration public liaison officer on November 2, 2017, which stated as follows:

> An application is hereby submitted to you by us according to the Freedom of Information Law, 5758-1998, for the purpose of receiving information in connection with seam zone mapping as specified below.
>
> In a number of answers which have recently been received from the civil administration it was noted that mapping of the seam zone had been carried out recently.
>
> **A copy of an example of such an answer dated July 27, 2016 is attached hereto** and marked A.
>
> In view of the above we wish to clarify the following:
>
> Which seam zone areas were mapped. Please specify the names of the villages whose lands were mapped.

> What were the criteria according to which the area was mapped. Please provide us with a list of the criteria according to which the mapping was made.
>
> Your prompt response is appreciated (emphasis was added, T.M.)

A copy of the Freedom of Information application dated November 2, 2017 is attached and marked **R/1**.

The response of the civil administration public liaison officer was received on January 2, 2018, which stated as follows:

> Receipt of your letter regarding the above referenced matter is hereby confirmed. The following is the response of the Judea and Samaria civil administration thereto:
>
> **No new mapping of seam zone lands has been conducted in connection with the division of the blocks**.
>
> **It is a drafting error**. Reference was made by the commander to data which had been forwarded to him by Staff Officer Guardian **consisting of *mawaqat* numbers of some of the lands of the villages in his area** according to blocks and plots **based on documents in the possession of the civil administration**.

A copy of the civil administration public liaison officer's letter dated January 2, 2018, is attached and marked **R/2**.

In addition, the undersigned has filed about seventy petitions regarding seam zone entry permits over the last two years, the vast majority of which are administrative petitions, which were mostly heard by Honorable Judge Moshe Sobel. All petitions, excepting perhaps a few, refer to adverse changes in respondent's policy governing the issue of seam zone entry permits in recent years. In all of these cases and in all other cases handled by HaMoked Center for the Defence of the Individual which have not been litigated, HaMoked has **never** come across the argument that the tightening of respondent's policy was related to the attack which had been committed in December 2017, to the permit regime investigation or to the alleged administrative work. All respondent's responses to the dozens of the above petitions, other than short responses having no legal content, explain the tightening of respondent's policy as follows:

> Recently, an examination was conducted by the civil administration and it was found that from the beginning of 2019 until August 6, 2019, 633 public servant

> certificates were issued for Israel Police specifying the types of permits held by Palestinian residents, holders of seam zone permits for agricultural purposes (farmer permit, farmer relative permit, and agricultural work permit) who were apprehended by the Police within the territory of Israel.
>
> Considering the total number of agricultural permits issued for the seam zone… there is evidently a widespread phenomenon, and even a sweeping phenomenon, of illegal use of seam zone agricultural permits for the purpose of entering Israel.

This is the explanation which was also given to the policy which had been contested in this petition, in the framework of the preliminary response to the administrative petitions which had been filed in that regard, which was attached to the petitions and during the hearings thereof, rather than the explanation concerning the 2017 attack, the investigation and the administrative work.

In the preliminary response to the administrative petitions it was argued, following the argument regarding the examination which has been recently conducted by the civil administration with respect to the number of public servant certificates that had been issued that "The above data regarding the misuse of the permits are of importance in the case at hand – firstly, when a seam zone entry permit is given, balancing is made between the security considerations which led, as aforesaid, to close the area, and the obligation of the military commander to maintain reasonable access of Palestinian residents to the lands of the zone, each one according to their needs. Secondly, there is no physical barrier preventing entry into Israel from seam zone lands with security risk implications embedded therein" (see paragraphs 64-67 of the preliminary response to the administrative petitions).

In a hearing held in the administrative petitions on March 3, 2020, respondent's counsel argued as follows:

> Commencing from 2017 the respondent started to apply more strictly the demand that all required documents be attached to the applications submitted to him. The demand had existed earlier, but in fact in said period permits were also given to persons who did not have a real need and who have not submitted their applications as required. **With the realization that the permits were misused to enter Israel… the respondent started to apply more strictly the procedures in their entirety, including the requirement to attach all necessary documents to seam zone entry applications** (page 1 of the protocol, attached to the petitions as P/1).

And thereafter:

> **The responded started to strictly demand compliance with said requirement commencing from 2017**… until the 2017 Collection of Standing Orders, compliance was not strictly enforced. In 2017 it was strictly enforced (*Ibid.*, page 5).

In later petitions – HCJ 5329/20; HCJ 5131/20; HCJ 5133/20 and HCJ 5816/20 – it was clarified that respondent's above argument made in the hearing in HCJ 6896/18 **Ta'meh v. Military Commander Of the West Bank** held on July 1, 2020, was criticized, and that in a decision given on that day it was held that the respondent should file an updating notice by August 31, 2020 specifying "the factual data concerning misuse of seam zone entry permits for the purpose of entering Israel illegally, and the data in that regard which were considered by the respondents while making the decision regarding the new policy" (the respondent requested an extension for filing the updating notice and it should be filed by him by September 30, 2020).

Namely, the argument concerning administrative work and investigation which were conducted following an attack which had been committed in 2017 is nothing but an attempt to provide an alternative explanation for a policy for which another explanation has been previously given and which was criticized by this honorable court. This argument as well its predecessor has no merit.

A copy of petitioners' response in the above ten petitions is attached and marked **R/12**.

118. The same applies to the case at hand – no details were presented with respect to the alleged investigation; the information which was collected in the framework thereof; and the manner by which conclusions were drawn from the information which had been collected, and **no document** was presented with respect to said investigation or with respect to the decision allegedly made, based thereon. We have no reason to believe that things were properly made and we have no reason to believe that the conclusion drawn from the alleged investigation was the required conclusion arising from the information obtained thereunder, if any has indeed been received, and that said conclusion was based on sufficient factual infrastructure.

119. Raising the argument that such investigation had been conducted so late in the proceeding, after numerous pleadings have been filed in the framework thereof and after responses have been filed to **dozens** of administrative petitions on the same issue, failing to mention such an investigation, is **peculiar and tremendously suspicious.** It is clear that said arguments was raised only because the honorable court did not accept the previous argument brought to substantiate respondents' policy concerning 633 public servant certificates which had been issued by the respondents. Had respondents' policy been formulated following a comprehensive and thorough investigation of the permit regime, and based on information revealed in said investigation, it would have

undoubtedly been mentioned in the responses to the petitions, and the respondents would have undoubtedly based their arguments thereon.

120. In the hearing which was held in the ten petitions concerning the registration demand with the Land Registration Office the following was stated:

> Honorable President E. Hayut: You were satisfied with less than that for many years, for at least 15 years you have not required registration of the applicant himself. One single stabbing event changed the policy?
>
> Adv. Aviram: Certainly not.
>
> Honorable President E. Hayut: According to the response it seems to have been the cause.
>
> Adv. Aviram: It was the starting point but it was preceded by other things, including an increase in the number of permits but it required an investigation that had been conducted for six months.
>
> Honorable President E. Hayut: Your investigation is important. For instance, the first petitioner in the first petition that you have discovered that the land was not cultivated and he has been requesting permits for years, but here even if it is registered it shall not change the reality. You should check it in the same way you used to do it, whether the person applying for a permit actually cultivates. The registration is irrelevant.
>
> Adv. Aviram: It is important because based on investigation and tours indicating that there are many permits while many plots are not cultivated, a concern of misuse was raised.
>
> Honorable President E. Hayut: How shall the registration help?
>
> Honorable Justice G. Karra: Persons who do not cultivate their lands and received permit are to be dealt with, but you do not go and punish everyone.

Minutes of the hearing dated September 21, 2020 is attached and marked **R/13**.

121. The same applies to the case at hand.

122. In addition, as aforesaid, the argument that the number of permits has increased is also not true according to the data presented in the updating notice. On the contrary, the number of permits has declined over the years.

123. Anyway, the respondents were required to specify "**the factual data** concerning misuse of seam zone entry permits for the purpose of entering Israel illegally." Namely, even if the above investigation had been conducted and the alleged conclusions were drawn in the framework thereof, it does not provide the "factual data" as required. If indeed such an investigation had been conducted, the respondents should have specified the

factual data collected in the framework thereof, and could not have satisfied themselves by arguing that the investigation had been conducted and its conclusions reconciled with their position. Respondents' above argument leaves the question posed by the honorable court unanswered and constitutes yet another request to accept respondents' position despite the fact that it is not supported by factual data.

The factual data considered by the respondents while making the decision regarding the new policy

124. In the decision of the honorable court, the state was required to specify "the factual data concerning misuse of seam zone entry permits for the purpose of entering Israel illegally and **the data in that regard which were considered by the respondents while making the decision regarding the new policy**".

125. As aforesaid, the state raised three arguments with respect to the factual data regarding the misuse of seam zone entry permits for the purpose of entering Israel illegally – the argument that it was known to the respondents from the soldiers' experience and that "naturally" there are no numerical data in that matter; presenting the data regarding the number of public servant certificates issued with respect to seam zone entry permits who were apprehended in Israel, but this time without distinguishing between holders of permits for agricultural needs and all other permit holders, plus data from previous years; and the argument that in the first half of 2018 a permit regime investigation was conducted following a stabbing attack which had been committed on December 10, 2017, and that the conclusion of said investigation is that the phenomenon alleged by them does indeed exist.

126. With respect to the argument concerning **the soldiers' daily experience** – the updating notice did not specify **when** reports were provided by "field officials" whereby thousands of permit holders were passing through the gates in the morning hours and that a "tour" – in the singular language – notices that only a few people actually cultivate their lands (paragraph 18 of the updating notice).

127. In order for the information to pass from the soldiers opening the seam zone gates, who are low-ranking soldiers that are not affiliated with the civil administration, to the bodies responsible for formulating respondents' policy and drafting the procedures regulating the entry into the seam zone, a series of meetings should have probably been held, in which the matter was discussed by the soldiers. It should have been decided that the soldiers' testimonies were credible and important and it should have been decided – several times – to push the issue up the military hierarchy until it reached respondents' most senior echelon, and that a dramatic decision would be made by them to materially change the seam zone entry procedures based on the reports of said soldiers.

128. Namely, even when a decision is made on the basis of the daily experience of "field officials" things should be actually documented in detail, including minutes of meetings; written testimonies of soldiers; correspondences regarding the matter; and documented decisions made based on said reports. Hence, the respondents should be able to date the decision-making process based on the soldiers' testimonies. They should have the dates on which the matter was raised by the soldiers who had opened

the gates or took part in the patrol or patrols as well as by their commanders; they should have the dates of the meeting which were held in that regard and correspondences on the matter; they should have the reasoned decisions on how the matter should be handled – also dated. The above, particularly due to the far-reaching consequences of the decisions which were eventually made – cancelation of the entitlement of many land owners in the seam zone to receive entry permits to their lands, and thereafter, limitation of farmers' access to their lands to quotas of several days per year. It is inconceivable that such drastic and weighty decisions, affecting the human rights of thousands of people, were made based only on general impressions conveyed by soldiers, without specific and accurate data, without any documentation, without an orderly procedure of deliberation and consultation; and without any written document.

129. However, while referring to the information obtained from "field officials" no **date** is provided by the updating notice. Therefore it is impossible to know whether the information which had been allegedly received as aforesaid was available to the respondents while making the decision to tighten their procedures in 2017 and 2019, even if the decision to tighten the policy was preceded by a reasonable process of data collection and consideration including an examination of the harsh consequences thereof.

130. The extremely general description of the manner by which the alleged information was conveyed by "field officials", coupled with the argument that "Naturally, the respondents do not have full data regarding the scope of illegal passage of holders of seam zone entry permits into Israel" raise heavy doubts regarding the seriousness of the decision-making process towards tightening the entry procedures into the seam zone. In any event, as aforesaid, it is unclear from the updating notice whether the information provided by "field officials" was indeed available to the persons who formulated respondents' new policy. The respondents did not expressly confirm it and did not clearly refer to "the data in that regard which were considered by the respondents while making the decision regarding the new policy."

131. With respect to the argument regarding the number of public servant certificates issued in the years 2016-2020 – the updating notice did not clarify when the data concerning the public servant certificates had been collected – before or after the formulation of the policy being contested in the petition – and it has not been noted whether said data had been available to the respondents while formulating their policy. It was only stated that the respondents have said "in their possession" and that "said data were collected for the years 2016 through 2020" (paragraph 19).

132. The updating notice stated that in "In 2019 1,839 incidents were documented, datum reflecting an increase of 65% compared to the previous year. It should be clarified that the actual increase in the number of incidents has apparently occurred also before 2019 – and therefore in 2019 more individuals were apprehended at least after the third time" (*Ibid*. emphasis in the original). Hence, even if the data for 2016 were collected in real time rather than for the preparation of the updating notice, which was not argued by the respondents, the increase in the number of public servant certificates does not explain the tightening of the procedures in February 2017. Even if the respondents are of the

opinion that it may be concluded from the 2019 data that the increase in the number of incidents occurred before 2019, the respondents were not aware of same prior to receiving the data referring to 2019. The data regarding 2019 were probably not available until 2020 – after the two "amendments" to the procedures.

133. With respect to the **permit regime investigation** – the alleged investigation is dated as of the first half of 2018 – at least a year after the 2017 Collection of Standing Orders was published. Hence, it was not available to the respondents while formulating their policy concerning "miniscule plots" as was also noted in the updating notice (paragraph 22).

134. Accordingly, with respect to some of the data specified in the updating notice it can be undoubtedly established that they were not in respondents' possession while formulating their policy concerning "miniscule plots" – the number of public servant certificates issued in the years 2017, 2018, 2019 and 2020 (since the rules in that regard were published in February 2017 in the 2017 Seam Zone Collection of Standing Orders), and the alleged investigation was conducted in the first half of 2018. With respect to all other data, the respondents did not clarify whether they were in their possession while formulating their policy or not. The honorable court demanded the respondents to provide an answer to said question and their avoidance from doing so is of significance.

Whether and in what way respondents' current policy reconciles with the position of the state as presented in the Seam Zone Judgment and with its statements in that case

135. The respondents argued in their updating notice that the changes in the seam zone entry procedures reconciled with the position presented by them in the HCJ permit regime judgment. According to the updating notice, in the HCJ permit regime judgment the respondents required the applicants to prove real connection to the land, due to the concern that the permits shall be misused to enter Israel illegally (paragraph 26 of the updating notice). Currently they refuse to give permits to persons whose lands are defined by them as "miniscule" for the same reason.

136. The respondents argue that their position has not changed and that rather, the reality has changed. According to the respondents, since the HCJ permit regime judgment was issued, it became clear that "the permits are misused – on a large scale – to enter Israel illegally" (paragraph 31) and that "therefore it is only clear" that "proving connection to the land in and of itself cannot sufficiently show that the permit applicant has a real need to cultivate lands in the seam zone" (*Ibid*.)

137. The above argument presents several problems.

138. **Firstly**, the permit regime was formulated in **the midst of the second intifada**. The security reality since then has completely changed, for the better and not for the worse. The argument that the drastic tightening of respondents' policy was required due to changes in the **reality**, and that respondents' position has not changed, does not make sense. It is clear that it is not the factual circumstances that have changed, but rather respondents' position regarding their obligations towards persons harmed by the

separation fence. The changes in the factual reality cannot justify the **tightening** of entry arrangements into the seam zone, but only easing them, and that did not occur.

139. Secondly, as clarified above, there is no factual basis for the argument that "the permits are misused – on a large scale – to enter Israel illegally". The respondents raise this argument over and over again but they have never supported it by any evidence or clear data, and in the updating notice they have even argued that "Naturally, the respondents do not have full data regarding the scope of illegal passage of holders of seam zone entry permits into Israel". Respondents' assessment of the scope of the phenomenon alleged by them is also vague and extremely non-committal – "a considerable part of permit holders" (paragraph 20) an "assessment" that tolerates almost any figure.

140. How can it be argued based on this kind of "information" that currently new factual circumstances exist, so clear and severe which justify a drastic change in the permit regime arrangements, cancelation of the arrangements which had been approved by the honorable court and formulation of new and much more harmful arrangements in lieu thereof? It is clear that such far-reaching change in the entry arrangements into the seam zone – such a fundamental change which in fact raises the question whether it is the same type of regime which was discussed in the HCJ permit regime judgment – cannot be based on such weak and shaky factual argument, which is not entrenched in facts, constituting nothing but a mere statement of the respondents that this is the situation and that their word should be taken for it.

141. Thirdly, there is a leap of logic in respondents' argument. Even if the respondents proved their argument that "the permits are misused – on a large scale – to enter Israel illegally" this cannot explain respondents' shift from the position that entitlement to a permit stems from the connection to agricultural lands in the seam zone, to their new position that "it is only clear that proving connection to the land in and of itself cannot sufficiently show that the permit applicant has a real need to cultivate lands in the seam zone".

142. Even if there was indeed a widespread problem of illegal use of seam zone entry permits for the purpose of entering Israel unlawfully, it could have only explained the formulation of rules regarding permits' use and supervision of such use. It cannot explain the change of the basis underlying the entitlement to receive permits and respondents' rejection of the premise that the local residents have the right to continue with their ways of life and access their lands as they have done before the separation fence had been erected, in the absence of security preclusion. Respondents' new position, rejecting the above premise, has no external and factual explanation.

143. In fact, we are concerned with a change in respondents' **legal** position – from the assumption that the burden to justify violation of fundamental rights of protected residents is imposed on them, and that a real security reason is required to justify any such violation, to the assumption that the protected residents should prove "real need" to have their fundamental right for private property recognized, and that the fact that they have proved their ownership of lands in the seam zone and that there is no security preclusion in their matter, is irrelevant for their entitlement to receive entry permits into their own lands. The above invalid assumption is coupled by another new assumption

of the respondents, that the fact that a permit applicant is the land owner, that the land is agricultural land, and that the land owner wishes to continue to have access to his land to cultivate it, as his family has been doing for generations, **is not** a "real need", and that under such circumstances there is no reason to approve the application. It is clear that the above assumptions do not reconcile with the state's position in the HCJ permit regime judgment and its statements therein, and are not even close to them.

144. The respondents argue that the same concern currently argued by them has already been raised in their response to the HCJ permit regime petition. However, according to the response filed therein, petitioners' complaint was that "the number of rejected applications submitted by **second-degree relatives** is particularly large for the purpose of reducing the circle of land owners' relatives receiving permits" (paragraph 118). The state responded to that by saying that "indeed, the security system had initially taken a very liberal approach in giving seam zone permits. However, there is a real concern that this policy shall be misused for the purpose of entering Israel illegally, such that residents of the area, who shall receive seam zone entry permits, shall misuse their permits to enter Israel without a permit, rather than in order to cultivate seam zone lands. Due to said concern, which is not at all negligible, the respondents currently wish to ascertain that the applicants do indeed have real connection to agricultural land in the seam zone, thus reducing the inherent concern that the purpose of the permit is to enter Israel without a permit." (paragraph 119).

145. The fact that the same argument which was used in the past to justify the fact that second-degree relatives of land owners encounter difficulties in obtaining permits, is currently used to justify the fact that the land owners themselves do not receive permits, only attests to the severe regression in the state's acknowledgment of its obligation to enable local residents to maintain their fabric of life in the area. So does the fact that in the past the respondents were of the opinion that they had to check whether the permit applicants had real connection to agricultural land in the seam zone, while currently they argue that individuals who proved that they had real connection to lands in the seam zone request permits although they have no need to access their lands, and that it should be assumed, as a general rule, that **they do not** intend to access their lands, but rather to break the law and enter Israel illegally.

146. As stated in petitioners' response dated June 25, 2020, in the HCJ permit regime petition a supplementary updating notice was filed on behalf of the state on July 30, 2009. Attached thereto were the seam zone entry procedures including a chapter captioned "Who is a farmer in the seam zone – procedure" (the supplementary updating notice was attached to the updating notice in the proceeding at hand as RS/1), which stated as follows:

> In the context of establishing the procedures and orders pertaining to the permit regime in the seam zone several meetings and discussions were conducted with civil administration professionals… for the purpose of establishing the entitlement to permanent farmer permits in the seam zone. After all meetings, discussions and deliberations in that regard, the undersigned met with the head of the infrastructure division who summarized the issue in the proposed procedure…

> The permit to a farmer whose connection to lands in the seam zone was proved shall be for two years… No limited quotas are set for agricultural permits in the seam zone and there is no preclusion preventing their renewal from time to time.
>
> **The objective**: preserving and improving the fabric of life of the Palestinian population having proved agricultural connection to the seam zone.

147. Said procedure includes a flow chart captioned "Farmer permit issue procedure in the seam zone" stating as follows:

> **Any Palestinian proving agricultural connection to land in the seam zone and is not security precluded, is entitled to a farmer permit**

148. As aforesaid, the seam zone entry procedures include provisions regulating the manner by which misuse of seam zone entry permits for the purpose of entering Israel should be handled, as well as provisions precluding anyone who acted in this manner from re-entering the seam zone. The procedures include an entire chapter in that regard, which chapter was not deleted when the limiting criteria for the issue of permits was formulated, but rather, continues to exist in both 2017 and 2019 Collection of Seam Zone Standing Orders. The Israeli authorities handle illegal entry into Israel and the legislator gave them powerful tools for this purpose. Harming persons who did not act contrary to the law and were not suspected of same is not justified, and the procedures themselves constitute proof that said harm is not required.

149. The position of the state in the HCJ permit regime petition was that the separation fence and the policy according to which only individuals having specific connection to the seam zone may enter the seam zone, and whose entry into the seam zone is allowed only by permits, are extremely effective measures, whose success in achieving their security purpose was well established:

> Obtaining seam zone entry permit constitutes proof that the person has been specifically examined recently and that there is no security preclusion on the permit application date preventing his entry into the seam zone…
>
> It should be noted that renewed security examination from time to time ensures that each case is examined on its merits *ad hoc*, according to the security circumstances at that time… **limiting entry into the seam zone only to persons having actual specific connection to this area and subjecting the entry thereto to permit** (which is conditioned on a specific security check), **extremely limit the ability of perpetrators to pass through the security fence** and to thereafter enter Israel or settlements located near the Judea and Samaria border line for the purpose of committing attacks. It should be noted that the **security**

> **fence project including the seam zone constituting an integral part thereof, have already proved their great efficiency in reducing the scope of terrorism west of the fence. This matter is currently within the judicial knowledge of the honorable court,** after data in that regard have already been presented to the honorable court, inter alia, in the framework of Alfei Menashe and Budrus & Shuqba (paragraphs 75-79 of the response, emphases added, T.M.).

150. The state does not currently argue that the closure of the seam zone is not an effective measure for the realization of said purpose. The state has simply replaced its position regarding the security purpose of the separation fence and of the closure of the area with a new position, focusing on the enforcement of the entry into Israel laws, not by the accepted measures, but rather by closing the seam zone to **individuals having actual specific connection thereto** – a step which has not even been taken during the second intifada. Hence, respondents' current position is totally different from the position presented by the state in the HCJ permit regime judgment.

151. It is unclear how the respondents wish to stand upon the honorable court's impression in the framework of the HCJ permit regime judgment that "Under the circumstances at hand, 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… It seems to us that this arrangement gives a reasonable solution which minimizes the violation of the rights of the farmers, and we assume in our said determination that respondents' give real substance to their declarations concerning the importance of continuing to give proper solutions for the needs of the farmers in the Area". (paragraph 34)

152. It is clear from the judgment that the proportionality of the closure of the seam zone to Palestinians cannot be separated from the question of whether individuals having connection to lands in the seam zone can continue cultivating their lands together with their family members and other workers, and whether the arrangements actually applied by the respondents minimize the violation of the rights of those having connection to the seam zone and provide them proper solution. When the arrangements change, said historic impression of the honorable court, from 2011, is no longer relevant, as it obviously does not relate to respondents' new arrangements according to which individuals having connection to lands in the seam zone **do not** have the ability to continue cultivating their lands since the outcome arising from the division of the size of the lands by the number of the heirs is less than 330.

153. In the hearing which was held in the petitions regarding the demand to register inheritances with the Land Registration Office as a condition for the issue of permits for agricultural purposes, on September 21, 2020, Honorable President Hayut said the following: "There are two points which worry me. The first is said regulation that Madam counsel points at and I don't know where it stems from. The logic behind imposing the obligation to pay one percent on a person wishing to register by virtue of inheritance, the justification thereof is unclear. It **obviously encumbers a population which is already weak and was forcefully disconnected from the lands by the**

erection of the fence and the state encumbered the ability, for security reasons, to lawfully access their lands. It is not clear why they should pay one percent of the value of the land. The other thing, is the condition of a plot which is not a miniscule plot. If five heirs are registered with respect to a certain plot and you shall arbitrarily attribute one fifth to each one, it may, if we theoretically assume that four are staying abroad and one cultivates for all of them, power of attorney may be given by the others and permit may be issued to that one. These things should be addressed."

154. Hence, firstly, the fact that we are concerned with a weak population which was harmed by the state that created the need to obtain said permits, should be taken into consideration. Secondly, defining the lands as "miniscule" due to the number of their heirs is arbitrary, erroneous and offensive.

155. In the framework of the decision given in the above proceedings on September 21, 2020, the respondent was required to file an updating notice by January 3, 2021, in which he should clarify his position regarding several issues which were discussed in the hearing, including whether a person can empower another to cultivate their lands located in the seam zone on their behalf. It is therefore possible that the provisions of paragraph 4.C. shall not be required for the court's decision regarding owners' "scheme of rights", since the same function may be fulfilled by the power of attorney without the negative effect associated with an ostensible "waiver" by the land owners of their rights, and without camouflaging the fact that each one of the land owners is a separate and independent individual, having fundamental rights.

156. In addition, in the hearing which was held in HCJ 6411/18 on December 12, 2019 the following was stated:

> Adv. Danieli: The plot in question consists of 64 dunams and there are several heirs. The plot consisted of 122 square meter. We also tried in connection with your honors' question regarding the number of cultivating farmers, there were attempts to negotiate, we are willing to give him a permit for personal needs. He can enter and cultivate the land provided he submits a request.
>
> Honorable Deputy President H. Melcer: I don't accept this condition. They are correct here. You examined the request and denied it. There is also a rule that citizens and residents should not be harassed.
>
> Adv. Danieli: Absolutely.
>
> Honorable Deputy President H. Melcer: Will you issue a permit? As of next week he shall be able to go and cultivate the land and thereafter you shall check whatever you need. I shall thereafter ask what the difference is between permit for agricultural needs and personal needs.
>
> Adv. Danieli: There is no doubt that a very long time passed and it was important for us before your honors, new procedures are being prepared.

Honorable Justice U. Vogelman: Never mind now procedures. We have therefore asked what the number of cultivating farmers was. A 64 dunam plot with respect of which none of the heirs has a permit to cultivate, one heir requests a permit to cultivate, give him the permit for the time being. All general issues may be discussed. We are not concerned with thirty heirs applying for permits. There is only one.

Honorable Deputy President H. Melcer: What is the difference between a permit for agricultural needs and personal needs?

Adv. Danieli: According to the new procedures if a person has rights in land, 34 square meters, he is given a punch card permit with a number of possible entries according to the type of the crop, size of the land etc., according to a table. It is limited, for instance to three years, 400, 200 entries, etc., according to the size of the land. Permit for personal needs, for instance an heir of a part of the land and to the extent his part is less than 330 square meter, according to respondents' procedures, you receive a permit for personal needs, according to need. These are new procedures.

Honorable Justice U. Vogelman: Here it's not enough. Without deciding on the general issues, at this stage give him a permit without prejudice and without derogating from your arguments which are reserved.

Adv. Danieli: The argument that he is the single cultivating farmer is obviously relevant, but we cannot accept because he was the first to apply, to the extent we receive the consent of all heirs, he should submit a request.

Honorable Deputy President H. Melcer: **Madam Counsel does not understand. He will receive a permit according to what he requested, the decision shall be canceled**, within one month he shall submit a new request and then you shall make a new decision.

Adv. Danieli: Accepted…

Adv. Meir: For how long shall the permit be valid?

Honorable Justice U. Vogelman: One year. Adv. Danieli, **Madam Counsel shall not cause us to say things that we do not want to say. Madam, in all fence cases we remember everything and Madam shall tell the respondents**.

A copy of the protocol of the hearing in HCJ 6411/18 is attached and marked **R/14**.

157. Hence, the refusal to give a farmer permit to a land owner based on the argument that his plot is miniscule, while in fact the plot is large and no permits were issued to the other heirs, cannot stand and is contrary to the state's undertakings given to the honorable court in the framework of the separation fence petitions. The invalidity of said decision is so clear and obvious that the honorable court canceled it without

discussing the lawfulness of the procedures on which it was based, since it is clear from the circumstances themselves that the decision is extremely unreasonable.

158. Accordingly, there is no doubt that respondents' current policy is not at all similar to the policy which was presented to the honorable court in the HCJ permit regime petition, based on which and based on the state's argument that said policy would be applied leniently, the honorable court refrained from interfering with the decision to close the seam zone to Palestinians.

Entrenching the declarations made in the hearing in respondents' procedures

159. The respondents stated in the updating notice that they intended to shortly publish a revised version of the seam zone entry procedures. In said version they intend to include a paragraph in the following language:

> "A cultivation permit for agricultural needs shall also be granted on the basis of a 'scheme' of rights of several right-holders who jointly hold 330 square meters – to one of them at their choice. Arguments concerning the farming of additional parts should be supported by appropriate documents."

160. Firstly, there is no "cultivation permit for agricultural needs" and the reference made by the procedures to such a permit opens the door to numerous errors and additional litigation in that regard. Currently, the paragraph that the respondents intend to change reads as follows:

> Checking applicant's part in the plot – agricultural work permits shall be issued for the relative part of the farmer in the land according to documents. It should be emphasized that:
>
> a) Arguments concerning cultivation of additional parts should be supported by proper documents (paragraph 14.a.7 of the Chapter "Permits for Agricultural Needs in the Seam Zone")

161. As stated in paragraphs 136-142 of the amended petition, the paragraph discussing the "miniscule plot" as cause for denial refers to agricultural work permits issued to workers engaged by the land owner, rather than to farmer permits issued to the land owners themselves. With respect to farmer permits, the procedures provide that "the farmer, having the proprietary connection to the agricultural land, shall not be taken into account in the quota of workers" (Ibid., paragraph 13.a.10). In fact the procedures are applied erroneously as a matter of policy and applications of land owners in the seam zone for farmer applications are systematically denied based on the clause relating to agricultural work permits. In any event, the type of permit should be clarified and no unclear phrasing should be codified in the regulations.

162. Secondly, the provision that "Arguments concerning cultivation of additional parts should be supported by proper documents" is neither sensible nor applicable. In fact,

the plots defined as ‘miniscule’ **are not** smaller than 330 square meter and were **not** divided between the heirs and therefore, *ab initio*, there is no document referring to land at the size argued by the respondents or to land division. Permit applicants attach to their permit applications land registration documents or property tax documents for areas much larger than 330 square meter, consisting of several dunams or dozens of dunams, and based on these documents the respondents argue that their plots are smaller than 330 square meters. How then can permit applicants submit documents proving they cultivate "additional parts", beyond the 330 square meter argued by the respondents?

163. In the case at hand, for instance, petitioner 2 received a permit for personal needs valid for three months based on the argument that the plot of his mother, petitioner 1, is smaller than 330 square meter (see P/6), after he had submitted a property tax document for a plot consisting of 17.5 dunams (see P/4).

164. Petitioner 3 received a punch card permit with a quota of 40 entries per year "for his plot the relative size of which is 181 square meter" (see P/19) after he had attached to his application a land registration document for a plot consisting of 42.135 dunams (see P/9).

165. How, then, can the application for cultivation of "additional parts" of the plot, be supported by documents? Obviously there is no basis for the argument that the permit applicant **does not** cultivate the entire plot, and there is no basis for the argument that the plot is smaller than 330 square meters.

166. In any event, the petitioners object to compelling the land owners to "choose" one of them as the permit holder. The joint owners are separate individuals, not one entity and each one of them has the right to own property, the right to freedom of occupation and the right to freedom of movement according to the law. The fact that they are partners, and often relatives, does not derogate from the weight of their human rights and does not legitimize the fact that they are denied access to their lands, in the absence of security considerations requiring it.

167. The fact that in the vast majority of cases these are lands which pass by way of inheritance from one generation to another, jointly owned by siblings and cousins who have been cultivating the lands together from childhood, only attaches greater importance and emotional value to their ability to access their lands. Separating the joint owners from each other causes severe harm not only to their property rights but also to their family ties. It disrupts the family customs of the local residents and injures their beautiful tradition which they hold dear of working together with their family members in the same plot inherited by them from their parents, and by their parents from their parents before them and so on and so forth. This custom carries with it very deep emotions and its cancelation shall constitute great loss for the local residents. Demanding family members to choose one of them, to be the only one having access to the land, while all other family members are disconnected from their land is **extremely harmful and destructive for the local residents. It may deeply and severely injure their feelings and cultural tradition in a manner which may never be restored.** An occupying power should not cause such harm to the fabric of life and

customs of protected residents. It is most certainly prohibited from doing so in the absence of security reasons obligating it to act in this manner.

168. Agricultural lands in the West Bank were jointly owned and ownership therein passed by way of inheritance long before the separation fence was erected, since that was the law in the area and these were the ways of life of the population which was living there. The fact that agricultural lands are owned by several owners in common is not new, but is rather exactly the factual situation referred to by the state and thereafter by the honorable court in the HCJ permit regime judgment and in all other judgments in which the separation fence and its crossing arrangements were discussed. It cannot be currently argued that petitioners' argument that all joint owners are entitled to access their lands is extreme or intransigent. The reality has never been different until the rules challenged in this petition were formulated. The respondents are the ones veering from the consensus in this matter arguing that the rules according to which a person who proved his connection to lands in the seam zone is entitled to a permit, in the absence of security preclusion, are "absurd". In their argument, the petitioners only reiterate the position of the honorable court in a host of judgments which **rejected** petitions against the route of the separation fence and the closure of the seam zone, and adopted the position of the state in that regard. As said by the Honorable Justice Karra in the last hearing "It's like the story about the goat and the Rabbi. You bring a goat in and afterwards you take it out." The petitioners request nothing but to restore the arrangement which was entrenched in the judgment **rejecting** the petition filed by petitioner 4 regarding the permit regime. It is difficult to understand the fact that the state objects thereto.

Conclusion

169. The updating notice filed by the respondents does not answer all questions posed by the honorable court.

170. The data presented in the updating notice regarding the number of permits which had been issued over the years do not support respondents' argument that the number of permits has increased and that the number of the permits was disproportionate compared to the size of the plots. The data support petitioners' argument that the number of permits has decreased, particularly following the recent "amendments" of the procedures, which are contested in the petition.

171. The state was unable to provide factual data regarding the misuse of seam zone entry permits for the purpose of entering Israel illegally. The state argued that "naturally" said data did not exist, and instead of providing the required data it re-provided data of the kind which has already been rejected by the honorable court in the last hearing – numbers of public servant certificates issued by the respondents. In addition, the state argued that an investigation regarding the permit regime had been conducted in the first half of 2018 and that the conclusion of said investigation was that the phenomenon argued by the state did exist. However, the factual data which had been collected in the framework of the alleged investigation were not provided but it was only argued that the investigation had been conducted and that its conclusion was as stated above. If such an investigation had indeed been conducted, following which it was decided to

establish the tighter and more rigorous policy regarding seam zone entry permits, it is unclear why it has never been mentioned in any of respondents' pleadings in this proceeding from its beginning until the updating notice, more than two years later, or in responses to about seventy other petitions filed by the undersigned on the tightening of respondents' policy. If such an investigation had indeed been conducted, in the framework of which information was collected well justifying the policy being challenged in the petition, it would have been expected of the respondents to base their response to the petition thereon rather than only mentioning it. However, the mere existence of the investigation has never been mentioned until this stage, which at the very least raises questions.

172. The updating notice did not clarify which data were available to the respondents while deciding to establish their policy. At least part of the data mentioned in the updating notice could not have been available to them at that time.

173. With respect to the question whether and how respondents' current policy reconciles with the state's position as presented in HCJ permit regime and its statements in that case, respondents' answer is not at all convincing. The respondents argue that their position has not changed and that the reality has changed, and that currently the phenomenon whereby permit holders enter Israel illegally is widespread, namely, according to the respondents, when the permit regime was established, in the midst of the second intifada, the factual situation was better than it is today, and therefore what could have been done then can no longer be done today. Said argument is obviously absurd. Secondly, as aforesaid, respondents' factual argument regarding the existence of a widespread phenomenon of misuse of seam zone permits for the purpose of entering Israel illegally has no basis. Thirdly, even if such a phenomenon exists, it cannot explain the shift from the approach according to which connection to the seam zone grants entitlement to a permit, to the approach according to which in addition to connection to the seam zone, "need" to receive the permit must be proven, and the land owners and other farmers do not have a "need" to receive permits. This change is not a change in the factual reality but rather a change in the legal position of the state, and its new position is clearly contrary to the position presented by it in HCJ permit regime and its undertakings therein.

174. With respect to the proposed provision regarding the "scheme" of rights of owners in common and choosing one of them to receive a permit instead of all other owners, firstly, the provision makes no sense. It refers to a type of permit which does not exist and it requires the applicants to prove the impossible – that they cultivate additional parts of the land, other than the "miniscule" area referred to by the respondents, while the mere argument that the area is "miniscule" is fictitious and is based on documents proving that the plot is much larger. Secondly, ownership in common of lands does not diminish from the human rights of the land owners and does not justify harming them as independent individuals. Lands have always been owned in common and ownership therein has always passed by way of inheritance. This was the reality referred to by the state *ab initio* while formulating the permit regime. It is also the reality referred to by judicial precedent, acknowledging the right of persons having connection to lands to continue accessing their lands and respondents' obligation to allow it, in the absence of security preclusion preventing it. The respondents are the ones veering from the

existing rule in this matter rather than the petitioners. They are the ones raising an innovative and far reaching argument. The only thing the petition requests is to act according to the judgment which rejected petitioners' arguments concerning the permit regime, and respondents' attempt to present petitioners' arguments as absurd and exaggerated, is the one veering from the consensus and disconnecting itself from accepted judicial precedent in that regard.

175. Therefore, the honorable court is requested to issue an *order nisi* as requested in the petition.

November 23, 2020.

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Tehila Meir, Advocate
Counsel for the petitioners