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At the Supreme Court **HCJ 475/21**
Sitting as the High Court of Justice

In the matter of:

1. **_____ Kabha ID No. _________**
   Palestinian resident of the occupied territories

2. **_____ Kabha, ID No. _________**
   Palestinian resident of the occupied territories

3. **_____ 'Amar, ID No. _________**
   Palestinian resident of the occupied territories

4. **_____ Sabach, ID No. _________**
   Palestinian resident of the occupied territories

5. **_____ Yassin, ID No. _________**
   Palestinian resident of the occupied territories

6. **HaMoked - Center for the Defence of the Individual founded by Dr. Lotte Salzberger**

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

The Petitioners

v.

Military Commander for the West Bank Area
Represented by the State Attorney's Office, Ministry of Justice,
29 Salah-a-Din Street, Jerusalem
Tel: 02-6466590; Fax: 02-6467011

The Respondent

Petition for Order *Nisi*

Petition for order *nisi* is hereby filed which is directed at the respondent ordering him to appear and show cause why he would not allow petitioners 1-5 in particular, and Palestinian men over the age of 55 and Palestinian women over the age of fifty, in general, to enter the seam zone without specific permits, as they are allowed to enter Israel without specific permits.

No alternative remedy

1. This petition concerns the entry of Palestinian men over the age of 55 and Palestinian women over the age of 50, into the seam zone, in the West Bank, without specific permits, as they are allowed to enter Israel without specific permits.

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2. Section 5A(a) to the Courts for Administrative Affairs Law, 5760-2000, provides as follows:

> The Court for Administrative Affairs in Jerusalem shall also adjudicate, in addition to the authority vested in it according to Section 5, the following:
>
> (1) A petition against a decision of any authority or body listed in the fourth addendum, acting in Judea and Samaria (hereinafter: the Area) in any matter specified in the fourth addendum, other than a petition the main remedy requested therein concerns enactment of security legislation including the revocation thereof, declaration that it is null and void or granting an order for its enactment (hereinafter: Administrative Petition in Area Matters).

3. Section 3(e) to the fourth addendum provides as follows:

> A specific decision of an authority concerning entry permit into an area constituting seam zone; in this sub-section "seam zone" – are declared as seam zone in security legislation as defined in Section 5A.

4. This petition is not concerned with a specific decision pertaining to an entry permit into the seam zone, but is rather concerned with a change of the legal arrangement concerning entry into the seam zone – the addition of "classes of persons" to the "General Entry and Stay Permit in the Seam Zone (Judea and Samaria), 5764-2003", such that individuals of certain ages shall not need specific permits to enter the seam zone. Hence, the Court for Administrative Affairs is not vested with the authority to adjudicate this petition and the petitioners have no alternative remedy.

Factual Infrastructure

The Permit Regime

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

6. The route chosen for the separation fence resulted in significant sections of it being built inside the West Bank. Once these sections were built, the Respondent declared the areas

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that remained between the fence and the Green Line closed zones, referred to jointly as the "seam zone." Entry into this area and presence therein are prohibited without a special permit for this purpose. The access ban does not apply to residents of the State of Israel or tourists, who may enter the seam zone as they please.

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

8. The permit regime judgment examined the harm caused by the seam zone's closure to Palestinians given the arrangements the Respondents had put in place for issuance of permits to enter the seam zone to Palestinians, including the "Seam Zone Standing Orders and Procedure for Addressing Exploitation of Seam Zone Permits", and given the Respondents' contention that these arrangements would be applied permissively. The Honorable Court ruled that the harm caused to Palestinian residents was proportionate, barring several specific issues that were disqualified.

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

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

11. Currently the vast majority of seam zone permit applications for agricultural purposes submitted by landowners in the seam zone are denied. According to information submitted by the Respondent in HCJ 6896/18 **Ta'ame v. Military Commander in the West Bank**, while in 2014 71% of the farmer permit applications were approved, in 2020 only 24% of the farmer permit applications were approved.

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A copy of Respondents' Updating Notice in HCJ 6896/18 dated October 26, 2020 is attached and marked **P/1**.

12. Absurdly, Palestinians above a certain age – men over the age of 55, and women over the age of fifty – may according to Respondent's procedures enter the **territory of the State of Israel** without a specific permit (section 8(19) of the "Unclassified Permit Status for the Entry of Palestinians into Israel, their Passage between Judea and Samaria and the Gaza Strip and their Travelling Abroad" procedure), but are not allowed to enter the seam zone areas in the **West Bank**. The absurdity of the situation is even greater when persons having specific ties to the seam zone are concerned, such as seam zone landowners who encounter difficulties in receiving seam zone entry permits and are forced, time and again, to conduct tiresome legal battles for this purpose, but may freely enter the state of Israel, without having to go through any bureaucratic proceedings and without the need to explain or prove anything.

13. There is no security purpose for preventing said Palestinians, who may enter Israel without permit, from entering the seam zone in the West Bank in the same manner. Therefore, the Petitioners request that the ban prohibiting the entry of Palestinian men over the age of 55 and Palestinian women over the age of 50 into the seam zone be revoked, by adding them to the "classes of persons" listed in the Addendum to the Security Provisions Order (Judea and Samaria)(No. 378), 5730-1970 "General Seam Zone Entry and Stay Permit", such that the members of said group shall be given a general permit to enter the seam zone, similar to the permit given to all other "classes of persons" listed therein.

The Parties

14. **Petitioners 1-5** are older Palestinians, most of them grandparents, having proprietary ties to lands in the seam zone. They receive individual seam zone entry permits from time to time, but not without considerable difficulties and significant delays. As will be demonstrated in the factual details in the matter of Petitioners 1-5, the permit regime greatly encumbers the few persons who are entitled, in principle, to receive individual seam zone entry permits. The proceedings that Petitioners 1-5 have undergone throughout the years to arrange their entry into the seam zone shall be described below in detail, rather than in short, to demonstrate the enormous burden and difficulty characterizing said proceedings, and show what individuals have to actually go through to receive the permits which it has been claimed will be given to them.

15. All other older Palestinians, not having specific ties to the seam zone, are completely prohibited from entering the seam zone in the West Bank, due to the fact that they are Palestinians, despite the fact that they are entitled to enter Israel without requesting entry permits into Israel, by reason of their low risk level, and despite the fact that Israelis and citizens of other countries may enter the seam zone without requesting seam zone entry permits, for the same reason.

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16. **Petitioner 6** is a non-profit association working to promote the human rights of Palestinians in the Occupied Territories. Among other things, it assists Palestinians to realize their right to freedom of movement.

17. The Respondent is the military commander in the West Bank on behalf of the state of Israel.

Main Facts and Exhaustion of Remedies

Petitioner 1

18. Petitioner 1, born in 1958, is married and has seven children and 19 grandchildren. He lives in Tura al Gharbyia in the Jenin district.

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

19. Petitioner 1 leases lands in the seam zone. Among other things, he leases a plot of land located on the lands of Ya'bad, in the seam zone. The plot spreads over an area of 29.409 dunam. The plot is registered in the name of the late father of the lessor, Mr. ___________ __________ _______ al-'Atatreh. Mr. al-'Atatreh passed away in 1961 and his property passed through inheritance to his children. Petitioner 1 leases said plot from al-'Atatreh's heirs since 2013. According to the lease, Petitioner 1 should farm the plot, weed the land, prune the trees, harvest the olives and transfer the yield to the olive press. The crops are equally divided between the lessor and Petitioner 1. Olive trees are grown on about twenty dunam of the Plot and tobacco is grown on the remaining area of the plot. To grow tobacco, the land should be plowed three times in preparation for sowing. Tobacco is planted manually in March. After germination, continuous and almost daily pest-control, spraying and weeding are required, until approximately August. The harvest of tobacco leaves is also done manually and is very laborious – the farmers do not cut-off the tobacco, but rather pull the leaves from each plant. Namely, tobacco growing requires regular and continuous access to the lands.

    A copy of the lease is attached and marked **P/3**;

    A copy of the Inheritance Order is attached and marked **P/4**;

    A copy of the power of attorney empowering the lessor to act on behalf and in the name of his siblings is attached and marked **P/5**.

20. Petition 1 has been receiving seam zone entry permits since the construction of the separation fence. However, on many occasions he had been given permits for shorter periods than set out in Respondent's procedures.

21. In 2011 Petitioner 1 was given a "work permit in the seam zone" for three months only – from March 4, 2011 through June 1, 2011. A three month permit does not enable a farmer to do the work which is required to grow tobacco. Tobacco leaf harvesting commences in June, and the permit granted to Petitioner 1 did not enable him to enter

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the seam zone in that period to harvest the leaves. Hence, Petitioner 1 could have lost the crops of the entire year.

22. Petitioner 1 submitted permit renewal applications for himself and for his wife a few days before his permit expired. He arrived to the DCO about two weeks later and met with the DCO officer. He emphasized that he had submitted permit applications for the purpose of growing tobacco and that the tobacco harvest season had already begun and requested that the applications would be handled urgently. On June 26, 2011 permits were issued to him and his wife, valid for six months only, from June 12, 2011 through December 8, 2011.

23. In the beginning of December 2011, Petitioner 1 submitted permit renewal applications for himself and for his wife. After two letters which were sent by HaMoked: Center for the Defence of the Individual in that matter, by the end of January 2012, the Respondent informed that permits had been issued for Petitioner 1 and his wife, again for six months, from January 24, 2012 through July 21, 2012.

24. Petitioner 1 and his wife submitted permit renewal applications in the beginning of July 2012, and were again issued permits valid for six months – from July 24, 2012 through January 24, 2013.

25. On January 13, 2013, they submitted permit renewal applications to the Palestinian coordination office. On February 25, 2013, a letter was received from the Civil Administration Public Liaison Officer, whereby the applications were denied "since the land is not located in the seam zone." Respondent's answer surprised Petitioner 1, who clarified that the lands leased by him were in the seam zone and that he was accessing them through gate 300 of the separation fence. The route of the separation fence in the area has undergone no changes since the previous permits had been issued to him.

26. One day before receiving the above letter from the Civil Administration Public Liaison Officer, on February 24, 2013, Petitioner 1 had signed another lease for an additional plot in the seam zone – the above described plot. Accordingly, on February 28, 2013, Petitioner 1 submitted seam zone permit applications for himself and for two of his sons, along with documents pertaining to the three plots which were attached thereto. All three plots cover an area of approximately 36 dunam, and several workers are required to cultivate them, particularly in view of the fact that tobacco growing requires manual and daily work.

27. After the date set out in Respondent's procedures has elapsed and no answers were received to the applications, HaMoked wrote to the Head of the Jenin DCO on March 20, 2013, inquiring about the absence of response to the applications. The letter noted that Petitioner 1 was growing tobacco and olives and that "tobacco sowing has recently begun and we therefore request that you handle the application immediately". After another letter had been sent, permits were issued to the family members, but once again the permits were valid for six months only, from April 7, 2013 through October 6, 2013.

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28. In the harvest season of said year, in June 2013, Petitioner 1 and other farmers growing tobacco, encountered new limitations. When they had arrived to gate 300 of the separation fence with their daily crops, they were told that the transfer of tobacco sacks was allowed on Mondays and Thursdays only, and was limited to several single sacks. One of the farmers was told that only five sacks could be transferred, while another farmer was told that the quantity was limited to ten sacks. The farmers must pick the tobacco leaves, put them in sacks, and transfer them to another location where they are immediately spread out and undergo a curing process. The leaves must not be left in the sacks too long but should be spread out for curing within a short period of time, to prevent spoilage. Hence, the limitations imposed on the transfer of tobacco threatened the farmers with the loss of their crops.

29. Therefore, the Head of the Dhaher al Malih Council contacted the DCO officer and explained to him the importance in having the tobacco transferred on a daily basis, without quantity limitations, as was the case in previous harvest seasons, and specified the damage which would be caused to tobacco growers as a result of the limitations imposed on them. The officer told him that there was no change in the limitations and that the matter would be re-examined. In fact, the soldiers at the gate continued to prevent farmers from transferring their crop sacks and the problem was not solved.

30. In response to a letter sent to the Head of the Civil Administration on this matter, among others, on behalf of Petitioner 1, the Office of the Head of the Civil Administration responded on June 12, 2013 that no limitations applied to the transfer of tobacco sacks from the seam zone through gate 300.

31. On June 24, 2013, information was received from Petitioner 1 that the above limitations on the transfer of tobacco sacks ceased. The soldiers started to allow the farmers to pass through the gate with their crops, provided only that their name appeared on the list held by the soldiers. The names of some tobacco growing farmers did not appear on said list and they were unable to transfer their crops from the seam zone.

32. Two weeks later, on July 2, 2013, Petitioner 1 arrived to the separation fence gate, on his way to the lands, but when it was his turn to pass through the gate, the soldier stationed at the gate prevented him from passing through and told him that there was a "preclusion" in his case and that he should go to the Salem DCO. Petitioner 1 went to the DCO and waited there for about an hour. He gave his identification card to the soldier at the public reception window and told him what had happened. The soldier examined the matter on his computer and a few minutes later returned to Petitioner 1 his identification card and told him that the problem was solved and that he could pass through the gate without any problem. Petitioner 1 was not told what the initial problem was.

33. In October 2013 Petitioner 1 and his family members were once again issued permits valid for six months only, from October 7, 2013 through April 7, 2014.

34. On March 27, 2014 Petitioner 1 was held at the separation fence gate on his way to the lands. He tried to transfer plants to the lands but the soldier at the gate refused to enable him to enter the seam zone and demanded that a DCO approval be presented to her.

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Petitioner 1 tried to explain that a special DCO approval was not required and that a seam zone entry permit was sufficient for that purpose, and that it was the way things were done throughout the years. He explained that he had plowed the land the day before and had prepared it for planting on that day, but to no avail. Two additional farmers also tried to pass through the gate with tobacco plants but were refused. After four requests made by HaMoked to Respondent's soldiers, notice was given that one of the DCO soldiers would come to the gate and see to it that the soldiers enable the farmers to pass through. The representative of HaMoked notified the farmers of same and told them to wait. The farmers waited, but nobody arrived and the soldiers locked the gate. The representative of HaMoked contacted the Civil Administration Public Liaison Officer again and the latter asked her whether the farmers had coordinated with the military their passage with the plants. The representative of HaMoked replied that such coordination was not required and that it was not a new thing. The farmers had valid seam zone entry permits for agricultural purposes and they are allowed to enter the seam zone. The representative of HaMoked contacted the Civil Administration Public Liaison Officer again and was told that the transfer of tobacco required the approval of the DCO officer. The representative of HaMoked asked when said rule was established and the officer told her that he did not know. The representative of HaMoked pointed out that only on the previous day people passed through the same gate with tobacco plants without any coordination, and that she did not understand where said demand stemmed from. The officer said that it was difficult for him to give her an answer. At 11:05, about three and a half hours after the farmers had arrived to the gate, HaMoked was informed that the Head of the DCO was involved in the matter and would see to it that the farmers were allowed to pass through.

35. At 12:00 the gate was opened again but the soldiers still did not allow Petitioner 1 to pass through with his plants. Petitioner 1 arrived to the gate on that day at 07:30 and was waiting there from that time. It was a very hot day and Petitioner 1's plants had withered while he was waiting for the soldiers to let him pass through. Petitioner 1 was already tired and frustrated and was fed up waiting. Eventually, after for and a half hours of waiting by the gate he decided to go back home without entering the seam zone.

36. The local council sent to the Palestinian coordination office a complaint of the military's demand for special coordination of the transfer of tobacco plants into the seam zone by persons holding seam zone entry permits for agricultural purposes. The Palestinian coordination office had long discussions with the DCO on that matter, and it was eventually agreed that the DCO would enable the farmers to transfer the plants without any limitation, other than on Fridays and Saturdays.

37. Petitioner 1 and his family members had submitted permit renewal applications and the applications were transferred to the DCO on March 26, 2014.

38. Following an inquiry sent to the Civil Administration Public Liaison Officer, HaMoked was informed on April 13, 2014, that neither one of family members' applications had been received and that they should submit new applications. On that day the Palestinian coordination office advised that a day earlier a permit had been issued for Petitioner 1.

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39. Petitioner 1 submitted a permit renewal application which was transferred by the Palestinian coordination office to the DCO on April 6, 2016. After a request for status clarification had been filed which remained unanswered, and after an appeal had been filed against the failure to respond to said request, which also remained unanswered, a permit was issued to Petitioner 1, valid for two years – from April 24, 2016 through April 23, 2018.

40. On March 21, 2018, Petitioner 1 and his son arrived to gate 300 of the separation fence with a horse and carriage, bringing with them their tobacco plants which they wanted to transfer to the seam zone. Petitioner 1 went through the gate, but the soldiers refused to allow his son to pass through the gate with the horse and the carriage. Petitioner 1 returned to the gate and waited for his son. After HaMoked contacted Respondent's soldiers three times and after the farmers' long wait at the gate, one soldier arrived to the gate and enabled them to pass through.

41. Towards the expiration of Petitioner 1's permit, on April 8, 2018, HaMoked contacted the deputy civil coordination officer at the Jenin DCO, a soldier called Noam, and requested to enable Petitioner 1 to submit his permit renewal application at the DCO, together with permit applications for his two sons and daughter-in-law, to enable them to assist him with the tobacco growing. HaMoked asked soldier Noam whether Petitioner 1 would be able to come to the DCO to submit the applications, in a bid to speed up the processing of the applications since the family members' applications were about to expire. Soldier Noam said on April 30, 2018 that Petitioner 1 could come to the DCO on the following day to submit the applications.

42. Petitioner 1's son arrived to the DCO on May 2, 2018, to submit the applications. However, the soldier at the public reception window refused to take the applications from him. Petitioner 1's son said that the matter had been coordinated with soldier Noam, but the soldier at the public reception window said that **there was no soldier by the name of Noam at the DCO**. A representative of HaMoked called soldier Noam who said that he was handling the application as agreed. Half an hour later soldier Noam took the applications from Petitioner 1's son and asked him to wait. About fifteen minutes later soldier Noam told Petitioner 1's son that there was a problem with the lease of the plot and that another agreement should be provided. No explanation was provided with respect to the problem in the agreement.

43. On May 7, 2018, HaMoked contacted the deputy civil coordination officer and clarified that the tobacco growing season was at its peak and that the applications should be handled promptly. The request was sent together with all the required documents for the approval of the family members' permit applications.

44. Meanwhile, some of Petitioner 1's tobacco plants suffered pest infestation. Petitioner 1 explained that he might lose the entire tobacco season and the plants which were damaged. He explained that if he did not access the plot and handle the matter within one week, it would be too late to repair the damage.

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45. However, on May 15, 2018, notice was received from the civil coordination officer at the Jenin DCO which stated as follows:

> Following the continuing discussion regarding _____ Kabha.
> The following are the details of the inappropriate items in the application and what should be submitted.
>
> 1. A new land registration extract should be submitted – can go to the land registration office and get the document.
> 2. Updated lease between him and the lessor of the land which does not refer to the state of Palestine but to the Palestinian Authority (like that!)
> 3. The above wishes to receive agricultural work permits in the seam zone for his sons. The application for agricultural work permit in the seam zone should be submitted specifically for each son and not together with the farmer's application.
>
> Until now the application was not proper. As soon as he submits the application together with all required documents we shall handle it and issue the permit.

46. All of the above requirements are technical rather than material and none of them is mentioned in Respondent's procedures. None of the requirements specified in said notice can justify precluding Petitioner 1 from accessing the land leased by him to handle his crops, particularly in view of the fact that the matter was urgent and that the inability to work in the plot would result in the loss of the crops of the entire year and would cause irreparable damage to the affected plants.

47. However, Petitioner 1 complied with the military's demands earlier and submitted new applications shortly after his son's attempt to submit the applications at the DCO. On May 22, 2018 HaMoked responded to the above notice of the civil coordination officer and clarified the matter; requested to receive a status update of the new applications; reminded that it was the peak of the tobacco season and requested that the applications be approved urgently to minimize the damage to the livelihood of Petitioner 1 and his family.

48. Following another correspondence, on May 30, 2018 the following notice was received from the civil coordination officer:

> Indeed the application was transferred to us by the Palestinian coordination office.
> After an examination of the application by the civil coordination officer it was found that the application is still improper.
> The above has indeed renewed the land registration extract but the lease between him and the lessor is still improper.
> As I have noted in the past the lease should not carry the emblem "State of Palestine" but rather that of the Palestinian Authority.

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> Once he has a proper form the above can come to the public reception window in Salem and we shall issue his permit…

49. Although said requirement is totally irrelevant and is not entrenched in Respondent's procedures, Petitioner 1 made a new lease, carrying the emblem of the Palestinian Authority rather than the emblem of the state of Palestine. HaMoked sent the new agreement to the deputy civil coordination officer on May 31, 2018 and requested to approve Petitioner 1's application forthwith, to prevent any further damage to his grove.

50. After a reminder was sent in the matter, notice was received on June 3, 2018 from the deputy civil coordination officer stating that an answer would be sent on the following day. No answer was received on the following day and two additional reminders were sent. On June 19, 2018 Petitioner 1 was given a farmer's permit, valid for a year and a half, rather than for two years, from June 14, 2018 through January 1, 2020. When HaMoked drew Petitioner 1's attention to the fact that the permit was given for a period shorter than established in Respondent's procedures, he said that the permit ordeal has completely "drained" him and he has therefore failed to pay attention to its period.

51. On December 24, 2018, Petitioner 1 arrived to gate 300 of the separation fence with his son and with a horse and wagon. The wagon had a ladder and tree pruning tools. The soldier at the gate refused to enable Petitioner 1 and his son to pass through with the wagon, claiming that the passage required prior coordination. They were allowed to pass through only after over an hour and a half and only after HaMoked had contacted the deputy civil coordination officer at the Jenin DCO.

52. On the following morning, December 25, 2018, Petitioner 1 and his son arrived again to the gate with a horse and wagon, and were again prevented by the soldiers from passing through the gate with the horse and the wagon. They were allowed to pass through only after over an hour and a half and only after HaMoked had contacted the DCO twice.

53. On January 24, 2019 Petitioner 1 arrived to the gate again with a horse and wagon to bring in pesticides to the plot, and the soldiers prevented him from passing through the gate with the horse and the wagon. After a wait, he managed to pass through.

54. Petitioner 1 called HaMoked on January 27, 2019 and said that he was fed up with the soldiers' harassment and abuse. He said that it was very difficult for him and the other farmers to obtain permits, that he could hardly make it as a farmer and that the military discourages him and causes him to quit farming. He said that on the previous day, January 26, 2019, at 08:00, he was on his way to the land with the horse and the carriage, but after he had passed through the gate, the soldiers told him to come back and said that according to the DCO's instructions he should return from the seam zone. Petitioner 1 had to go back and did not reach his land. On that day, January 27, 2019, he arrived again to the gate with the horse and the carriage and the soldiers prevented him again from passing through with the horse and the wagon. A representative of HaMoked had contacted the Civil Administration Public Liaison Officer to clarify why Petitioner 1's passage had been prevented, and he had eventually succeeded to pass through the gate.

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55. On February 24, 2019 Petitioner 1 was once again prevented from passing through gate 300 with his horse and wagon in which he carried pesticides. The soldiers allowed him to pass through only after he had to wait for an hour and a half and after several calls made by HaMoked to the DCO in that regard.

56. Again, on the following day, February 25, 2019, the soldiers did not enable Petitioner 1 to pass through the gate with the horse and wagon and the pesticides. He was eventually allowed to pass through after nearly two hours. Petitioner 1 told HaMoked that he was extremely discouraged and frustrated. He said that he arrived to the gate around 07:30 intending to get to the land early and make good use of the work day, but that all of the delays and passage preventions depressed him and drained him of his energy and strength. He said that the obstacles raised by the army and the difficulties he had to face as a result had a detrimental effect on his plans to cultivate the land and farm it and undermined the little stability he had. He expressed the concern that he would soon have to abandon his land. He said that he was deliberating greatly whether to even grow anything on his land that year as he had deliberated every previous year. He said that he became sick and tired of the need to cope with the army's refusals and that he thought that he might give up. Petitioner 1 begged HaMoked to do something in the matter.

57. HaMoked approached the Jenin DCO on March 25, 2019, in connection with the recurring problem of denying Petitioner 1 from passing through the gate with a horse and wagon. On that day an answer was received from the seam zone non-commissioned officer at the Jenin DCO whereby "the procedures shall be clarified to the soldiers manning the crossing and the issue shall be handled".

58. Petitioner 1 managed to pass through the gate several times without problems, but on April 7, 2019 he was again prevented from passing through. Petitioner 1 arrived to the gate with a horse and wagon and pesticides and the soldiers refused to let him pass through the gate with them. The soldiers mocked Petitioner 1 and told him that if it was a donkey they would have let him pass through. Eventually the soldiers let him pass through the gate with the horse and wagon after he had to wait for about an hour and a half. Petitioner 1 was extremely depressed and frustrated. He told HaMoked that he was one of the last farmers who were still growing tobacco in the seam zone and that all the obstacles which were raised by the army to encumber his ability to enter the seam zone with his horse and wagon weakened his ability to hold on to the land, and that he was concerned that he would not be able to go on.

59. HaMoked approached the Jenin DCO again on April 8, 2019, informed it of the fact that Petitioner 1 was held at the gate and reiterated its request that it would be clarified to all soldiers staffing the gate that Petitioner 1 was entitled to enter the seam zone with his horse and wagon. The letter noted that the tobacco planting season was about to begin within the next few days and that Petitioner 1 would need to reach his land on a daily basis and therefore it was particularly important to clarify the matter. The seam zone non-commissioned officer at the Jenin DCO replied on that day that "although clarification was made with respect to the passage of animals through agricultural gates, the procedures shall be clarified and emphasized again to all soldiers staffing the barrier by the seam zone and crossings non-commissioned officer".

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60. On April 15, 2019, Petitioner 1 and another farmer growing tobacco were told by a representative of Tura al Gharbiya Council that the DCO had informed the Palestinian coordination office that the military would no longer allow transferring tobacco plants and tobacco growing equipment into the seam zone, that it was examining the permits granted for that season and intended to visit the plots. Petitioner 1 told the representative of HaMoked that he was depressed and frustrated, that he understood that he would not be able to transfer his plants and equipment into the seam zone and had therefore decided to plant tobacco in another plot not within the seam zone, to avoid the incessant concerns and dependency on the army.

61. On September 5, 2019, the soldiers at the separation fence gate prevented once again Petitioner 1 from passing through the gate with his horse and wagon. One of the soldiers told Petitioner 1 that a horse could not pass through the gate while a donkey could. Petitioner 1 asked what the difference was and the soldier got angry with him. Petitioner 1 approached another soldier who was there, and who had also been at the gate on the prior day when he had entered the seam zone with his horse and wagon and came back, but she told him that she could not get involved. Petitioner 1 called HaMoked requesting help, and after two calls made by HaMoked to the Jenin DCO, Petitioner 1 managed to enter the seam zone with his horse and wagon, after he had been waiting at the gate for about an hour.

62. As aforesaid, Petitioner 1's permit was valid until January 1, 2020. By the end of December 2019 he filed permit renewal applications for himself and for his family members. The applications were returned to the Palestinian coordination office. It was noted that the applications were denied and that the lease should be certified by a lawyer or by the court. Petitioner 1 had the agreement certified by a lawyer and submitted new permit applications on February 12, 2020. The applications were transferred to the DCO on February 13, 2020. Petitioner 1 emphasized to HaMoked, due to the difficulties involved in the renewal of the permits, that the family relied to a large extent on the tobacco season and on the olive harvest season for its livelihood, and that at that time the land had to be weeded and plowed in preparation for tobacco planting.

63. On February 27, 2020, HaMoked sent to the Civil Administration Public Liaison Officer a status clarification request concerning the permit applications of Petitioner 1 and his family members. The request clarified that it was the tobacco planting period and that therefore the matter was urgent. Nevertheless, the request remained unanswered.

64. On March 17, 2020, a representative of HaMoked approached the Civil Administration Public Liaison Officer, and he replied that he did not see that any application had been received from Petitioner 1.

65. HaMoked sent another status clarification request concerning Petitioner 1's application on March 19, 2020.

66. On April 2020 the local council notified that it intended to transfer to the army a list of farmers growing crops requiring agricultural care at that time. Petitioner 1 requested to

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be included in said list and the request was transferred to the Palestinian coordination office on April 26, 2020.

67. On May 3, 2020, HaMoked sent to the Civil Administration Public Liaison Officer a status clarification request concerning Petitioner 1's most recent application. The request remained unanswered.

68. On May 18, 2020, an appeal was filed against the failure to respond to the request.

69. A reminder was sent on June 2, 2020.

70. On June 3, 2020, a letter was received from the Civil Administration Public Liaison Officer stating that "Permit for "commercial engagement in the seam zone" was issued to the resident, valid until June 16, 2020. In addition, no permit application for agricultural purpose was received. To the extent an application is received it shall be examined according to the procedures and the policy". Permit for "commercial engagement in the seam zone" does not enable entry into the seam zone to access agricultural lands and is therefore irrelevant.

71. Due to all difficulties involved in obtaining the permit, Petitioner 1 was unable to plant tobacco in time and was prevented from growing tobacco this year, leaving Petitioner 1 deeply depressed and frustrated. In addition to tobacco, Petitioner 1 grows in his plot olive trees. Petitioner 1 needed a permit to weed out dry shrubs and thorns to prevent fires during the summer. Petitioner 1 needed the permit urgently.

72. On June 8, 2020, a commercial worker permit was given to Petitioner 1 as mentioned in the Civil Administration Public Liaison Officer's letter. The permit was valid from March 19, 2020 through June 16, 2020. Hence, on the day the permit was received, only eight days remained prior to its expiration, which only added to Petitioner 1's frustration.

73. On June 8, 2020, an appeal was filed against the failure to issue a farmer permit to Petitioner 1.

74. Petitioner 1 contacted the DCO on June 10, 2020, to find out whether a decision was made in his application. The soldier there told him that no answer had been received.

75. On that day a telephone conversation was held between a representative of HaMoked and the deputy civil coordination officer at the Jenin DCO. The deputy civil coordination officer argued that Petitioner 1 submitted a personal needs permit application. She said that the application was approved, that it was decided to give him a permit valid for three months and that the permit might be issued on that very same day. The deputy civil coordination officer also said that a permit for personal needs was issued rather than a farmer permit because Petitioner 1 had to "update the land registration" – an argument contradicting the argument that he had submitted an application for said permit.

76. On the following day the deputy civil coordination officer informed that the permit was printed and that Petitioner 1 could come to the DCO to pick it up.

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77. Petitioner 1 received the permit on June 14, 2020 – a permit for "personal needs", valid only from June 10, 2020 through September 7, 2020.

78. On June 21, 2020, a letter was received from the Civil Administration Public Liaison Officer stating as follows:

    - No applications were received in February, but the above submitted applications on June 10, 2020, at the DCO's public reception window, examined and approved for three months "personal needs" in the seam zone.
    - The above, because the resident from whom the above leases the land, is not registered as the owner of the land with the land registration office. Ownership of the land is registered under another resident, who had bequeathed the land to the current lessor.
    - It was therefore decided to give the family permit for "personal needs" valid for three months, to avoid damage to the residents' crops, until the land owner opens transaction for the arrangement of the land in the land registration office

    A copy of the letter dated June 21, 2020 is attached and marked **P/6**.

79. On June 23, 2020, a request was submitted for a hearing before the Head of the DCO (HDCO hearing) to examine the denial of Petitioner 1's farmer permit application.

    A copy of the request for an HDCO hearing is attached and marked **P/7**.

80. On July 7, 2020, a letter was received from the Civil Administration Public Liaison Officer stating as follows:

    - We recommend to change [the registration of] the land with the land registration office to the name of the referenced residents for the purpose of receiving a long term permit.
    - To avoid harming his ties to the land, as alleged by him, a permit for personal needs was issued to the resident, valid for three months.

    A copy of the letter dated June 7, 2020 is attached and marked **P/8**.

81. On July 20, 2020, an appeal was filed against the denial of Petitioner 1's farmer permit application.

    A copy of the appeal is attached and marked **P/9**.

82. On August 12, 2020, notice was received from the Civil Administration Public Liaison Officer, whereby an HDCO hearing was scheduled for the following day, August 13, 2020, at 09:00.

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83. Petitioner 1 arrived at the appointed time to the DCO, but was instructed by a soldier there to wait because the officer who should have conducted the HDCO hearing had not arrived. The HDCO hearing started almost forty minutes late.

84. The HDCO hearing was attended by three soldiers in uniform, but the Head of the DCO was not among them. The soldiers demanded that the owners of the plot leased by Petitioner 1 register the plot in their name. Petitioner 1 explained that he had been leasing the same plot for years and had never been presented with such a demand. The soldiers told him that the "laws have changed" and that he "should forget the former laws".

85. The minutes of the HDCO hearing state as follows:

> Until the owner of the land registers his land with the land registration office it shall not be required to issue to the lessee.
> The lessee has a permit for personal needs valid until September 7 for continued engagement in land until the owner arranges (not clear, T.M.) vis-à-vis the land registration office according to 2019 Standing Orders.

A copy of the minutes of the HDCO hearing is attached and marked **P/10**.

86. HaMoked approached the Civil Administration Public Liaison Officer again on August 17, 2020, and requested that the appeal filed on July 20, 2020 be heard.

87. On the following day Petitioner 1 informed that his son, who had also received a permit valid for three months, arrived to gate 300 of the separation fence in order to enter the seam zone with a horse and wagon carrying agricultural equipment used by the family on a daily basis, but the soldiers refused to let him pass through the gate with the horse and the wagon.

88. On August 24, 2020, a letter was received from the Civil Administration Public Liaison Officer, dated August 19, 2020, stating as follows:

> The resident referenced in your letter attended an HDCO hearing at the Jenin DCO on August 13, 2020 at 09:00.

89. On September 8, 2020 another reminder was sent regarding the appeal dated July 20, 2020.

A copy of the reminder is attached and marked **P/11**.

90. On September 17, 2020, Petitioner 1 approached the Salem DCO and submitted personal needs and olive harvest permit applications and similar applications for his wife, sons and daughter-in-law. The applications remained unanswered. The olive harvest season had begun and the family members were left without permits.

91. Petitioner 1 called the seam zone officer who had attended the HDCO hearing and begged him to issue permits to him and his family members for the olive harvest season. The officer response was: "Had you complied with our request, the problem would have been

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solved". Eventually, the officer told Petitioner 1 to come to the DCO on October 11, 2020.

92. On October 7, 2020, notice was received from the Civil Administration Public Liaison and Freedom of Information Non-Commissioned Officer stating that Petitioner 1 and Petitioner 2 "are invited to an appeal committee the date of which shall be provided within the next few days".

93. On October 8, 2020, a letter was received from the Civil Administration Public Liaison Officer, stating as follows:

> After examination opposite the relevant bodies it arises that the deputy Head of the DCO attended the hearing and that no regret was expressed of the demand to update the land registration documents. Minutes of the hearing are attached.

A copy of the letter dated October 8, 2020, is attached and marked **P/12**.

94. Petitioner 1 went to the DCO on October 11, 2020, as agreed with the Seam Zone Officer. He waited there for **about five hours**. Eventually, the Seam Zone Officer took from him the applications he had brought with him and issued to the family members "olive harvest" permits, valid only from October 11, 2020 through January 8, 2021. The officer told Petitioner 1 again that the permits would not be renewed unless ownership of the plot was registered with the land registration office in the name of the lessor, *in lieu* of the inheritor.

95. Petitioner 1 told HaMoked that he was worked up and that he was sick and tired of the subordination and dependence on the military and that he was deeply depressed and frustrated. He said that for several days he could not stop thinking how he could spare himself and his family the delays, offence and humiliation suffered by them whenever they apply for permits.

96. HaMoked approached the Civil Administration Public Liaison Officer on October 18, 2020, and wrote as follows:

> Your new policy, in the framework of which you refuse to issue permits for agricultural purposes to persons having proprietary connections to seam zone lands and their family members, due to the fact that ownership in the lands was proved by inheritance orders, subjecting the ability of said persons to access lands located in the West Bank to an action requiring payment of a fee to the Civil Administration in a sum equal to one percent of the value of the land, unnecessarily violates the fundamental rights of protected persons. Such violation is prohibited according to the law.
>
> On September 6, 2018, a petition was filed by HaMoked (6415/18) in which we have requested that the respondents explain "why they do not stop refusing to issue farmer permits in the seam zone valid for two

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> years to persons who inherited lands in the seam zone, due to the fact that they have not acted to change the registration of their rights in the lands with the land registration office". Following the petition, the petitioner was given a farmer permit, fully valid.
>
> Currently, ten petitions filed by HaMoked Center for the Defence of the Individual on that matter are pending (HCJ 3066/20, HCJ 3067/20, HCJ 3068/20, HCJ 3070/20, HCJ 3071/20, HCJ 5131/20, HCJ 5133/20, HCJ 5329/20, HCJ 5331/20 and HCJ 5816/20).
>
> For efficiency purposes we do not proceed at this stage with a proceeding challenging your demand to register the ownership of the heir with the land registration office administered by you, but we reserve our arguments in that regard and intend to challenge your decision in the future, inter alia, given the developments in the above proceedings.

A copy of the letter dated October 18, 2020, is attached and marked **P/13**.

97. Petitioner 1 submitted a new farmer permit application to the Palestinian coordination office on December 16, 2020. In response to a status clarification request concerning the application, an e-mail message was received on January 7, 2021, from the Civil Administration system which stated as follows:

> The application was denied due to failure to open a transaction with the land registration office. On December 26, 2020 the resident received three months to open a transaction with the land registration office, and the resident did not submit an application together with a transaction opening document with the land registration office. It is important to note that the resident leases (typographical error in Hebrew, T.M.) the land. He arrived to the DCO for a hearing and it was explained to him that land owners should open a transaction with the land registration office for further processing.

A copy of the e-mail message dated January 7, 2021, is attached and marked **P/14**.

98. On January 14, 2021, HaMoked filed an appeal in the matter, which stated as follows:

> We request that Mr. _____ Kabha, Mr. _____ al-'Atatreh, Mr. _____ al-'Atatreh and Mr. _____ Kabha the details of whom are specified above, shall be invited as soon as possible to the appeal committee according to your procedures as published in the collection: "2019 Seam Zone Entry Procedures and Guidelines", whereby the purpose of the appeal committee is to "scrutinize DCO work and decisions to grant seam zone entry and stay permits, including its decisions to deny applications, in whole or in part." (Section 1 to the chapter dealing with the appeal committee). We shall explain:

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The applications of the above referenced farmers to receive seam zone entry permits were denied based on the argument that they should initiate a proceeding for the update of the registration of their lands with the land registration office…

As known, HaMoked filed a series of petitions against the demand to register inherited properties with the land registration office as a condition for the issue of permits to persons having ties to seam zone lands (HCJ 3066/20, HCJ 3067/20, HCJ 3068/20, HCJ 3070/20, HCJ 3071/20, HCJ 5131/20, HCJ 5133/20, HCJ 5329/20, HCJ 5331/20 and HCJ 5816/20). The petitions noted, *inter alia*, that the registration of the inherited properties with the land registration office requires payment of a fee in an amount equal to one percent of the value of the land, and that it was unacceptable to force the farmers to pay such fees in order to enable them to access their lands.

On January 4, 2021, and updating notice was filed on behalf of the state which stated as follows:

> Currently the state wishes to update that in view of the comments made by the honorable court in the hearing, several meetings were held at the Civil Administration, including the Civil Administration's Fees Committee to formulate its position on the issue of reducing the registration fees on inheritance transactions and setting them to the same amount charged in the state of Israel (about NIS 160)… The approval proceedings and the final position upon their conclusion are expected to terminate within approximately three months" (paragraph 6)…

In view of the above, attesting to a change in your policy, and since the updating procedure of the registration of the lands with the land registration office which you require as a condition for receiving permit for agricultural purposes is an expensive procedure, and since pursuant to the court's comments the Civil Administration does indeed act towards changing it, we request at this stage, and to avoid harming farmers who need seam zone entry permits to access their lands, that permits would be issued to the above referenced farmers and their family members, without initiating the expensive updating procedure of the registration of the lands with the land registration office which according to you is about to change shortly.

In view of the above, and without derogating from our arguments presented in the above petitions, we request Messrs. _____ Kabha, _____ al-'Atatreh, _____ al-'Atatreh and _____ Kabha as well as their family members for whom

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applications were submitted, would be invited as soon as possible for a hearing before the appeal committee.

Attached are the application forms for the appeal committee.

A copy of the appeal dated January 14, 2021, is attached and marked **P/15**.

99. Currently Petitioner 1 does not hold a seam zone entry permit.

Petitioner 2

100. Petitioner 2, born in 1964, is married and has five children. He lives in Tura al Gharabiya in the Jenin district. He worked as a school teacher until his retirement in 2018.

A copy of Petitioner 2's identification card is attached and marked **P/16**.

101. Petitioner 2 owns two plots of land located on the lands of Barta'a, in the seam zone. He inherited the plots from his late grandfather, Mr. _____ Kabha. The plots spread over areas of 127.601 dunam and 28.228 dunam. Olive trees and tobacco are grown in the plots.

Copies of land registration extracts are attached and marked **P/17**.

Copies of inheritance orders are attached and marked **P/18**.

102. Petitioner 2 received many seam zone entry permits since the separation fence, some of them for a short period. Many permits were given to him only after the intervention of HaMoked: Center for the Defence of the Individual.

103. Until recently, Petitioner 2 used to attach to his permit applications only one land registration extract of the 28.228 dunam plot. In January 2018 his farmer permit application (the permit given to owners of agricultural lands in the seam zone) was denied, which was filed together with the land registration extract for said plot, based on the argument that it was a "miniscule plot" and that the size of the plot was "11 m" (just like that!).

A copy of the rejection form is attached and marked **P/19**.

104. The meaning of "miniscule plot" as a grounds for permit rejection, according to Respondent's procedures, is not that in fact the plot is small, but rather that if the area of the plot is divided by the number of its owners, the outcome is less than 330. The implementation of said grounds for rejection resulted in numerous seam zone land owners being found "not eligible" for seam zone entry permits, according to the Respondent, although their lands remained in their long-standing locations, of the same size and of the same ownership. Said grounds for rejection is currently adjudicated in a petition filed by HaMoked: Center for the Defence of the Individual, HCJ 6896/18 **Ta'ame v. The Military Commander of the West Bank.** On December 10, 2020, order

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nisi was given in the above proceeding, directing the respondents to show cause "why Section 14.a.7 of the 2019 Seam Zone Standing Orders referring to the "examination of applicant's share in the plot" should not be revoked and/or replaced with another arrangement providing solution to joint owners of rights in the plots."

105. HaMoked submitted a request for an HDCO hearing concerning the above denial, and after the HDCO hearing the following decision was given:

> The above argues that the land is not divided between all siblings and that they have not yet divided the land between them. However, he claims that he is the only one who takes care of the land and that he had planted tobacco therein. In addition he cultivates the olive grove.
> The above was in his past a school principal of a school in the village of "Ya'bad", elementary school… Ya'bad. He is currently retired and has a salary of NIS 3,000, Therefore he must work in agriculture to supplement his income. Prima facie he seems a serious and truthful person and we shall indeed give him a permit until the end of the current tobacco season and later on the civil administration officer shall visit the grove to examine the truthfulness of his statements… Site inspection shall be made by the civil administration officer until mid-May.

A copy of the HDCO hearing form is attached and marked **P/20**.

106. A farmer permit was given to Petitioner 2 valid from April 2, 2018 through December 31, 2018 – for about nine months only. According to Respondent's procedures at that time, 2017 Seam Zone Standing Orders, farmer permits could be validly issued for two years.

107. In 2019, Petitioner 2 submitted a series of farmer permit applications. Most applications were not answered and one of them was denied also on the basis of a "miniscule plot" argument. Said application was submitted together with a land registration extract of Petitioner 2's larger plot consisting of **127.601** dunam, but to no avail.

108. In 2020, Petitioner 2 submitted four farmer permit applications, the most recent ones in June 2020. Three applications were not answered. Eventually a "personal needs" permit was given to Petitioner 2, valid for three months only, from June 22, 2020 through September 19, 2020.

109. HaMoked submitted a request for an HDCO hearing concerning said decision. On July 21, 2020, a letter from the Civil Administration Public Liaison Officer was received which stated as follows:

> A personal needs seam zone permit was issued to the residents on June 22, 2020 for about three months until September 19, 2020. To receive "seam zone farmer" permit we recommend they update the status of the land with the land registration office.

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110. HaMoked filed an appeal against said decision on July 27, 2020, which stated as follows:

> Since the construction of the separation fence and the permit regime declaration Mr. _____ Kabha received from the Civil Administration seam zone entry permits to enable him to farm his land. The same documents which were presented by him in the past substantiating his ties to the lands of his family were attached to the application relevant to the appeal at hand. Said documents were presented to DCO representatives as of the construction of the separation fence. By virtue of said documents and for many years, he was given long-term seam zone entry permits to cultivate his land. Said documents prove that he inherited the plot relevant to the appeal at hand from his father – land registration extract, in which his grandfather is registered as the owner of the plot, and inheritance orders issued by the Sharia court, whereby he is listed as one of his father's heirs.
>
> According to your procedures, being a person with proprietary ties to agricultural lands in the seam zone, Mr. _____ Kabha is entitled to a "farmer" permit. See sections 2, 4 to the chapter "Permits for agricultural purposes in the seam zone" in the "2019 Seam Zone Entry Procedures and Guidelines" collection.
>
> However, DCO representatives denied his application for such permit, demanding him to take action to update the land's registration documents. Subjecting a person's access to lands inherited by him, which have been cultivated by him and his sons from the period which preceded the construction of the separation fence, to an update or change of the registration in his records, has no legal basis, is contrary to judicial precedent, and disproportionately violates the fundamental rights of the land owner.
>
> We wish to note that on September 6, 2018, a petition was filed by HaMoked with the High Court of Justice (6415/18) in which we requested that the Respondents would show cause "why they do not stop refusing to issue farmer permits in the seam zone valid for two years to persons who inherited lands in the seam zone, due to the fact that they have not acted to change the registration of their rights in the lands with the land registration office". Following the petition, the petitioner was given a farmer permit, valid for two years.

A copy of the appeal is attached and marked **P/22**.

111. Petitioner 2 was invited on August 12, 2020 to an HDCO hearing which was scheduled for August 13, 2020 at 09:00, together with three additional individuals represented by HaMoked Center for the Defence of the Individual. They all arrived to the DCO on time

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and wanted to go in, but the soldier at the entrance refused to let then in and told them to stay away from the gate. One of the individuals was allowed to enter, while the three other men stayed outside. One of them approached the soldier at the gate and told him that he had a meeting with the Head of the DCO Salim and with the officer Saliman. The soldier yelled at him and cursed him and sent him home. The person who was allowed to enter the DCO said that he had to keep on waiting because the officer did not arrive. Petitioner 2 was allowed to enter the DCO after he had been waiting outside for about an hour and kept on waiting inside.

112. In the HDCO hearing Petitioner 2 was asked "What do you want?" Petitioner 2 said that he was a farmer and that he wanted to access his lands, that he had been given permits which were valid only for three months and that it was not reasonable. In addition, Petitioner 2 said that Barta'a crossing 356 appeared on his permit rather than the gate he had requested – Tura gate 300. He explained that he was 55 years old and was suffering from a heart disease and that Tura gate 300 was closer to his lands and that the passage through Barta'a crossing 356 instead of Tura gate 300 extended his way and made his trip more expensive. The officer said that the soldiers "must have mixed things up". Petitioner 2 protested against said answer and said that immediately upon receiving the permit he requested the officer to amend the gate which appeared on his permit, but the officer refused. The officers raised different speculations regarding the requirement to register the lands with the land registration office and Petitioner 2 clarified that he objected to said demand and that he would not have agreed to accept the "personal needs" permit had he been told from the beginning that this was the reason for its issuance. The officers told him that maybe his plot was sold and Petitioner 2 answered: "Firstly, you say "maybe". Secondly, given all the difficulties involved in receiving seam zone entry permits, who would want to buy land over there?"

113. The officers told Petitioner 2 that there were "new laws", that the plot had to be registered with the land registration office and that there was no alternative but to do so. Petitioner 2 rejected said condition again and said that he refused to comply with said demand. In addition Petitioner 2 noted that these were not "laws" but rather military orders, since the area was under occupation and under such circumstances there were military orders rather than "laws". He complained that the changes in the military orders were causing great confusion and were making things very difficult for the farmers.

114. At that stage the Head of the DCO joined the HDCO hearing, which until that point had been conducted by other soldiers. Petitioner 2 reiterated his words to the Head of the DCO and noted again that he was a farmer, that he had the right to access his land, and requested to receive a farmer permit. Petitioner 2 pointed out that **it was easier to receive an entry permit into Israel than have access to land which is not within the territory of Israel,** and commented on the absurdity of the situation. He complained again of the military rules which encumber the farmers, and said that the army's policy kept getting stricter. In addition he protested against the way the civil administration was treating the farmers and said that the soldiers were talking to them as if they were a herd of animals and that the soldiers did not understand their claims and did not respond to them in a proper and pertinent manner. He noted that he had B.Sc. in Physics and Administration

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and he was treated in a degrading, humiliating and disrespectful manner by the soldiers. The officers did not change their decision and told Petitioner 2 that he would be given another three-month permit, that Tura gate 300 would be written on the permit and that he should "open a land registration transaction".

115. Petitioner 2 objected to the decision and told the officers that he refused to accept the permit. He requested the officers make a note in the minutes of the HDCO hearing that he refused to accept the permit and to also write down all the other things he had said. He and his son refused to accept the permits and left the room. A policeman ran after them and gave the permits to Petitioner 2's son. These permits were valid only until September 19, 2020 – the same expiration date of the permits which were the subject matter of the request for an HDCO hearing and of the appeal. The only thing which was changed was the name of the gate that appeared on the permits.

116. The HDCO hearing for stated as follows:

> The above claims that he is a first heir through his grandfather.
> The above wants to receive a permit through gate 300. He claims that he received an entry permit through Barta'a crossing and said that the seam zone officer did not agree then to give him a permit to gate 300. He claims that he did not know that he had to submit an application to open a land registration transaction in the three months he had received. The above refuses to accept any solution to solve the problem. An offer was made to give him additional personal needs [permit] for 3 months since he claimed that he did not know that he had to open a land registration transaction with the land registration office.
> In addition the permit was changed from Barta'a crossing to gate 300. The same was done for his son. However, he insists on not accepting any solution. He was told that these were the laws and procedures in the seam zone and that if he had any complaint he could contact (unclear, T.M.)

A copy of the HDCO hearing form is attached and marked **P/23**.

117. It is evident from the decision itself that Petitioner 2's arguments were not heard, were not understood and were not responded to.

118. On August 17, 2020, and on September 22, 2020, reminders were sent by HaMoked concerning the appeal in which no response had been received by that time. On October 7, 2020, a letter was received from the Civil Administration Public Liaison Officer which stated as follows:

> Following an examination with the relevant bodies it arises that the civil coordination officer attended the hearing and that no regret was expressed with respect to the requirement to update the land registration documents. Attached is a summary protocol of the hearing.

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A copy of the letter dated October 7, 2020, is attached and marked **P/24**.

119. On that day, October 7, 2020, an e-mail message was received from the Civil Administration Public Liaison and Freedom of Information Non-Commissioned Officer whereby Petitioner 2 and another person represented by HaMoked were "invited to appear before the appeal committee the date of which shall be provided within the next few days".

120. HaMoked approached the Civil Administration Public Liaison Officer on October 18, 2020, and wrote as follows:

> Your new policy, in the framework of which you refuse to issue permits for agricultural purposes to persons having proprietary connections to seam zone lands and their family members, due to the fact that ownership in the lands was proved by inheritance orders, subjecting the ability of said persons to access lands located in the West Bank to an action requiring payment of fee to the Civil Administration in a sum equal to one percent of the value of the land, unnecessarily violates the fundamental rights of protected persons. Such violation is prohibited according to the law.
>
> On September 6, 2018, a petition was filed by HaMoked (6415/18) in which we have requested that the respondents explain "why they do not stop refusing to issue farmer permits in the seam zone valid for two years to persons who inherited lands in the seam zone, due to the fact that they have not acted to change the registration of their rights in the lands with the land registration office". Following the petition, the petitioner was given a farmer permit, fully valid.
>
> Currently, ten petitions filed by HaMoked on that matter are pending (HCJ 3066/20, HCJ 3067/20, HCJ 3068/20, HCJ 3070/20, HCJ 3071/20, HCJ 5131/20, HCJ 5133/20, HCJ 5329/20, HCJ 5331/20 and HCJ 5816/20).
>
> For efficiency purposes we do not proceed at this stage with a proceeding challenging your demand to register the ownership of the heir with the land registration office administered by you, but we reserve our arguments in that regard and intend to challenge your decision in the future, inter alia, given the developments in the above proceedings.

A copy of the letter dated October 18, 2020, is attached and marked **P/25**.

121. Petitioner 2 has repeatedly encountered difficulties in receiving entry permits to his lands. Currently, it is not sufficient that he has substantiated proprietary ties to seam zone lands in order to obtain a farmer permit and his applications are repeatedly denied by the Respondent although there is no security preclusion in his matter and there is no doubt

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as to his proprietary ties to his lands. As stated by Petitioner 2 in the HDCO hearing, it is easier for a land owner in the seam zone to receive an entry permit into Israel than to receive an entry permit into the seam zone. It is an absurd situation. Petitioner 2 does not need a specific permit to enter Israel due to his age, but is prohibited from accessing his own lands which are owned by him and which are located in the West Bank. It is unconceivable.

Petitioner 3

122. Petitioner 3, born in 1957, is married and has seven children and thirteen grandchildren. He lives in Qaffin, in the Tulkarm district.

A copy of Petitioner 3's identification card is attached and marked **P/26**.

123. Petitioner 3 is the owner of ten plots of land located in Qaffin lands, in the seam zone. As specified below, he submitted a seam zone permit application, to which he had attached property tax extracts for five of his plots. Three plots are registered in the name of his late grandfather, Mr. _____ _____ Halil, and they consist of 17 dunam, 13 dunam and 12 dunam. One of the plots is registered in the name of his late father, Mr. _____ _____ _____ 'Amar, and it consists of one dunam. The grandfather had passed away in 1959 and the father passed away in 2003, and Petitioner 3 is one of their heirs. The fifth plot is registered under the name of _____ _____ _____ 'Amar, and it consists of eight dunam. Mr. _____ 'Amar sold a certain part of said plot consisting of 1,250 sq. meters to Petitioner 3, in 1996.

Copies of property tax extracts for the plots registered under the grandfather's name are attached and marked **P/27;**

A copy of property tax extract for the plot registered under the father's name is attached and marked **P/28;**

Copies of the grandfather's and father's inheritance orders are attached and marked **P/29**;

A copy property tax extract for the plot registered under the seller's name is attached and marked **P/30;**

A copy of an irrevocable power of attorney is attached and marked **P/31;**

124. Olive trees and almond trees are grown on the lands of Petitioner 3. In the past the family grew a variety of additional agricultural crops but had to stop due to difficulties in obtaining seam zone entry permits.

125. On July 19, 2011, a petition was filed concerning Respondent's refusal to issue to Petitioner 3's son, Mr. _____ 'Amar, a seam zone entry permit to access his lands and the lands of Petitioner 3 – HCJ 5427/11 **'Amar v. Military Commander for the West Bank Area**.

126. On December 21, 2011, a petition was filed concerning Respondent's refusal to issue to Petitioner 3 himself a seam zone entry permit to access his lands – HCJ 9512/11 **'Amar v. Military Commander for the West Bank Area**.

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127. On March 22, 2012 a letter was received from the State Attorney's Office along with a letter on behalf of the Legal Advisor for the West Bank from that day which stated as follows:

> **<u>Re: HCJ 5427/11 – Halil 'Amar… v. Military Commander</u>**
>
> In a recent visit conducted with Petitioner's father, Mr. _____ 'Amar… it was found that petitioner's father owns agricultural land in the seam zone. Under the current circumstances, it was found that the petitioner at hand is entitled to receive seam zone employment permit by virtue of his father's ties…

128. The petition was deleted according to petitioners' request on August 26, 2013.

129. In a preliminary response to the petition in the matter of Petitioner 3, HCJ 9512/11, the respondents informed of their decision to issue to him a permanent farmer permit, valid for two years. The petition was deleted on October 15, 2012. On September 1, 2013, a decision was received obligating the respondents to pay petitioners' costs and expenses.

130. On January 26, 2014, Petitioner 3's permit was arbitrarily and aggressively confiscated at a separation fence gate. Petitioner 3 reached the gate with his 12 year old son. The soldier at the gate did not know that children could enter the seam zone with their parents holding farmer permits (see section 2 to the chapter "Passage of Minors" of Respondent's procedures). She took from Petitioner 3 his ID card and his permit and told him that the child would not be able to pass through because he did not have a permit. Petitioner 3 explained that the child was a minor and was entitled to pass through without a permit. The soldier yelled at him saying that she would not enable Petitioner 3 himself to pass through the gate and she was closing the gate. Petitioner 3 understood that there was no use arguing with the soldier. He told his son to go back home with the other farmers and requested the soldier to enable him to pass through the gate without his son. At this stage Petitioner 3 was circled by all the soldiers, and one of them even pointed his gun at him. Petitioner 3 requested that the soldier return his ID card and his permit. She gave him back his ID card and tore his permit. Petitioner 3 contacted the Head of the DCO and complained of the incident. The Head of the DCO asked him to come to the DCO on the following day, and on that day, February 5, 2014, a permit was issued to him in lieu of the permit which had been taken from him, valid until July 15, 2014.

131. Petitioner 3 submitted a permit renewal application on September 22, 2014. The Palestinian coordination office stated that the application was denied based on the argument that enough permits were issued for the plot. Petitioner 3 submitted a request for HDCO hearing, which was not answered, and after that he submitted three additional permit applications, which also remained unanswered. On November 17, 2014, HaMoked was informed that Petitioner 3's application was denied because his land was not located in the seam zone.

132. HaMoked submitted a request for HDC hearing and filed an appeal against said decision arguing that Petitioner 3 owns many plots in the seam zone and that his ownership of lands in the seam zone was acknowledged in a letter provided on behalf of the Respondent in HCJ 5427/11. On December 29, 2014, a farmer permit was issued to Petitioner 3, valid for one year, from December 14, 2014 through December 8, 2015.

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133. HaMoked contacted the Public Liaison Officer and requested to extend the validity of Petitioner 3's permit for two years. The request was approved and a farmer permit was issued to Petitioner 3, valid from February 8, 2015 through February 8, 2017.

134. Petitioner 3 encountered difficulties in renewing his permit. The permit was valid until February 2017, as aforesaid, and at that time a new version of seam zone entry procedures was published, enabling the respondent to deny agricultural permit applications based on the argument that the plots are "miniscule" – 2017 collection of seam zone standing orders.

135. The Palestinian coordination office went on strike as a result of said "amendment" to the seam zone entry procedures and stopped transferring applications to the Israeli DCO. The strike ended on May 24, 2017 and Petitioner 3 submitted a new permit application to the Palestinian coordination office in Tulkarm on May 27, 2017. The application was transferred to the DCO on June 6, 2017, and was summarily rejected, based on the argument that the form did not include all required details.

136. Petitioner 3 submitted a new permit application on August 9, 2017, which was transferred to the DCO on August 16, 2017. On September 26, 2017, a letter was received from the Civil Administration Public Liaison Officer which stated as follows:

> The application of the resident was denied because the plot is not located in the seam zone. The Palestinian coordination office was informed of the denial. The resident can approach the DCO in the framework of HDCO hearing to examine the case.

137. HaMoked approached the State Attorney's Office in a Pre-HCJ petition on November 7, 2017. On January 30, 2018, HaMoked was informed by Respondent's legal officer, Mr. Yehonatan Pe'er, that the answer dated September 26, 2017, was a "human error" and that the real answer was that the property tax extract should be updated. On January 30, 2018, a letter was received from the Civil Administration Public Liaison Officer which stated as follows:

> Following your discussion with the legal advisor's representative, legal officer Yehonatan Pe'er, I wish to put things in writing.
> The resident's application was not denied for the reason stated in our letter dated September 27, 2017, but was summarily rejected due to the filing of property tax extracts which are no longer valid.
> According to the explanation given to you by phone, to the extent revised documents are submitted, the application shall be examined on its merits.
> Due to human error, an erroneous response was given.

138. HaMoked challenged the demand for updated property tax extracts, and Petitioner 3 and his son, whose permit application had also been denied, were invited to the DCO on February 26, 2018 "to examine their applications".

139. Petitioner 3 and his son arrived at the appointed time to the DCO and the officer Eyal Salman, the DCO commander, came out to see them. The officer asked Petitioner 3 to give him the applications he had brought with him and said that he did not have time to meet with him. Petitioner 3 said that he and his son came especially to the DCO and waited because they understood that a meeting with the Head of the DCO was scheduled. Petitioner 3 insisted on saying what he had to say although the officer did not want to meet with him. He told the officer that it was not his problem that the officers and Heads

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of the DCO were constantly changing, and that each new officer assuming office starts the examination of the case anew disregarding what has been previously done in the matter. Petitioner 3 specified to the officer the names of the former officers who preceded him, an officer called Avi and the Head of the DCO Masalha, who have already visited his lands, and explained that petitions were filed with the High Court of Justice in the matter and that a decision was made to issue permits to him and to his son. Petitioner 3 told the officer that the army must keep records of the above, because lack of documentation harms him, his sons and others like them. The officer did not like the discussion. He took the applications of Petitioner 3 and his son and told them that a visit to the land would be scheduled and that they would be contacted by military personnel.

140. HaMoked approached the Head of the Tulkarm DCO on March 1, 2018 and clarified that another visit to the lands was not required since things have already been examined in the HCJ proceedings and it was determined that Petitioner 3 and his son had ties to lands in the seam zone.

141. In a conversation held on March 7, 2018, between a representative of HaMoked and the legal officer, Sharon Astrug, the officer said that had checked the matter and that indeed another visit was not required in view of the proceedings which had taken place in the matter. He said that he had also discussed the matter with the officer Eyal Salman. The officer Eyal Salman claimed that he was not familiar with the proceedings because these were "old HCJs". Officer Sharon Astrug said that Petitioner 3 could come to the DCO on March 12, 2018, to receive a farmer permit valid for two years.

142. Petitioner 3 came to the DCO on March 12, 2018, and was told by the soldiers that there was no permit in his name. After about an hour and a half he received a farmer permit, valid for two years, from March 12, 2018 through March 10, 2020.

143. Petitioner 3 submitted a new permit application on June 17, 2020 at the Tulkarm DCO. It was impossible to do it earlier, firstly, due to the fact that for almost three months, from the beginning of March until the end of May, the army did not handle seam zone permit applications, on grounds relating to the Coronavirus, and thereafter as a result of the discontinuation of the Palestinian coordination activities in protest against the declarations of the state of Israel of its intention to annex the West Bank.

144. On June 25, 2020, HaMoked sent to the Civil Administration Public Liaison Officer a status clarification request concerning Petitioner 3's application.

145. As the deadline for processing the application expired and no answer had been received, on July 26, 2020 an appeal was filed for lack of response to the application.

146. On July 29, 2020, a letter was received from the Civil Administration Public Liaison Officer which stated, with respect to Petitioner and his son, as follows:

> Permit for "farmer's immediate relatives" was issued to the residents referenced in your letter. The permits were printed on July 28, 2020 at the Efraim DCO and are valid until July 27, 2023.

147. On August 3, 2020 Petitioner 3 was given a farmer permit valid from July 28, 2020 until July 27, 2023, limited to 120 seam zone entries for the entire period – an average of forty entries per annum. The above following further restrictions imposed by seam zone entry procedures in 2019, according to which the entry of farmers to the seam zone, including the land owners themselves, was limited to quotas of several entries per annum. Said

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restriction was also challenged in HCJ 6896/18 **Ta'ame v. The Military Commander in the West Bank**, and the respondents notified on October 26, 2020 of their intention to cancel it "within the next few weeks", but to date it has not yet happened.

148. In addition to the limitation on the number of Petitioner 3's seam zone entries, only one gate appeared on his permit – Aqaba gate 408 ("Qaffin North"). Beforehand, the permits which were given to Petitioner 3 included two gates – Qaffin gate 436 and Aqaba gate 408.

Copies of permits dated July 28, 2020 are attached and marked **P/32**.

149. Both Aqaba gate and Qaffin gate are opened only three times per week on Sundays, Tuesdays and Thursdays. There is no gate or crossing in the entire area which opens all weekdays (in the past, farmers having lands in the Qaffin enclave could also enter the seam zone through Baqa al Sharqiya gate 526 which is opened daily, but recently the Respondent refuses to enable it based on the argument that it requires passage in Israeli territory). Therefore, Petitioner 3 could not access his lands all weekdays, although according to his permit he may enter the seam zone on "Sunday, Monday, Tuesday, Wednesday, Thursday, Friday, Saturday."

150. Some of Petitioner 3's lands are closer to Qaffin gate and some of them are closer to Aqaba gate. Therefore he requested that both gates would appear on his permit. The distance between Petitioner 3's home and Aqaba gate is about two kilometers, and the distance between Aqaba gate and the lands closer to that gate is about three kilometers. The distance between Petitioner 3's home and Qaffin gate is about one kilometer, and the distance between Qaffin gate and the lands closer to that gate is about two kilometers. To reach from Aqaba gate to the lands closer to Qaffin gate Petitioner 3 has to walk for about forty minutes, in addition to the five kilometers stretching from his home to the lands closer to Aqaba gate. There is no convenient and orderly route between the plots which are closer to Aqaba gate and the plots which are closer to the Qaffin gate. Walking between the plots requires physical effort, climbing and passage through military roads. Petitioner 3 is required to take this route before farming his lands – which also requires physical strength and endurance – and then he must go all the way back to his home after work.

151. Petitioner 3 used to divide his work days such that on some days he entered the seam zone through Aqaba gate and worked in the plots closer to that gate, and on others he entered the seam zone through Qaffin gate and worked in the plots closer to that gate. The new permit did not enable him to do that and did not give him reasonable access to his lands, without any need to so encumber Petitioner 3.

152. In addition Petitioner 3 noted that his father's name, as it appears on his permit and on his son's permit was misspelled - the name ليمان (Liman) was typed instead of سليمان (Saliman). Petitioner 3 believes that things should be presented correctly without errors. The registration of a person's name with a typographical error is also disrespectful.

153. Therefore, HaMoked sent to the Civil Administration Public Liaison Officer a letter on August 6, 2020 which stated as follows:

> On July 28, 2020 seam zone entry permits for agricultural purposes were issued to Mr. _____ 'Amar and his son Mr. _____ 'Amar. Said permits were delivered to them in the DCO on August 3, 2020. Said permits enable them to access their land 120 times over three years.

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Said permits extremely and disproportionately violate their fundamental rights to property, freedom of occupation and freedom of movement.

Your new procedures whereby owners of lands in the seam zone shall not be able to access lands privately owned by them, which are not located in Israel but rather in the West Bank, other than a few times per annum, because you think that there is no real need in their agricultural work, and therefore, according to your position, you have no obligation to enable them to access their lands as they please and you prevent it from them without any security need, are illegal and cannot stand.

Such harsh, sweeping and unnecessary violation of fundamental rights of protected persons is in complete contrast to the obligations of an occupying power to provide for the needs of the protected population, and to the consistent judgments of the Israeli court on maintaining the residents' ties to the seam zone.

The lawfulness of your procedures, drastically limiting farmers' access to their lands located in the seam zone, with no security need, is currently pending before the court in HCJ 6896/18 **Ta'ame v. The Military Commander in the West Bank** (hereinafter: **Ta'ame**).

For efficiency purposes, at this stage we do not initiate a proceeding regarding the punch-card permits issued to Mr. 'Amar and his son _____, but we reserve our arguments regarding their right to access their lands as they please, and in the future we intend to challenge your decision limiting their access to their lands, inter alia based on the results of Ta'ame.

However, notwithstanding all of the above, even according to your position which is unacceptable to us, several errors occurred in the issue of the above permits, and we therefore request that at this stage you amend them and issue proper permits. The errors which should be amended are as follows:

<u>Additional gate</u>: the current permits which were issued to Ibrahim and Halil 'Amar carry only one gate number through which they can access their lands, namely gate 408 (Qaffin North). In the past they received permits specifying two gate numbers: gate 408 and gate 436 (Qaffin), It should be reminded that according to the state's undertaking in the permit regime judgments (9961/03, 639/04) which received the force of a judgment, you should have specified two gates on the permit, on your own initiative, without the resident's explicit request. We therefore request that you issue to them permits carrying the two gate numbers specified above.

Proper registration of name: we request that the name of Mr. _____ 'Amar shall be properly registered on the permits in Hebrew and Arabic and we therefore request that you amend the error in his name in Arabic.

In view of all of the above and despite our detailed objection to "punch card" permits, we request that at this stage you amend the deficiencies

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specified above and issue to Mr. _____ 'Amar and his son, _____ 'Aamar new seam zone entry permits.

154. A reminder was sent on August 20, 2020.

155. On September 9, 2020, a letter was received from the Civil Administration Public Liaison Officer, stating as follows with respect to Petitioner 3 and his son:

> Following an examination of the argument, it arises that the resident _____ is entitled to a farmer's relative permit in the absence of an inheritance order from his father, who is still alive. Therefore, he is not entitled to a seam zone farmer permit, the above, according to the current collection of procedures and guidelines. With respect to the addition of another gate, the request of the resident to add a gate is currently denied. It should be noted that the current gate is closer to the specific plots owned by the residents. In addition, I wish to emphasize again the opening hours of the gates are identical. This is our last response in the matter.

156. Hence, HaMoked filed an administrative petition in the matter on October 18, 2020 in which the court was requested to direct the respondent:

   a. To amend the seam zone entry permit of petitioner 1 (Petitioner 3 in the proceedings at hand, T.M.) such that two gates appear thereon – Qaffin gate 436 and Aqaba gate 408 ("Qaffin North" as referred to by the army), instead of gate 408 alone; and under "Father's name" to write the name سليمان (Saliman) instead of the name ليمان (Liman);

   a. To amend the seam zone entry permit of petitioner 2 (the son of Petitioner 3 in the proceedings at hand, T.M.) such that two gates appear thereon – Qaffin gate 436 and Aqaba gate 408 ("Qaffin North" as referred to by the army), instead of gate 408 alone; to replace the wording "farmer's immediate relatives" with the wording "seam zone farmer"; and under "Grandfather's name" to write the name سليمان (Saliman) instead of the name ليمان (Liman). Alternatively, to give petitioner 2 a "seam zone farmer" permit in addition to the "farmer's immediate relatives" permit which was given to him, and to revise the "farmer's immediate relatives" permit such that both gate Qaffin 436 and Aqaba gate 408 appear thereon and under "Grandfather's name" the name (Saliman) shall appear instead of the name ليمان (Liman).

A copy of the first page of the petition is attached and marked **P/33**.

157. On November 25, 2020 "Notice and Application on Respondent's Behalf" was filed which stated that the Respondent agreed to add another gate to the permits of Petitioner 3 and his son, and to change the type of the permit issued to Petitioner 3's son. However:

> With respect to the application to change the father's name in petitioner 1's permit and petitioner 2's grandfather, it should be clarified that the names of the residents in the permit are taken from a copy of the Palestinian population registration in Respondent's possession, and are

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> not established on the date on which the permit is issued. Therefore, to the extent the request is to change the name of petitioner 1's father in the systems of the Civil Administration, a proper application should be submitted… In view of the above, Respondent's position is that the hearing of the petition became redundant. Therefore, the honorable court is requested to cancel the hearing scheduled for November 29, 2020, and direct that the petition be deleted.

A copy of the "Notice and Application on Respondent's Behalf" is attached and marked **P/34**.

158. On November 26, 2020 the petitioners filed an application for leave to file reply to the response, which stated that "Photocopies of the ID cards of petitioners 1 and 2 were attached to the petition as P/3 and P/4, and it can be seen that the name سليمان is written there as requested in the petition, rather than as it appears on their permits dated July 28, 2020. The سليمان was also correctly written on the seam zone entry permits which were given to the petitioners in the past, some of which were attached to the petition as P/15; P/16; P/22; P/24; P/25; P/26 and P/29. Therefore, respondent's explanation for his refusal to revise the error in the registration of the name on the permits of petitioners 1 and 2 has no merit…".

159. In the hearing which took place on November 29, 2020, the following things were said:

> **Adv. Vogelman**: Only this morning I have received an update that the error does not appear in the copy of the Palestinian Population Registration which was provided to the Civil Administration…
>
> **Adv. Meir**: An application for the deletion of the petition was filed, why don't you check before… My colleague refers us to a procedure and it says there that we should submit a proper application, What application?...
>
> **Counsels for the parties**: It is eventually agreed that the seam zone entry permits of petitioners 1 and 2 shall be amended as specified in paragraph 2(a)-(b) of respondent's last notice dated November 25, 2020, In addition, the name of the father and grandfather in the permits (Saliman) shall be amended according to the copy of the Palestinian Population Registration. After the petitioners receive the permit, notice shall be submitted by their counsel to the court and the petition shall be deleted and court fees shall be refunded.

A copy of the minutes of the hearing in the Administrative Petition in the matter of Petitioner 3 is attached and marked **P/35**.

160. On December 1, 2020 the undersigned approached Respondent's counsel and asked whether petitioners' permits were ready. On December 3, 2020, he answered and said that he was informed that "the petitioners can go to Efraim gate (Tulkarm) representative office to receive the permits requested by them."

161. Petitioner 3 arrived to the Tulkarm DCO on December 6, 2020 around 09:00. After about an hour, when it was his turn, he approached the soldier and requested to receive his and his son's permits. However, the soldier did not give the permits to Petitioner 3, and told him that he should go to the Palestinian coordination office. Petitioner 3 presented to the

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soldier Respondent's application to delete the petition, which stated that "the petitioners can go to **the representative office of the regional DCO in Efraim gate** and receive to their possession the amended permits" (paragraph 3), but to no avail.

162. Thereafter Petitioner 3 went again to the public reception window and the soldier told him to wait. After he had waited, he went to the window for the third time and was then informed by the soldier that the permits were ready, but that Petitioner 3 should pick the permits up from the Palestinian coordination office, rather than from the DCO.

163. After approximately an additional forty minutes had elapsed, a soldier called Idan arrived, who said that he was the Deputy Head of the DCO and told Petitioner 3 that "he had nothing to do in the DCO" and that if he needed something he should go to the Palestinian coordination office and get it over there.

164. At 12:27 – **about three and a half hours after his arrival to the DCO**, and after four calls of the undersigned to Respondent's counsel – Petitioner 3 informed HaMoked that the permits had been received.

165. On December 10, 2020, judgment deleting the petition was given enabling the petitioners to file an application for costs.

166. Hence, Petitioner 3 is forced to repeatedly cope with erroneous and arbitrary denials and with unnecessary encumbrances and delays, all of which violate his fundamental rights. There is no justification for the great difficulty involved in obtaining seam zone entry permits. The same applies to any person who is entitled to a permit. But the absurdity of the situation is even greater when permit applicants may enter Israel as they please, without any specific permit, while encountering so many difficulties in order to access lands owned by them in the West Bank.

Petitioner 4

167. Petitioner 4, born in 1958, is married and has three sons and two grandchildren. She lives in Qaffin, in the Tulkarm district.

A copy of Petitioner 4's identification card is attached and marked **P/36**.

168. Petitioner 4 is the owner of land located in Qaffin lands, in the seam zone. She inherited the land from her father, Mr. _____ _____ _____ Saliman, who had passed away in 1963. The plot consists of three dunam. Olive trees are grown in the plot. In addition, the family grows legumes and other crops. Currently, fava beans (ful) and barely are grown in the plot, in addition to the olive trees.

A Copy of property tax extract for the plot is attached and marked **P/37;**

A copy of the inheritance order is attached and marked **P/38**;

A copy of an affidavit regarding Petitioner 4's last name is attached and marked **P/39;**

169. Throughout the years Petitioner 4 received farmer permits. She submitted a series of permit renewal applications, none of which has been answered. She submitted another

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permit application in September 2018, but instead of a farmer permit, valid for two years, she received an olive harvest permit, valid until December 1, 2018 only.

170. Petitioner 4 is not the only one who received at that time a short term olive harvest permit, rather than the requested permit – farmer permit, valid for two years. HaMoked approached the Civil Administration Public Liaison Officer in that matter on October 11, 2018, and noted 28 cases in which individuals had submitted from May 2018 through September 2018 agricultural permit applications, and received olive harvest permits, the vast majority of which were valid from October 7, 2018 until December 1, 2018.

171. On November 6, 2018, a letter was received from the Civil Administration Public Liaison Officer which stated as follows:

> After an examination conducted on our computerized system, we found that all residents specified in your letter had submitted "olive harvest" applications rather than applications for different permits.
> It should be clarified that all applications submitted for the olive harvest were approved.
> To the extent the residents in your letter wish to receive a different permit, we request that they submit new applications together with all relevant documents by the end of the harvest season, and they shall be examined on their merits.

172. For lack of any other option, Petitioner 4 submitted a new farmer permit application on January 13, 2019. The application was transferred by the Palestinian coordination office to the DCO on January 17, 2019.

173. According to Respondent's procedures, agricultural permit applications should be answered within four weeks (Section 5.a. to the "Processing Schedule of Different Applications" chapter). Therefore, after four weeks had passed and Petitioner 4's application had not been answered, HaMoked filed an appeal on February 26, 2019 for failure to process the application.

174. According to Respondent's procedures, within two weeks from the date on which the appeal was received a decision should be made as to whether a hearing shall be held therein, and if it is so decided, the applicant should be invited to the hearing within one month from the date of the appeal (Sections 5.g. and 5.i. to the "Appeal Committee" chapter). However, more than a month passed and no response had been received to the appeal, nor to eight additional appeals which were filed by HaMoked Center for the Defence of the Individual. Therefore, on March 31, 2019, HaMoked sent a letter to the Civil Administration Public Liaison Officer requesting to invite all appellants to hearings before the appeal committee without delay.

175. At the same time, Petitioner 4 submitted another permit application on February 24, 2019. The application was transferred by the Palestinian coordination office to the Israeli DCO on March 11, 2019. The Palestinian coordination office informed that the application had been denied by the Respondent for failure to submit an inheritance order.

176. On April 2, 2019 a letter was received from the Civil Administration Public Liaison Officer which stated that Petitioner 4's application had not been received by the Civil Administration,

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177. Petitioner 4 found herself in a desperate situation in which she was submitting one application after another, and was told each time that no application had been received from her. Therefore, on May 5, 2019, HaMoked sent a letter to the Civil Administration Public Liaison Officer in the matter of Petitioner 4 and her husband and wrote as follows:

> The spouses… have been trying since January 2019 to receive seam zone entry permits. They submitted applications on January 13, 2019 which were transferred to DCO representatives by representative of the Palestinian coordination on January 17, 2019. In the absence of any answer, we have filed on their behalf on February 26, 2019 an appeal for lack of response. A reminder was sent on March 31, 2019.
> Only on April 2, 2019, we have received your notice that their applications have not been by received in the offices of the Civil Administration.
> In view of the above, and in a bid to promote the matter of the Sabach spouses, particularly in view of the fact that they have been trying for more than three months to receive permits, we request that you coordinate for them a date in the near future on which they would be able to submit their applications directly to the Israeli DCO.

178. On May 27, 2019, a letter was received from the Civil Administration Public Liaison Officer which stated that Petitioner 4's application was denied "due to illegible documents" and that she should "go to the representation together with clear documents evidencing the size of the plot" and then her application shall be re-examined.

179. However, shortly thereafter Petitioner 4 was given a "seam zone personal needs" permit valid from June 2, 2019 through August 30, 2019. Petitioner 4 was not told why her permit was given for a short period of time and no explanation was given to her as to what has changed since the answer of the Civil Administration Public Liaison Officer was given.

180. On July 16, 2019, HaMoked sent a letter to the Civil Administration Public Liaison Officer requesting to extend the validity of the permits of Petitioner 4 and her husband, or, alternatively, to explain to reasons for the refusal to do so and to invite Petitioner 4 and her husband to a hearing before the appeal committee. The request stated as follows:

> We approach you on behalf of the spouses _____ and _____ Sabach whose details are specified above. We request that you issue to them "farmer" seam zone entry permits according to the "2017 Seam Zone Standing Orders" for a two year period, instead of the "personal needs" permits which were issued to them for three months only: June 2, 2019 – August 30, 2019.
>
> The Sabach spouses are Palestinians, residents of the occupied territories, residing in Qaffin, in the Tulkarm district. Mrs. Sabach inherited agricultural land located in Qaffin lands locked behind the separation fence in the seam zone. On their land the spouses grow a grove of olive trees. They intend to resume growing seasonal vegetables when a long term permit is given to them.
>
> Attached: land registration document – marked **A**.
> Inheritance order and affidavit – marked **B1-2**.
> Copies of ID cards of the Sabach spouses – marked **C1-2.**

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> Section 4 to chapter C of the "2017 Seam Zone Standing Orders" dealing with permits for agricultural purposes in the seam zone provides: The validity of the permits is two years.
>
> The Standing Orders also provide that "As a general rule, permits shall be issued for the period established in the Standing Orders. If permit was given for a shorter period of time, an explanation should be given. If permit was given for a shorter period of time due to the position of security bodies, an open paraphrase regarding the reason therefore should be provided" Section 19 to chapter A – "General Guidelines".
>
> In view of all of the above, we request that you act to issue permits to the Sabach spouses according to the Standing Orders procedures. If the Civil Administration insists that the validity of the permits held by _____ and _____ Sabach should not be extended, we request that an explanation shall be given according to section 19 of the Seam Zone Standing Orders…
>
> Alternatively, we request that Mrs. _____ Sabach and her spouse, Mr. _____ Sabach shall be invited to the appeal committee, due to improper processing of their seam zone agricultural permit applications by the DCO – limiting the validity of the permit to three months only, without any explanation – according to the objectives of the appeal committee (section 1 to the sub-chapter "appeal committee" of chapter A to the Standing Orders; hereinafter: appeal committee procedures), and by virtue of section 5(b) of the appeal committee procedures stipulating that "appeal applications may also be filed with the committee in matters which are not specified above."

181. However, the validity of Petitioner 4's permit was not extended, an explanation for Respondent's refusal to do so was not given, Petitioner 4 was not invited to a hearing before the appeal committee, and the permit given to her expired.

182. On September 22, 2019, an administrative petition was filed on behalf of Petitioner 4 and her husband, Mr. _____ Sabach (AP 50249-09-19 **Sabach v. Military Commander for the West Bank Area**) in which the court was requested to "direct the respondent to give petitioners 1 and 2 seam zone entry permits for agricultural purposes, to enable them orderly and continuous access to their lands, or alternatively, to enable them to enter the seam zone without printed permits". The petition stipulated as follows:

> The petitioners have been conducting bureaucratic proceedings for over a year for the purpose of receiving permits that they are entitled to receive according to the law – permits for agricultural purposes, valid for two years, enabling regular and constant access to their lands. However, said proceedings lead to a dead end and the petitioners have been prevented for a long period of time from accessing land privately owned by them, which is no located in Israel, due to the cumbersome bureaucratic procedures governing the implementation of the permit regime, while if the petitioners wish to enter the territory of the state of

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> Israel they shall be able to do so without permit, given their ages (para. 39).

and:

> According to the military procedures included in the "Unclassified Status of Authorizations for the entry of Palestinians into Israel, their passage between Judea and Samaria and the Gaza Strip and their travelling abroad", older Palestinians may enter the territory of the state of Israel without a printed permit:
>
> **Old age**: authorized entry of older Palestinians (men over 55, women over 50) without a printed permit (Section 10.19)
>
> Said people obviously do not have status in Israel and the procedure emphasizes that "a Palestinian resident does not have a vested right to enter Israel" (Section 6 to the "General" chapter). Nevertheless, they are not only allowed to enter Israel, but they are not even required to show any reason for their desire to do so.
>
> Hence, in the case at hand, the petitioner who is 61 years old and the petitioner who is almost sixty years old, who can enter the state of Israel freely, without requesting a permit and without having to justify it, cannot access **land owned by them in their country**. Under these circumstances, the denial of petitioners' seam zone permit applications with the violation of fundamental rights associated therewith, seems devoid of all logic and purpose and arbitrary, and at least, fails to attribute proper weight to petitioners' fundamental rights (paras. 56-58).

A copy of the Administrative Appeal filed on behalf of Petitioner 4, without its exhibits, is attached and marked **P/40**.

183. After the petition was filed, on October 3, 2019, a letter was received from the Civil Administration Public Liaison Officer, which stated as follows:

> The resident should submit an application in the Palestinian coordination office. Should his [sic, T.M.] application be received it shall be examined according to the 2019 Seam Zone Standing Orders.

A copy of the letter sent by the Civil Administration Public Liaison Officer from October 3, 2019, is attached and marked **P/41**.

184. On February 9, 2020, a decision was given in the petition which stated as follows:

> Since the petition was filed after the new procedures entered into force, and after I have considered the position of the parties in the responses filed by them according to my decisions, I decided to give in the case at hand directions similar – although not identical – to the directions given by the Supreme Court on October 23, 2019 in HCJ 6896/18 Ta'ame (see, similar to my decision dated October 24, 2019 in AP 18977-07-19 and others).

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> Therefore:
>
> 1. The petitioners shall submit within 14 days a new seam zone permit application according to their needs and the provisions of the amended Standing Orders.
> 2. A decision in Petitioners' application shall be made within 30 days from its submission.
> 3. An updating notice shall be filed by the Respondent by April 5, 2020.

185. On March 24, 2020, an "Updating Notice and Request to Delete the Petition" was filed which stated that "A seam zone farmer permit was issued to Petitioner 1, _____ Sabach valid from March 11, 2020 through March 10, 2023 with unlimited entries. A farmer's immediate relative permit was issued to Petitioner 2, _____ Sabach, valid from March 11, 2020 through March 10, 2023, enabling 40 entries per annum (in total 120 entries)".

    A copy of the "Updating Notice and Request to Delete the Petition" dated March 24, 2020 is attached and marked **P/42**.

186. The Petitioners filed a response on April 2, 2020 which stated that the permit of Petitioner 4's husband – petitioner 2 in said proceeding – was not received. On April 5, 2020 a decision was given directing the respondent "to file with the court by April 19, 2020 a copy of the permit issued to petitioner 2".

187. On April 19, 2020, "Updating Notice and Request on behalf of the Respondent" was filed which stated as follows:

> According to the relevant bodies, due to technical difficulties in Respondent's computerized system it is impossible to print permits which were issued… therefore, instead of presenting a copy, the Respondent wishes to file with the honorable court Public Servant Certificates with the details of permits which were issued to petitioners 1-2…
>
> To complete the picture for the honorable court, the Respondent wishes to update further as follows:
>
> a) Due to the spread of the Coronavirus and the lockdown in the area permits at this stage cannot be delivered, since the DCO's public reception window and the Palestinian coordination office are closed.
>
> b) However, inter alia, in response to petitioners' assumed argument that the permit was sent back to the DCO, the Respondent wishes to inform that following an examination with the relevant bodies it seems that both permits were transferred to the Palestinian coordination office and were not sent back to the DCO, however this may not be verified due to the lockdown and the fact that the Palestinian coordination office is closed.

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c) In addition, as a general rule, permit holders cannot use them due to the lockdown in view of the spread of the Coronavirus as specified above.

A copy of the "Updating Notice and Request on behalf of the Respondent" dated April 19, 2020 is attached and marked **P/43**.

188. On April 21, 2020, judgment was given as follows:

> Following my decisions dated February 9, 2020, and March 25, 2020, and considering the positions of both parties, the petitioners shall be entitled to enter into and stay in the seam zone according to the permits described in the Public Servant Certificates attached as Exhibit 1 to Respondent's notice, subject to the limitations and restrictions which apply pursuant to legislation and guidelines relating to the spread of the Coronavirus.
> No order for costs is given. Court fees shall be refunded to the Petitioners according to the regulations.

Petitioner 5

189. Petitioner 5, born in 1946, is married and has eight children and five grandchildren. He lives in 'Anin, in the Jenin district.

A copy of Petitioner 5's identification card is attached and marked **P/44**.

190. Petitioner 5 is the owner of land located in 'Anin lands, in the seam zone. He inherited the land from late his father, Mr. _____ _____ _____ Yassin, who had passed away in 2000. The plot consists of ten dunam. Olive trees are grown in the plot.

A Copy of property tax extract for the plot is attached and marked **P/45;**

A copy of an inheritance order is attached and marked **P/46**;

191. Throughout the years Petitioner 5 received seam zone entry permits.

192. He submitted a seam zone permit application which was transferred to the DCO on April 19, 2012 and was not answered. HaMoked approached the Head of the Jenin DCO in the matter of failure to respond to the application on July 1, 2012. The letter stated as follows: "The almond harvest season is about to begin. During the harvest, daily care of the plots is particularly essential and intense. Therefore, we ask you to act urgently to approve the application". In addition it was reminded that according to the procedures which were valid at that time, the Respondent had to give a decision in the application within two weeks from its receipt by the DCO – almost two months earlier.

193. Said letter remained unanswered and an additional letter which was sent on July 18, 2012 noting that almond harvest season has already begun.

194. Petitioner 5 told HaMoked that he was concerned that the harvest season would end and that he would not manage to pick the almonds. Therefore, he had to request people living in Barta'a in the seam zone to pick the almonds for him and pay them for their work, although he wanted to do it.

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195. On July 29, 2012, a letter was received from the Civil Administration Public Liaison Officer informing that a seam zone entry permit was issued for Petitioner 5, valid from July 24, 2012 through January 24, 2013 – six months only. The permit which was issued to Petitioner 5 was a "seam zone employment" permit, rather than a permanent farmer permit, the permit which should be issued to persons having proprietary ties to seam zone lands, which is valid, according to Respondent's procedures, for two years.

196. Petitioner 5 submitted a permit renewal application on January 13, 2013. The application was transferred from the Palestinian coordination office to the DCO on the same day. Timely response to said application had not been received, and HaMoked contacted the Head of the Jenin DCO on February 11, 2013 for failure to respond to the application. On February 14, 2013, an answer was received from the Civil Administration Public Liaison Officer whereby a permit was issued to Petitioner 5, for an even shorter period – three months only – from February 3, 2013 through May 6, 2013. Said permit was also a "seam zone employment" permit for reasons unknown to the petitioners.

197. Petitioner 5 submitted another permit application on June 30, 2013, and again received a permit valid for six months only.

198. Petitioner 5 submitted a permit renewal application. The application was transferred from the Palestinian coordination office to the DCO on April 19, 2014, and was not answered. A representative of HaMoked approached the Civil Administration Public Liaison Officer in the matter on May 28, 2014. He told her that he did not see in the system an application in Petitioner 5's name and that submission of application at the DCO should be coordinated for him. On the following day the Civil Administration Public Liaison Officer informed that HaMoked could send the application for Petitioner 5 and the officer would transfer it to the DCO and would ask to accelerate its processing.

199. HaMoked submitted the application again on May 29, 2014. On July 27, 2014 a letter was received from the Civil Administration Public Liaison Officer, according to which a farmer permit valid for two years was issued to Petitioner 5 – from June 17, 2014 through June 17, 2016.

200. Thereafter a farmer permit valid for two years was issued to Petitioner 5 – from June 22, 2016 through June 21, 2018, and thereafter another permit, valid from July 11, 2018 through July 9, 2020.

201. Petitioner 5 submitted a permit renewal application in the beginning of September 2020 and received no answer.

202. HaMoked filed an appeal for failure to respond to the application on October 8, 2020.

     A Copy of the appeal is attached and marked **P/47**.

203. On October 21, 2020, a letter was received from the Civil Administration Public Liaison Officer which stated that "the application was denied for lack of inheritance documents" and that Petitioner 5 should come to the DCO and re-submit the application together with the will of inheritance. At that time the olive harvest had already begun and Petitioner 5 was left without an entry permit to his land in such a critical period.

204. Two days earlier, on October 19, 2020, a letter was received from the Civil Administration Public Liaison Officer in response to a series of letters sent by HaMoked

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regarding the entry of farmers into the seam zone in the olive harvest season, which stated as follows:

> In view of the exceptional circumstances specified in our above referenced letter, primarily the spread of the Coronavirus and discontinuation of the civil coordination by the Palestinian Authority, it was exceptionally decided to sweepingly allow the entry into the seam zone of Palestinians who last year held seam zone entry permits for the harvest season, without a specific application. To receive the printed permit the residents should come to the DCO.

A Copy of the letter is attached and marked **P/48**.

205. Accordingly, Petitioner 5 arrived to the Jenin DCO on October 26, 2020 to receive the olive harvest permits for himself and for his family members. He waited in the DCO for about three hours, and then the soldier accepted the applications he had brought with him and told him that he would be contacted on a later date. A representative of HaMoked contacted the Civil Administration Public Liaison Officer on that day and requested him to look into the matter, given that according to his letter dated October 19, 2020, residents could come to the DCO and receive the permits without applications. The Civil Administration Public Liaison Officer replied that Petitioner 5 did not have a permit in the prior year. The representative of HaMoked explained that he had a permit valid for two years until July 2020, and hence had a permit in the last harvest season as well as in the season which preceded it, although it was a farmer permit and not a permit limited to the harvest season only. The representative of HaMoked added that the olive harvest had already begun and that the delay in the processing of Petitioner 5's application may cause him to miss the entire harvest season. The Civil Administration Public Liaison Officer replied that he could recommend that discussion in the matter be held with DCO representatives but could not ensure that Petitioner 5 would get the permit on that day.

206. After an additional wait of about an hour and a half, one of the DCO officers approached Petitioner 5. Petitioner 5 told the officer that he had arrived to the DCO to receive harvest permits for himself and for his wife and sons. The officer told him that the answer to his applications would be received within a week. Petitioner 5 told the officer that he was an older man, 74 years of age, and that it would not be easy for him to return to the DCO and wait there again for hours. The officer did not change his position and Petitioner 5 was forced to go back home empty handed, after a wait of about **four and a half hours** in the DCO.

207. On October 27, 2020, HaMoked sent a letter to the Civil Administration Public Liaison Officer which stated as follows:

> The Yassin spouses received for many years seam zone entry permits for agricultural purposes. The last permit held by Mr. Yassin had been given to him for two years and expired in July 2020. The last permit held by Mrs. Yassin had also been given for two years and expired in August 2020. Ever since the permits held by him and his wife expired he has been trying to renew them. He submitted several applications in the DCO. The last applications relevant to the above matter were submitted yesterday, October 26, 2020, directly in the DCO.
>
> Said applications were submitted following your notice from October 19, 2020 (Reference: 465-01-1840) which stated that: "…it was

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exceptionally decided to sweepingly allow the entry into the seam zone of Palestinians who last year held seam zone entry permits for the harvest season, without a specific application. To receive the printed permit the residents should come to the DCO".

After a long wait in the DCO Mr. Yassin submitted the applications, but instead of receiving printed permits, as was stated in your above notice, he was told that he would receive an answer within a few weeks.

Mr. Yassin contacted our organization and complained that the requested permits were not printed out for him as had been promised in your notice. Consequently the undersigned sent a WhatsApp message to Yoav Bar-Ness, the Public Liaison Officer. Eventually it became evident that since last year Mr. Yassin and his family members did not have "harvest" seam zone entry permits but rather "farmer" and "agricultural employment" permits, they were not entitled to receive a "harvest" permit according to your above notice.

Clearly said decision is devoid of all logic. If persons who received harvest permits are entitled to have their permits renewed automatically, all the more so persons who received permits for other agricultural purposes, for longer periods of time, based on their ties to lands in the seam zone.

Therefore, and given that the harvest season is at its peak, we request that you issue, without any further delay, agricultural seam zone permits to Mr. Yassin and his family members.
In addition, we request that you revise your notice dated October 19, 2020 and issue harvest permits to any person who had a seam zone permit for agricultural purposes last year, and has not yet received a seam zone permit for different reasons.

A Copy of the letter of HaMoked dated October 27, 2020, is attached and marked **P/49**.

208. On November 3, 2020 a letter was received the Civil Administration Public Liaison Officer informing that a farmer permit had been issued for Petitioner 5, valid from November 1, 2020 through October 30, 2023, and that a "farmer's immediate relative" permit was issued for his wife, having the same validity.

A Copy of the letter of the Civil Administration Public Liaison Officer dated November 3, 2020, is attached and marked **P/50**.

209. Petitioner 5 arrived to the DCO on November 4, 2020 to pick up the permits. However, the soldier at the public reception window told him that a decision in his application had not yet been given. A representative of HaMoked approached the Civil Administration Public Liaison Officer in the matter, and thereafter Petitioner 5 received his permit. The permits of his wife and sons were given to him only after an additional wait of about forty-five minutes.

Exhaustion of Remedies

210. On May 19, 2020, HaMoked sent a letter to the Head of the Civil Administration which stated as follows:

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As known, the decisions to construct the separation fence, close the seam zone and apply the permit regime were made against the backdrop of the second Intifada. According to judicial precedent, the purpose of the permit regime is to "assist the state of Israel to cope with the harsh terror threats directed at it from the territories of the Palestinian Authority" (HCJ 9961/03 **HaMoked Center for the Defence of the Individual founded by Dr. Lotte Salzberger v. The Government of Israel, paragraph 30** (reported in Nevo, April 5, 2011, hereinafter: the **permit regime judgment**)).

Closing the seam zone to Palestinians as such, and subjecting Palestinians' entry, and their entry alone, into the seam zone, to the permit regime, severely violates a host of their fundamental rights, including the right to dignity and the right to freedom of movement in their country.

Therefore, it was held in the permit regime judgment that: "the permit regime imposes a very heavy burden on the Palestinian population and severely injures their rights. This presumption obligates the respondents to establish arrangements that would minimize to the maximum extent possible the encumbrance inflicted on the inhabitants, without undermining the security objective" (Ibid., paragraph 32).

We are of the opinion that the arrangements established by you and which have been constantly aggravated over the last few years, do not minimize to the maximum extent possible the harm caused to the Palestinian residents, to say the least. We are of the opinion that the arrangements may be amended in a manner minimizing the scope of the violation of the residents' fundamental rights, without significantly undermining the security objective of the permit regime, and therefore, you have an obligation to do so.

One way to minimize the harm inflicted by the permit regime on Palestinian residents without undermining its security purpose is to exclude the older population – men above 55 and women above 50 – from the obligation to receive a specific permit to enter the seam zone.

Section 10.19 to the "Status of Authorizations for the Palestinian Population in Judea and Samaria" procedure provides that Palestinian men over the age of 55 and Palestinian women over the age of 50 may enter the state of Israel without a printed permit, apparently, based on the assumption that these people are not expected to harm the security of Israel while entering its territory.

Hence, it seems that there is no real security need in preventing the entry of said people into the seam zone. Firstly, closing the seam zone is intended to prevent people from entering Israel. Since men over the age of 55 and women over the age of 50 may enter Israel, there is no need or reason to prevent their entry into the seam zone.

Secondly, the entry of older people into Israel is allowed because it does not pose a real risk to Israel's security. It is therefore only obvious that their entry into the seam zone does not pose any such risk. Hence, preventing such people from accessing the seam zone does not promote in any manner the security objective of the permit regime, and therefore violates their fundamental rights beyond need.

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> In addition, the situation in which Palestinian residents may enter the territory of the state of Israel in which they do not have any status, but are prevented from freely moving in their own country, is absurd and unreasonable.
>
> It should be reminded that due to recent years' stricter seam zone entry procedures, in many cases Palestinians having proprietary ties to seam zone lands do not receive permits, and when they do receive permits, the permits enable them to enter the seam zone for about only forty times per annum. Consequently, older Palestinians who own lands in the seam zone can enter the state of Israel as they please, but do not have the ability to access lands privately owned by them in the West Bank other than in rare cases. It is an unconceivable situation.
>
> Therefore, we request that you enable Palestinian men over the age of 55 and Palestinian women over the age of 50 to enter the seam zone without specific permits, as they are allowed to enter Israel without specific permits.

A Copy of the letter of the Head of the Civil Administration dated May 19, 2020, is attached and marked **P/51**.

211. On July 2, 2020 a reminder was sent.

A Copy of the reminder dated July 2, 2020, is attached and marked **P/52**.

212. On July 13, 2020, an e-mail message was received from the Civil Administration Public Liaison and Freedom of Information Officer which stated as follows:

> Please be advised that due to the large number of bodies commenting on your letter – within and without the Civil Administration – our response has not yet been distributed.
>
> All arguments are examined. We are in the final stages of formulating a response which shall be distributed shortly.

A copy of the notice sent by the Public Liaison Officer on July 13, 2020 is attached and marked **P/53**.

213. HaMoked sent another reminder in the matter on August 3, 2020.

A Copy of the reminder dated August 3, 2020, is attached and marked **P/54**.

214. A third reminder was sent on September 10, 2020.

A copy of the reminder dated September 10, 2020, is attached and marked **P/55**.

215. A fourth reminder was sent on November 9, 2020.

A copy of the reminder dated November 9, 2020, is attached and marked **P/56**.

216. On that day an email message was received from the Civil Administration Public Liaison and Freedom of Information Officer which stated as follows:

> Your letter is still under deliberation by Civil Administration bodies and additional bodies. Since it is an issue which involves numerous bodies, the response is delayed. Nevertheless, to the extent any

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> decisions are made in the future, they shall be forwarded to you as soon as possible.

A copy of the Public Liaison Officer' message dated November 9, 2020, is attached and marked **P/57**.

217. To this day no material answer has been received to the letter dated May 19, 2020. As aforesaid, in July 2020, the Respondent informed that "we are in the final stages of formulating a response which shall be distributed shortly". It seems that no progress has been made in the matter and that waiting for an answer is pointless.

218. Hence the petition.

The Legal Argument

219. The Petitioners shall argue below that prohibiting Palestinians like them, who are entitled to enter Israel without specific permits, due to their advanced age, from entering the seam zone in the same manner, violates their fundamental rights to freedom of movement and dignity, and in some cases their rights to property and freedom of occupation, in a disproportionate manner.

The Legal Background

220. The petition concerns Respondent's acts in the occupied territory. The fields in which the Respondent is authorized to act in an occupied territory are to protect the legitimate security interests of the government and to protect the rights of the residents of the occupied territory:

> Israel holds the territories of the area under belligerent occupation. In the framework of the military regime the military commander discharges in the area authorities arising both from the rules of international law and principles of Israeli public law… The belligerent occupation in the area is governed by the main norms of international customary law entrenched in the Hague Convention (IV) Respecting the Laws and Customs of War on Land, 1907 [25], while the humanitarian principles of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949 (hereinafter: the Geneva Convention) are actually implemented by the state and by the commander of the area (Askan [1], *Ibid*., pages 793-794). **The Hague Convention authorizes the commander of the area to act in two major areas: the first – securing the legitimate security interest of the government holding the area, and the other – securing the rights and needs of the local population in the area under belligerent occupation.** The first is a military need. The other is a civilian-humanitarian need. The first focuses on protecting the safety of the military power and maintaining order, security and the rule of law in the area; the other – concerns the obligation to ensure the safety and wellbeing of the residents. **In securing the residents' wellbeing as aforesaid, the commander of the area is obligated not only to maintain the order and protect the safety of the residents but also to protect their rights, particularly the constitutional human rights vested in them**. "Securing human rights is at the center of the humanitarian considerations that the commander must consider" (HCJ 10356/02 **Haas v. IDF Commander in the West Bank** (hereinafter:

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> Haas [4]), page 456). In discharging his duties, the commander of the area must secure the essential security interests, on the one hand, and protect the rights of the civilian population, on the other. Proper balance should be maintained between these two obligations (Y. Dinstein "The Legislative Authority in the Held Territories," [23], page 509). In protecting the constitutional rights of the residents of the area the military commander is subordinated to the principles of Israeli public law, including the fundamental principles of human rights (HCJ 7862/04 **Abu Daher v. Commander of IDF Forces in Judea and Samaria**, IsrSC 59 (5) 368, 375-376 (2005))(All emphases in the petition were added unless otherwise noted, T.M.).

221. In the separation fence and permit regime petitions, the state emphasized that its decisions to erect the separation fence and close the seam zone are based on weighty security considerations alone. The honorable court accepted the position of the state and in a series of judgments it was held that the separation fence was erected following the second intifada attacks, and that it was intended to prevent perpetrators from entering Israel and carrying out terror attacks therein. For instance:

> The decision to erect the separation fence was adopted on April 14, 2002, by the National Security Ministerial Committee in order to "improve and strengthen the operational evaluations and abilities in the effort to cope with terror, and to thwart, disrupt and prevent the infiltration of hostile activity from Judea and Samaria into Israel". Said decision was approved following a government meeting held on June 23, 2002 in which it was decided to erect a 116 km. long barrier, mainly in sensitive areas through which destruction and blood-sewing perpetrators have infiltrated many times for the purpose of carrying out terror attacks…
>
> The purpose of the seam zone is to bar suicide bombers and other perpetrators from entering the territory of the state of Israel. According to the security and military bodies in charge of the matter, creating a seam zone is a central element in the fight against terror arriving from Judea and Samaria. **If the barrier cannot totally prevent infiltration of perpetrators, its purpose is then to delay infiltration into Israel for a sufficient period of time which would allow forces to arrive to the scene, thus creating a geographic security zone enabling military forces to catch the perpetrators before they enter Israel**.
>
> There is no doubt that the creation of the seam zone harms the Palestinian residents in the zone. For the purpose of erecting the barrier, agricultural lands were and shall be confiscated and the ability of the residents to exploit their lands may be significantly affected including their ability to access the land. **Said harm is a necessity of the moment and is the result of the state of combat in the area over the last two years** – a situation which resulted in the loss of many human lives (HCJ 8172/02 **Ibrahim v. Commander of IDF Forces in the West Bank** (reported in Nevo, October 14, 2002)).

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and also:

> **Needless to elaborate on the severe security situation confronted by the state of Israel since 2000 – when the second intifada broke out**. In dozens of petitions which were filed with this court during the past decade, we have discussed, in different contexts, the complexity of this security situation and the challenges faced by the state of Israel in its fight against the terror which was directed against its inhabitants… Among the steps taken by the government of Israel **in an attempt to fight the severe terror attack**, a decision was made to erect the security fence in the Area, **with the intent that it would serve as a barrier between the territories of Israel and the territories of the Palestinian Authority and would thus make it harder on the Palestinian terror infrastructure to injure Israelis**. This court held in consistent judgments, that according to the rules of international law, and in view of the fact that the decision was based on clear security reasons, the commander of the Area had the authority to issue orders concerning the construction of the security fence (see, for instance, the Beit Sourik matter). In addition it was held that this authority also extended to the construction of the fence on territories within the Area, when this was justified by security reasons… Naturally, as a result of the recognition of the authority of the military commander to erect the security fence on territories within the Area, in several segments along the route of the fence, access to Israeli territories from certain parts of the territories of the Area which border Israeli territories and which are not separated there-from by any barrier, is easy and readily available. As aforesaid, these areas constitute the seam zone.

222. Hence, this is the only reason underlying the closure of the seam zone to Palestinians, according to the position of the state as well as according to judicial precedent. As aforesaid, the Respondent is not authorized to make decisions on any basis other than legitimate security considerations and consideration relating to the wellbeing of the protected persons. Therefore, preventing protected persons from entering the seam zone, constituting part of the West Bank, cannot be justified unless security considerations require preventing them from entering Israel and carrying out terror attacks therein.

223. The case at hand concerns a group of people who are allowed to enter Israel without specific permits, apparently on the basis of security bodies' evaluation that people of such ages do not normally carry out attacks. Since these people may enter Israel as they please, as they pose no security risk, precluding them from entering the seam zone is devoid of any logic, since the entire purpose of the ban prohibiting Palestinians from entering the seam zone is to prevent them from entering Israel for the purpose of carrying out terror attacks therein.

224. The Respondent is obviously authorized to exclude groups of people from the ban on entering into and staying in the seam zone and from the requirement to receive a specific permit therefore, and he has already done it with respect to several groups consisting of millions of people.

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225. The Declaration concerning the Closure of Area No. S/2/03 (Seam Zone)(Judea and Samaria), 5764-2003, provides as follows:

> By virtue of the power vested in me as the commander of the IDF forces in the Judea and Samaria area, and according to sections 88 and 90 to the Order regarding Security Regulations (Judea and Samaria) (No. 378), 5730-1970… and my other authorities pursuant to any law and security legislation, and given the special security circumstances in the area and the need to take necessary steps in order to prevent terror attacks and the passage of perpetrators from the areas of Judea and Samaria to the state of Israel, I hereby declare as follows:
>
> 2. I hereby declare that the seam zone is a closed area as defined in this order.
> 3. a. No person will enter the seam zone or stay therein
> b. Any person in the seam zone is obliged to leave it immediately.
> 4. a. Section 3 of this declaration shall not apply to:
> 1. An Israeli.
> 2. Any person who was given a permit by me or by anyone on my behalf to enter the seam zone and stay therein, all according to the conditions set in the permit. A permit according to this section can be general, for a specific type, personal or special.
>
> b. Notwithstanding the provisions of sub-section (a), a military commander may determine that section 3 to this declaration shall apply to a person or to any class of persons entering the seam zone or staying therein.

226. The term “Israeli” was defined in the declaration as follows:

> Each one of the following:
>
> 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 effect in Israel from time to time.
> c. Any person entitled to immigrate to Israel according to the Law of Return, 7510-1950, as in effect in Israel from time to time.

A copy of the Declaration concerning the Closure of Area No. S/2/03 (Seam Zone)(Judea and Samaria), 5764-2003 is attached and marked **P/58**.

227. Thereafter additional groups were excluded from the requirement to receive specific permits to enter the seam zone and stay therein, by a general permit issued to all group members. Section 1 of the Order regarding Security Directions (Judea and Samaria)(No. 378) Order, 5730-1970, "General Permit to Enter the Seam Zone and Stay Therein" provides as follows:

> Permit to enter the seam zone, as defined in the declaration, and to stay therein is hereby given to every person belonging to the class of persons

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specified in the appendix to this permit, according to the conditions specified in the appendix.

228. The appendix provides as follows:

Classes of Persons	Conditions
Any person who is not a resident of the area, holding a valid foreign passport and a valid stay permit in Israel	Entering the seam zone and staying therein for all purposes
Any person holding a valid working permit in an Israeli settlement located in the seam zone, according to the order regarding Employment of Workers in Certain Areas (Judea and Samaria) (No. 967), 5742-1982	Entering the seam zone and staying therein for employment purposes in the settlement specified in the work permit, under the conditions set in the work permit
Any person holding a valid exit permit from the area to Israel	Passing through the seam zone to exit the area to Israel

A copy of the Order regarding Security Directions (Judea and Samaria)(No. 378) Order, 5730-1970, General Permit to Enter the Seam Zone and Stay Therein, is attached and marked **P/59**.

229. Respondent's procedures "2019 Seam Zone Entry Procedures and Guidelines" provide as follows:

A person who may 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 Population Registration Law, 5725-1965, as in effect in Israel from time to time.
c. Palestinian holding an entry permit into Israel, for passage only.
d. Any person who is not a resident of Judea and Samaria holding a valid stay permit in Israel (Section 3 of the "General Guidelines").

The relevant page from Respondent's procedures is attached and marked **P/60**.

230. Namely, Israelis, persons eligible for return and tourists from all over the world are entitled to enter the seam zone, any time and for whatever purpose, without the need to request a permit and without explaining why they wish to do so. These persons are not affected by the decision to close the seam zone since they have no connection to the place and it is not located within the boundaries of their country. Although these persons do not have a vested right to enter the West Bank, it was decided to exclude them from the ban prohibiting the entry and stay in the seam zone, probably, to refrain from violating their freedom of movement and autonomy, in the absence of any security need therefore.

231. The case at hand also concerns a group of people whose members pose no security risk, as evidenced by the fact that they are entitled to enter Israel without specific permits. As aforesaid, there is no logic in preventing these people from entering the seam zone, since

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the purpose for closing the seam zone is to prevent Palestinians from entering Israel, while Palestinians of the age groups with which this petition is concerned may enter Israel as they please. However, unlike the groups which have already been excluded from the prohibition against entering and staying in the seam zone without a specific permit, the case at hand concerns a group of people whose fundamental rights are significantly violated by said ban, since they are Palestinians, residents of the West Bank, protected persons, and said ban limits their intra-state freedom of movement, and occasionally, their right to access lands privately owned by them, based on their group affiliation, and without any security need.

232. Hence, it is feasible and proper to also exclude from the prohibition against entering and staying in the seam zone without a specific permit, the group of people being the subject matter of this petition – Palestinian men over the age of 55 and Palestinian women over the age of 50 – thus, reducing the harm inflicted by the closure of the seam zone on protected persons, according to the principles outlined by judicial precedent.

The harm inflicted on protected persons by the closure of the seam zone

233. The honorable court has acknowledged the fact that Palestinians, residents of the West Bank, are severely affected by the closure of the seam zone. The court's decision not to interfere in the matter was based on the assumption that the state was acting to minimize, to the maximum extent possible, the harm caused by the closure of the seam zone to the Palestinian population. Accordingly, for instance, the permit regime judgment states as follows:

> In our judgment we have widely discussed the complex security situation which led to the construction of the security fence. **This step severely injured the daily lives of many of the Palestinian inhabitants of the Area**. In its judgments, this court ruled many times that such injury was inevitable taking into consideration the clear security need upon which the construction of the security fence was founded. However, this court examined and re-examined, time and again, whether the injury caused by the route of the fence satisfied the proportionality requirement and whether the military commander acted according to the duties imposed on him to minimize the violation of the basic rights of the Palestinian inhabitants. As aforesaid, the permit regime which was applied to the seam zone is a derivative product of the route of the fence. It also severely violates the rights of the Palestinian inhabitants – those who live within and those who live without its boundaries. **The restrictions imposed by this regime encumber the ability of the residents of the seam zone and their brothers who live in the other parts of the Area to conduct normal daily lives. The petitioners in the petitions before us presented a harsh picture of the complex reality of life with which these inhabitants cope from the commencement of the permit regime. We did not dispute the fact that such hardships existed, and it seems that the state is also very well aware of them**. However, this time again, we could not ignore the essential security objective underlying the decision to close the seam zone, and therefore we examined, with the legal tools available to us, whether the military commander used his best efforts to minimize the injury inflicted on the inhabitants under the permit regime. Under the circumstances of the matter, and given the factual infrastructure which was presented to us, we came to the

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> conclusion that subject to a number of changes which were widely discussed above, the decision to close the seam zone and apply the permit regime thereto satisfied the tests of legality and hence, there was no cause which justified our intervention therewith. **Our above determination is based, as aforesaid, not only on the arrangements themselves, but also on the statements of the state concerning measures continuously taken by it, which are designed to improve the handling processes of the different applications and to ease the access to the seam zone, and by so doing, to minimize the injury inflicted on the daily lives of the Palestinian inhabitants**.
>
> At the same time, we wish to express a wish and a hope that this state of affairs in which a fence separates between parts of the population that wish to share their lives with its other parts, is a temporary situation, the existence of which is dependent on a severe temporary reality. (Permit Regime judgment, paragraph 46).

234. In the state's response to the permit regime petitionsה it was argued that the state was using its best efforts to minimize the harm inflicted on the Palestinians by the fence:

> The construction of the barrier, considerable parts of which are located on private lands, harms the owners of said lands. The respondents acted and act in an attempt to limit, to the maximum extent possible, said harm… **the barrier also imposes limitations on the freedom of movement of Palestinians in a territory constituting part of the Area. It is a very severe result and the respondents use their best efforts to minimize said limitations** and provide solution to the needs of the population (paragraphs 37-38 to the preliminary response on behalf of the state in the Permit Regime judgment).

235. Judicial precedent regarding the separation fence has repeatedly emphasized the harm caused by the fence to the local population and the need to limit said harm to the necessary minimum. For instance:

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

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> farmer's ability to work his land. There will inevitably be areas where the security fence will have to separate the local inhabitants from their lands. In these areas, the commander should allow passage which will reduce, to the extent possible, the injury to the farmers (HCJ 2056/04 **Beit Sourik Village Council et al., v. The Government of Israel**, paragraph 82 (reported in Nevo, June 30, 2004)).

and also:

> The conclusion according to which it is impossible to establish an alternative geographic route for the fence which is less injurious does not, in and of itself, terminate the proportionality analysis in its second sense. In the examination of the injury caused by the fence, the geographic route and the permit regime and the passage to the lands which remained west of the fence are interrelated. Petitioners' groves and grazing lands were cut-off by the separation fence. Under these circumstances, the respondents must see to it that reasonable passage arrangements and an access regime to Petitioners' lands are established, in a manner minimizing, to the maximum extent possible, the harm inflicted on them. (HCJ 4825/04 **Alian v. The Prime Minister**, paragraph 16 (reported in Nevo, March 16, 2006)).

236. One possible way to limit the harm caused by the closure of the seam zone to Palestinians is to exclude from the prohibition against the entry and stay in the seam zone without a specific permit the group of people who are entitled to enter Israel without a specific permit, due to their age – Palestinian men over 55 and Palestinian women over 50. The security purpose of the separation fence and the closure of the seam zone shall not be affected therefrom, since these persons may anyway enter Israel as they please, as they pose no risk. Therefore harming these persons is not justified and they should be exempt from the need to receive specific seam zone entry permits. They should be allowed to enter the seam zone without specific permits, as they are already currently allowed to enter Israel. Accordingly, the principle whereby the harm inflicted by the separation fence on the Palestinian population should be limited shall be realized, and unnecessary infringement of fundamental rights of innocent people shall be avoided.

<u>The violated rights</u>

<u>The right to freedom of movement</u>

237. The right to freedom of movement is well recognized by both Israeli and international law as one of the most basic and important rights:

> The status of freedom of movement in our legal system was discussed by this court in Horev [20], where it considered inter alia the relationship between freedom of movement and an injury to religious sensibilities and a religious lifestyle. In that case, President Barak said that freedom of movement is 'one of the more basic rights' (ibid., page 49), that the right to freedom of movement 'is in the first rank of human rights' (ibid., page 51) and that freedom of movement is 'a freedom that is on the very highest level of the scale of rights in Israel' (ibid., page 53). The president also added in Horev [20] that 'as a rule, we place freedom of movement within the boundaries of the state on a similar constitutional level to that of freedom of expression' (ibid., page 49). It should be noted that similar remarks with regard to the status of

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> freedom of movement were also made by the justices who did not agree with President Barak's majority opinion in Horev [20] (see, for example, the remarks of Justice Cheshin (ibid., page 147) and the remarks of Justice Tal (ibid., page 181). On the status of freedom of movement in Israeli law following Horev [20], see also Y. Zilbershatz, 'On Freedom of Movement within the State' (hereinafter: Zilbershatz [34]), pages 806-809).
>
> Freedom of movement is also recognized as a basic right by international law. Freedom of movement within the state is entrenched in a host of international conventions and declarations concerning human rights (see, for instance, Article 12 to the International Covenant on Civil and Political Rights, 1966, Article 13 to the Universal Declaration of Human Rights, 1948 [34], and Article 2 to the Fourth Protocol of the European Convention on Human Rights, [38] 1950), and it also appears to be entrenched in customary international law (HCJ 1890/03 **Bethlehem Municipality v. The State of Israel Ministry of Defense**, paragraph 15 (reported in Nevo, February 3, 2005, hereinafter: **Bethlehem Municipality**).

238. According to judicial precedent, the great importance afforded to freedom of movement arises from the fact that this right derives from a person's mere control of their life and personal liberty. It was further held by the courts in their judgments that closing parts of the public space and preventing people from traveling freely from one place to another, harm public interest, and raise a feeling of coercion with the entire population the movement of which is prevented:

> Freedom (right) of movement is a fundamental right vested in each person in Israel… It is entrenched in the Basic Law: Human Dignity and Liberty. It is derived from the principle of human dignity, which is protected by our constitution… **The individual's freedom to travel freely within and without the boundaries of his state is a clear manifestation of the autonomy of the will of the individual**. Freedom of movement is embedded in the constitutional principle – deriving from human dignity – concerning the development of the personality of each individual. Indeed, the constitutional protection afforded to the freedom of movement is a manifestation of the constitutional protection given in Israel to liberty. A person's freedom of movement "… derives from a person's intrinsic freedom, and from the state's nature as a democratic state..." (HCJ 3914/92 **Lea Lev v. The Tel-Aviv-Jaffa District Rabbinical Court et al**. [56], page 506). Each individual in Israel is vested with the constitutional right to travel freely. "This constitutional right is self-sufficient, and can even be implied from human dignity and liberty." HCJ 2481/93 supra.[27], page 472). Freedom of movement is the freedom to travel freely on streets and roads (see HCJ 148/79 supra. [24]). It is the freedom to "come and go" ("la liberté d'aller et de venire"). Hence, **closing a street to traffic on Saturday—either fully or partially—infringes the constitutional right to freedom of movement of each individual.** Moreover, preventing movement in the city on Saturday injures public interest in free movement, allowing members of the public to travel from one place to another. **Indeed, the ability to freely travel from one part of the city to another is a matter of public interest**… Finally, parts of

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> the secular public must certainly oppose what they perceive as religious coercion. Indeed, in the League [1] case, Deputy President Agranat pointed out that an order directing to close a certain part of a street to traffic on the Saturday "does not… constitute religious coercion of any kind, since the order did not compel petitioner 2 to act in a manner which contradicts his views regarding religion." (Ibid., page 2668; and also Baruch [2], page 165). In my opinion, this is not a simple matter. However, be that as it may (see Rubinstein in his above book (volume A) [92], page 177, footnote 14), **some members of the public must clearly have a subjective feeling that they were subjected to religious coercion as they are prevented from passing through Bar-Ilan street during the hours in which it is closed to traffic on Saturday** (HCJ 5016/96 **Horev v. Minister of Transportation**, IsrSC 51(4) 1, paragraph 74 (1997)).

239. Hence, the closure of the area harms the entire population which is prohibited from entering the area and not only the individuals that would have entered the area but for its closure. Any individual prohibited from moving freely in their country is harmed by the limitation imposed on their liberty and autonomy and from the sense of coercion. As clarified below, the fact that we are concerned with a limitation resting on group affiliation, which precisely affects a group of protected persons, aggravates the harm and creates hard feelings.

240. In addition, public interest is harmed by preventing the entire Palestinian population from using the territories which were declared as "seam zone". The harm caused to public interest is aggravated the longer the zone remains closed and its use by the Palestinian population remains very limited. If public interest in freedom of movement is harmed by the closure of a road for traffic on Saturday, the closure of wide areas of the West Bank from the beginning of the century until this day, and precluding the entire Palestinian population from using them for their benefit throughout the entire period, *a fortiori*.

241. According to the factual background described above, individuals having specific ties to the seam zone, including owners of seam zone lands, are harmed by the closure of the seam zone to the Palestinian population. Although, theoretically, these individuals are entitled to enter the seam zone and should receive permits enabling same, in fact, the permit regime is implemented in a manner depriving them, time and again, for long periods of time, from the ability to enter the seam zone and access their lands. In numerous cases seam zone entry permits are granted to land owners and their relatives only after a long and exhausting battle, after repeated rejections or lack of response on behalf of the Respondent to one application after another and to one request after another. This is the regular and routine situation, rather than the exception. Consequently, persons usually receiving seam zone entry permits cannot enter the seam zone freely and regularly, but only on and off, after overcoming numerous obstacles. Namely, the permit regime harms the freedom of movement of the population entitled to seam zone entry permits as well as persons that receive such permits, like the Petitioners.

242. In HCJ 9593/04 **Morar v. Commander of IDF Forces in Judea and Samaria**, IsrSC 61(1) 844, 863 (2006), it was held that freedom of movement is particularly weighty when restrictions are imposed on the access of landowners to their lands:

> It is important to emphasize that in our case we are not speaking of the movement of Palestinian residents in nonspecific areas throughout Judaea and Samaria but of the access of the residents to land that

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> belongs to them. In such circumstances, where the movement is taking place in a private domain, especially great weight should be afforded to the right to freedom of movement and the restrictions imposed on it should be reduced to a minimum

243. The same applies to the Petitioners and many other people in the same situation.

244. A general seam zone entry permit granted to Palestinian men over 55 and Palestinian women over 50, shall prevent severe and unnecessary violation of said persons' right to freedom of movement, and shall promote public interest in free movement.

The right to liberty and equality

245. The following was stated on the right to equality:

> The right to equality is the 'heart and soul of our entire constitutional system' (HCJ 98/69 **Bergman v. Minister of Finance**, IsrSC 23(1) 693, 698 (1969)). And it has already been held that "the need to ensure equality is natural to man. It is based on considerations of justice and fairness [...]. Equality protects the regime from arbitrariness." (HCJ 953/87 **Poraz v. Shlomo Lahat, Mayor of Tel Aviv Yafo,** IsrSC 42(2) 309, 332 (1988)) and is "the means to obtain justice, a way to discharge the authority's obligations justly and fairly, to reach a just result." (the words of Justice S. Netanyahu in HCJ 720/82 **Elizur Religious Sports Association Nahariya v. Nahariya Municipality**, IsrSC 37(3) 17, 20 (1983)). But not any infringement shall be regarded as an infringement of the right in the constitutional sense. According to the median model adopted by this court in HCJ 6427/02 **Movement for Quality Government in Israel v. The Knesset** [reported in Nevo] (May 11, 2006), the right to equality forms part of human dignity entrenched in section 2 to the Basic Law, provided it is inextricably linked to human dignity… It has been similarly held in the past that the test for determining whether discrimination exists is an objective test focusing on the ramifications arising from the realization of the scrutinized norm, and is not limited only to the subjective intention of the creator of the norm. The question is not whether there is an intention to discriminate against one group or another, but rather, what are the actual ramifications of its implementation (HCJ 1308/17 **Silwad Municipality v. The Knesset**, paragraph 46 (reported in Nevo, June 9, 2020).

246. The honorable court referred in that context to the violation of the right to equality caused by the application of normative arrangements preferential to Israelis in the West Bank, and not to Palestinians in the same place:

> The rule of law is a basic principle of our jurisprudence telling us that everybody is equal before the law, while retroactive regulation and validation of illegal construction affects the rule of law and encourages criminal conduct. Indeed, as noted above, Israelis living in the Area are personally subordinated to additional Israeli legal norms, but the purpose of the application of said norms is, in general, to create uniformity with respect to the laws applicable to Israelis in the Area and in Israel, and to enable the state to enforce its rule and laws on its

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> citizens residing in the Area. Conversely, in the case at hand, the regulation law creates a situation whereby construction offenders in the Area receive a different and preferential treatment compared to Palestinian construction offenders residing in the Area and, in fact, construction offenders within Israel itself. **The actual application of different laws on populations in the Area relating to construction offences and invasion of private land, resting on religious or national affiliation "severely contradicts the principle of equality before the law […] is revolting as far as justice is concerned; it threatens the legal system**" (HCJ 6396/96 **Zakin v. The Mayor of Beer Sheva**, IsrSC 53(3) 289, 305 (1999); compare HCJ 1027/04 **Forum of Independent Cities v. Israel Land Council** [reported in Nevo] paragraph 51 to the opinion of Justice E. Arbel (June 9, 2011)).
>
> Therefore, with respect to a policy which draws a distinction between illegal construction in Palestinian settlements and illegal construction in Israeli settlements in the Area, I do not think that there is a relevant difference between the two populations (Ibid., paragraph 54).

and thereafter:

> It is not a law with a declaratory effect which shall apply to a limited number of cases only. According to the data presented by the government **we are concerned with thousands of structures and families, the vast majority of which are Israelis. A distinction of such scope between Israelis residing in the Area and Palestinians residing therein is by its nature a "suspicious" distinction.**
>
> It has already been held in other contexts that **"different treatment based on religion or nationality is a 'suspicious' treatment which is prima facie a discriminating treatment"** (Ka'adan, page 276; The Supreme Supervision Committee case, paragraph 20 to the opinion of President A. Barak. The harm inflicted on the Palestinians residing in the Area "is not only a violation of equality but also a violation of their dignity. It is a violation of their right to advance their life in an autonomous manner; it affects their livelihood; […] and mainly, it violates their fundamental right not to be **discriminated against** by the government" (emphases appear in the original. Nasser, paragraph 46 to the opinion of President (retired) D. Beinisch). The alleged distinction entails an inherent violation of dignity since it positions the Palestinian resident at "an ostensibly lower level, compared to their Jewish neighbors" (Nasser, paragraph 53 to the opinion of President (retired) D. Beinisch). The above applies even more forcefully given the fact that we are concerned with "protected persons" according to international law holding "an inherently inferior power position relative to that of the Israeli settlers in the Area, who are full and equal citizens of the state of Israel" (Ziada, paragraph 116 to the opinion of the Deputy President (retired) S. Joubran)…

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> Therefore, at least on the consequential level the regulation of illegal construction in the Area discriminates between the Israelis residing in the Area and the Palestinians residing therein, with no relevant difference which may be pointed at in this context between the population residing in these communities. Therefore, it can be determined that the regulation law violates the constitutional right to equality and dignity of the Palestinians residing in the Area (paragraphs 55-57).

247. In the case at hand, the exclusion of Israelis and additional groups which are not Palestinians from the ban prohibiting entry into the seam zone, is not intended to enable the state to enforce its regime and laws on its citizens residing in the West Bank, but rather, to refrain from limiting their actions, based on the assumption that there is no security need to do so, and that in the absence of security need, their freedom should not be violated. The population group being the subject matter of this petition – Palestinians, residents of the West Bank, who may enter Israel without permits due to their age – did not receive a similar treatment, despite the fact that the harm inflicted on this group is not necessary security-wise. Hence, the right of said persons to dignity and equality has been violated.

248. Said violation is particularly severe given the fact that the harm inflicted by closing the seam zone to Palestinians is much greater than the harm inflicted by closing the seam zone to Israelis and others, firstly, since their intra-state freedom of movement is limited and not only their right to leave their country; secondly, since those affected by the closure of the area are protected persons, while the citizens of the occupying power, and citizens of other countries, are excluded from said harm; and thirdly, we are not concerned only with harm inflicted on Palestinians as opposed to non-Palestinians, but rather with harm inflicted on Palestinians and **privileges** granted to non-Palestinians – the possibility to freely enter a closed area outside the boundaries of Israel.

249. The harm caused by a legal arrangement which draws a distinction between Israelis and Palestinians and precisely harms the local Palestinian residents, is aggravated by the fact that it is a sweeping arrangement, which does not exclude those who according to the state itself, do not pose any security threat.

250. Even when we are concerned with profiling due to security considerations and even when the collective harm inflicted on Palestinians is deemed legitimate based on these reasons, an arrangement which fails to take into account the differences between individuals, without any exception, is disproportionate:

> The second amendment to the Citizenship Law provides no solution to the difficulties embedded in the collective arrangements established therein, and other than extremely exceptional cases no specific examination is conducted in the matter of those wishing to reunite with their families and they are not afforded any practical way to positively refute the presumption of dangerousness attributed to them. The above severely violates and harms the constitutional right to family life of each one of the individual group members, harm which is aggravated given the fact that it is not a specific short-term harm but rather harm having long-term ramifications (see: Daphne Barak-Erez, Terrorism and Profiling: Shifting the Focus from Criteria to Effects, 29 CARDOZO L. REV. 1, 7-8 (2007)).

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Moreover, the law is intended to provide solutions to the security needs of the state of Israel given the armed battle conducted by Palestinian organizations against Israeli citizens. However, the collective nature of the policy entrenched in the Citizenship Law – which in fact erases the unique identity of the individual members of said collective – and the disproportionate infringement of equality caused as a result of the arrangement established in the law, may create an ostensible unlawful "racial profiling" which should be avoided…

As I have noted in *Adalah*, the complex security situation that the state of Israel is forced to deal with since its establishment vis-à-vis the Palestinian terror organizations, requires that significant weight shall be given to the security considerations underlying the law. Therefore, I was willing to assume, as a starting point, that risk is posed by the residents of the area, although said presumption has a certain appearance of ethnic profiling. In my eyes this is the price which may be paid, on the ethical level, for security considerations, provided that alongside said presumption the law would have enabled a specific-individual examination giving any person requesting family re-unification, the opportunity to rebut it. Accordingly, in my opinion, proper balance could have been obtained satisfying the proportionality requirement established in the limitation clause. **However, since the collective preclusion established by the law remained in force, since the second amendment expanded the collective criteria barring family reunification between Israeli Arabs and their spouses who are residents of the Area, and since they are not given the opportunity to prove on a specific basis that they do not pose a security threat, the law's constitutional flaw of dis-proportionality remains**.

My colleague Justice H. Melcer expressed in his opinion the position that in this case the "Precautionary Rule" should be applied whereby in cases posing "a potential uncertain risk, which is expected to cause great damage the maximum scope of which is difficult to evaluate – the authority may take precautionary action even in the absence of sufficient proof that the catastrophe may possibly occur" (paragraph 34 to his opinion). My colleague is also of the opinion that when it is appropriate to apply the Precautionary Rule "the relevant legislation successfully satisfies" the third proportionality sub-test (paragraphs 38-39 to his opinion). I do not agree with my colleague and I prefer in this matter the position of my colleague President D. Beinisch. Indeed, the main deficiency of this rule, anyway in the manner in which my colleague Justice H. Melcer wishes to apply it, stems from the fact that it disregards the fact that the total measure taken against the risk which it wishes to prevent, creates, in and of itself, risks and damages which may be significant for the society or at least to certain groups thereof. **Therefore, there is no alternative but to conclude that the implementation of the Precautionary Rule in the above manner shows extreme sensitivity to certain risks while showing no sensitivity to other harms which may be caused as a result of its mere implementation. Hence the main criticism expressed against this rule. Indeed, the totality associated with its implementation**

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leaves no room for proper balancing between the interests – as important as they may be – which should be protected and the damages and harms which may be inflicted as a result of the implementation of the above measure in this way…

(On the bias which may be reflected in the application of offensive measures in the fight against terror, often leading to a situation in which the price of public interest is paid by the members of the minority group alone, see and compare: Jeremy Waldron, Security and Liberty: The Image of Balance 11(2) THE JOURNAL OF POLITICAL PHILOSOPHY 191, 200-204 (2003); Ronald Dworkin, The Threat to Patriotism NEW YORK REVIEW OF BOOKS, February 28, 2002).

The examination of the entirety of risks arising from both sides of the equation while properly balancing them stands at the center of the proportionality test. The implementation of the precautionary rule in the above described manner does not provide a conceptual framework and practical tools for such balancing. In fact, its application as aforesaid nullifies, to a large extent, the third sub-test of the proportionality requirement, which is one of the corner stones of the rules of judicial scrutiny in Israel's jurisprudence (HCJ 466/07 **MK Zehava Galon Meretz-Yahad v. The Attorney General**, IsrSC 65(2) 44, paragraph 4-6 to the judgment of Justice (as then titled) Hayut (2012), hereinafter: **Galon**).

And also:

In the case of A. (MCrimApp 8823/07) I noted that "The golden thread that runs through the judgments of this court is the effort to strike a balance between security and rights, using sensitive scales and delicate tools. As a Jewish and democratic state, the views of the state of Israel on the ethics of the fight against terror should also be inspired by Jewish law." In another case (HCJ 9441/07 Agbar v. Commander of IDF Forces in Judea and Samaria (not reported), paragraph 14), I quoted the words of the head of Har-Etzion Yeshiva, Rabbi A. Lichtenstein:

We should take the same path taken by our father Abraham (in which he fought his war – ER) – be sensitive to ethics and justice while fighting a war which is true and just in and of itself."

In the context of Jewish law "A person's dignity is viewed as the image of God in which man was created and as the basis for the duties of man to their fellowmen" (my opinion in HCJ 7195/08 **Abu Rahma v. Major General Avichai Mandelblit, Chief Military Advocate** (not reported) paragraph 15; **Netivei Mimshal U'Mishpat**, pages 229-230). The purpose of the Basic Law: Human Dignity and Liberty is to "protect human dignity and liberty, in order to establish in a Basic Law the values of the State of Israel as a Jewish and democratic state (in the language of Section 1A of the Law). The obligation to protect the dignity of all Israeli citizens – Jews and members of other religions –

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> stems, as aforesaid, from the fact that the state of Israel is a "democratic state" as well as a "Jewish state".
>
> Many words were written on the adaptation of old rules regarding the relations between Israel and other nations, the vast majority of which were drafted in the diaspora in the absence of state sovereignty, to the reality of Jewish and democratic sovereignty… however, even without elaborating on this issue, it should be emphasized that **the compliance of the Temporary Order with the right of "any person as such" to dignity (as stated in section 2 of the Basic Law) is also a question addressed by Jewish law and Jewish ethics; a system which almost two thousand years ago has wisely determined that "Loveable is man who was created in his image, as stated "in the image of God he created man"** (Mishna, Avot 3, 14) (Ibid., paragraphs 45-46 to the judgment of the Honorable Justice Rubinstein).

251. Accordingly, the right to dignity is also the source from which stems the obligation of the authority to take into consideration the differences between one person and another, and to refrain to the maximum extent possible from sweeping harm to entire sectors. In the case at hand, persons to whom the security rational of the general ban on the entry of Palestinians into the seam zone does not apply – older people who may enter Israel without specific permits - should be excluded from said ban.

252. In addition to the infringement of their dignity embedded in the inequality and sweeping applicability of the ban prohibiting the entry of Palestinians into the seam zone, the right of older Palestinians to dignity is infringed by said prohibition in a more primary and simple manner. We are directed to respect the elderly, and harming older people is commonly regarded as particularly serious, as compared to harming any person as such. Moral intuition directs us to give special weight to the right of older people to dignity, to make things easier for them to the maximum extent possible, to prevent them from encountering difficult and offensive situations and to stand by them and protect them when they are harmed. Said intuition has also been manifested in the judgments of the honorable court, in different contexts. For instance:

> We shall add that towards an elderly person a special duty is imposed on society, due to their inherent weakness ("Thou shall respect the elderly" Leviticus 19, 32; "And do not despise your old mother" – Proverbs 23, 22). Everybody wants to reach old age, and everybody wants old age to be dignified in the most basic sense of the Basic Law: Human Dignity and Liberty, namely, "a person's dignity as such" (section 2). The legislator has also addressed this issue in the National Insurance Law [Consolidated Version], 5755-1995, as well as in the Senior Citizens Law, 5750-1989, as well as in other laws. Indeed, the question whether old age pension falls under the right to property pursuant to the Basic Law: Human Dignity and Liberty (section 3) has not yet been decided by this court. President Barak answered this question in the affirmative in HCJ 5578/02 **Manor v. Minister of Finance**, IsrSC 59(1) 729, 738, but his colleagues to the panel, Justice – as then titled – Rivlin and Justice Grunis, left the question under advisement (pages 743, 744). However, this issue is not relevant to the case at hand…

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> Current public and legal discourse also revolves around social rights. In his book 'The Social Transformation of Business Law' (5767-2007) Dr. E. Bukspan presents labor laws as a test case for the social responsibility of the business community (page 437 and onwards). As far as I am concerned, the rights of the elderly stand on an even higher level.
>
> It should also be stated that we are concerned – in the framework of Jewish law – with issues involving both law and ethics. […] See also Rabbi Prof. A. Steinberg, Halachic Medical Encyclopedia – definition of the term "Old", Vol. B (5751-1991), page 332. In page 337 the author notes that "**recently the attitude of modern society to the elderly has undergone moral and practical changes**"; on the attitude to the elderly see also supra, pages 352-354. **The above should be properly implemented in practice** (CA 7654/06 **Rozenschtrauch v. The Pension Fund of Egged Members Ltd**., paragraph 9 to the judgment of the Honorable Justice Rubinstein (reported in Nevo, December 30, 2007)).

And also:

> If in the past the elderly were well-respected and appreciated for their experience and contribution to society, these days the elderly are sometimes disregarded, and even their relatives, their own flesh and blood, do not help them, precisely in years of sickness when their general functioning abilities are not as they used to be. In these circumstances, society is obligated, now as before, to care for its elderly with respect, compassion, kindness and gratitude for the good they have contributed to society while they were strong and able (CA 4377/04 **Holzberg v. Miraz**, IsrSC 62(2) 661, paragraph 42 to the judgment of the Honorable Justice Arbel (2007)).

And in criminal law:

> The elderly should be the subject of respect and if necessary compassion and society should enable them to age in a dignified manner, peacefully and safely. No tolerance should be displayed towards those brazenly harming the elderly. Those turning the elderly into an 'easy prey' instead of respecting them should be severely punished, and low weight shall be given to personal circumstances for mitigation of punishment purposes. (CrimApp 1261/15 **State of Israel v. Dalal**, paragraph 34 (reported in Nevo, September 3, 2015)).

253. The same applies to the case at hand. The Palestinian public in its entirety is harmed by the closure of the seam zone and by the ban prohibiting entry and stay therein without a specific permit which is sweepingly applied only against it. But the harm inflicted on the older population is particularly severe.

254. In addition, older people in fact often experience a special kind of heart-break and distress as a result of being denied access to parts of the West Bank, more than younger people, since they had been there before the area was occupied and some of them even

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before the state of Israel was established. Therefore, they are particularly harmed by and protest against the limitations imposed on their ability to access lands in the seam zone. The fact that young soldiers have the authority to prohibit them from entering lands forming part of the West Bank, in their old age, and after their entire history there harms older peoples more severely.

255. As described in the factual part of the petition, persons entitled, in principle, to receive specific permits, also encounter numerous difficulties in receiving the permits and are forced to go through a long, exhausting and demoralizing bureaucratic ordeal to receive them, meanwhile having no ability to access their lands for long months. Often, arbitrary and inexplicable rejections are received, and even more frequently, land owners' repeated applications to access their lands remain unanswered They apply time and again to the army requesting to enable them to access their lands, wait for weeks, understand that no answer shall be received, and so on and so forth.

256. Permit applicants are also forced to cope with harassment and humiliating treatment by the soldiers. Occasionally they are held by the soldiers at the gates of the separation fence for hours, with no reasonable reason, even on extremely hot days; they are required to arrive to the DCOs, and when they arrive they are yelled at by the soldiers and driven away; they wait in the DCOs for long hours until they are attended to by any one of the soldiers, and even then they usually do not get what they seek, without receiving any convincing and substantiated explanation for the refusal or for the elongation of the proceeding and for the growing number of demands imposed on them over the years. Subordination to the permit regime is difficult and offensive for any person, particularly given the way it is currently being conducted. However, when older people are concerned, it is particularly difficult and intolerable.

257. Accordingly, for instance, a civilized person cannot bear a situation in which an elderly man, grandfather of 19 grandchildren, goes to his lands with a donkey and wagon and the soldiers repeatedly prevent him from passing through the gate with the donkey, leaving him to wait in the heat for hours until they allow him to pass through, as happened to Petitioner 1. It also difficult to tolerate a situation whereby a 74 year-old man, owner of lands in the seam zone, waits in the DCO for four and a half hours to receive permits for the olive harvest season only, so as not to lose the crops of the entire year, and is then sent home empty-handed, with an unreasonable explanation, as happened to Petitioner 5.

258. The mere fact that older people most of whom have inherited their seam zone lands long before the separation fence was erected and even before the area was occupied by the state of Israel, are repeatedly required to "prove" to the soldiers that they have the right to access their lands, deeply and severely infringes on their dignity and hurts their feelings. The fact that time and again the proof presented by them does not satisfy the soldiers, and they are required to submit one document after another, and to cope with demands which get stricter and stricter, further aggravates the harm. The above is coupled by humiliations, delays and disregard of their repeated applications, which are not "isolated mishaps" but rather regular and common characteristics of the manner by which the permit regime has been actually implemented throughout the years, constituting some sort of an "oral codex" accompanying the written procedures.

259. Since such harms serve no security need, persons in the above ages should be exempt from the need to receive permits, and they should be allowed to enter the seam zone without specific permits as they are allowed to enter Israel, with respect of which they do not have vested rights. No damage shall be caused thereby and it may only make

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things easier for said people in their old age and prevent them from suffering severe and unnecessary harm.

Violation of the Rights to Property and Freedom of Occupation

260. The ban against entry of Palestinians into the seam zone also violates the right to property and the right to freedom of occupation of some of the population relevant to the petition at hand. The same applies to persons whose lands or work places are located in the seam zone encountering difficulties in receiving entry permits and access to the seam zone, like the Petitioners.

261. As is known, the right to property is a fundamental right, entrenched in section 3 of the Basic Law: Human Dignity and Liberty, protecting the rights of all persons and in international covenants relevant to the occupied territory:

> Property rights are also included among the basic human rights. Property rights have been recognized as basic rights worthy of protection in the case law of this court (see, for example, HCJ 390/79 **Dawikat v. Government of Israel**, IsrSC 34(1), 14-15; HCJFH 4466/94 **Nuseibeh v. Minister of Finance**, IsrSC 49(4) 68, 83-85) and have also been given explicit constitutional expression in section 3 of the Basic Law: Human Dignity and Liberty. These rights are also recognized in international law, and in so far as territories held under belligerent occupation are concerned, they are enshrined, inter alia, in the Hague Convention and the Fourth Geneva Convention (**Bethlehem**, paragraph 20 to the judgment of the Honorable Justice (as then titled) Beinisch).

262. Freedom of occupation has also been recognized as a fundamental right, and the authorities must refrain from violating it while acting outside the boundaries of the state of Israel:

> Additional grounds… are found in the fundamental right to freedom of occupation, which was recognized in this Court's case law even before the Basic Law: Freedom of Occupation was enacted… Israeli law may not directly apply in the Area, but this Court applies its basic principles to the military commander of the Area and his subordinates by virtue of their personal powers as members of state authorities acting in the Area on behalf of the State… in the same manner in which it applies the principles of administrative law to them. (HCJ 3940/92 **Jarar v. The Commander of the Judea and Samaria Area**, IsrSC 47(3) 298, 304 -305 (1993)).

263. Persons having proprietary ties to lands located in the seam zone, like the Petitioners, and their family members, employees and other people whose work places are located in the seam zone, need regular, permanent and continuous access to the seam zone to realize their fundamental rights to property and freedom of occupation. The permit regime to which they are subordinated does not enable it, and even the small number of people who usually receive seam zone entry permits do not receive them continuously, but only sporadically, at times only for short periods of time, and after a long struggle with rejections and failure to respond to a series of applications. The individuals who do meet the criteria for receiving seam zone entry permits also have no certainty that their permits would be renewed when they expire, and have no grounds to assuming that their future

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applications would be approved. They cannot rely on it and therefore cannot plant and sow crops in their lands, with the knowledge that they would be able to grow them and pick their fruits, or work regularly in an orderly manner, for years, in a business located in the seam zone. The inability of land owners to access their seam zone lands on a regular basis, and their inability to plan their future work in their lands and make the necessary investments therein due to the concern that they would not be able to do it in the future, severely and disproportionately violate their fundamental rights to property and freedom of occupation. The same applies to the inability to employ employees on a continuous basis in businesses located in the seam zone.

Lack of proportionality

264. As is known, the question whether violation of fundamental rights is proportionate depends on its compliance with three sub-tests – the rational connection test, the least injurious measure test, and the proportionality test in its narrow sense (HCJ 1661/05 **Hof Aza Regional Council v. Knesset Israel**, IsrSC 49(2) 481, paragraph 67 (2005)).

265. With respect to the rational connection test the following was written:

> The first sub-test is the "rational connection test" or the "compliance test", according to which a pertinent connection must exist between the proper purpose of the law and the arrangements established in the law for its realization. Namely, the chosen measure must rationally lead to the realization of the purpose. For this purpose, "a real connection" should exist between the proper measure and the proper purpose. Vague or theoretical probability does not suffice, since the injurious measure should lead to the realization of the purpose by a "significant level of probability" (HCJ 8425/13 **Eitan Israeli Immigration Policy et al. v. The Government of Israel**, paragraph 25 (reported in Nevo, September 22, 2014)).

266. The harm in the case at hand does not satisfy the rational connection test. As specified above, it was held by judicial precedent that "the purpose of the seam zone is to bar suicide bombers and other perpetrators from entering the territory of the state of Israel… If the barrier cannot totally prevent infiltration of perpetrators, its purpose is then to delay infiltration into Israel for a sufficient period of time which would allow forces to arrive to the scene, thus creating a geographic security zone enabling military forces to catch the perpetrators before they enter Israel". Hence, when we are concerned with a group of people who may enter Israel without requesting and without receiving a specific permit due to their low risk level, preventing them from entering the seam zone does not realize the purpose of preventing them from entering Israel and serves no security purpose. As aforesaid, vague or theoretical probability that the measure realizes the purpose does not suffice. For this purpose a significant level of probability is required, which obviously does not exist in the case at hand.

267. With respect to the least injurious measure, the application of an offensive blanket arrangement to people who are harmed by it in a manner which does not realize the purpose of said arrangement, causes the harm inflicted by the arrangement to be disproportionate, since a less injurious measure exists – an arrangement which does not apply to said people, as was held in HCJ 10662/04 **Hassan v. The National Insurance Institute**, IsrSC 65(1) 782, paragraphs 63-64 to the judgment of the Honorable President Beinisch (2012):

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> As we have seen above, certain individuals fall within the absolute presumption established in section 9A(b) although the (proper) purpose of the section – non-payment of pension to persons having available to them sufficient means to secure minimal needs of existence – does not apply to them. These individuals do not fall within the exceptions set out to the above presumption in section 9A(c) of the law. In the absence of adequate exceptions, an absolute presumption according to which owning or using a vehicle has a value which is at least equal to the value of an income guarantee pension, does not enable to consider the circumstances of those individuals who use vehicles the value of which is lower, at times significantly, from the value of the income guarantee pension… with respect to these individuals the question arises whether the purpose of the law before us could have been realized in other ways, less injurious to the constitutional right for minimal dignified existence.
>
> *Prima facie*, it seems that the answer to this question is yes. One can point at several reasonable alternatives which can realize the legislative purpose underlying the provisions of section 9A(b) of the Income Guarantee Law, with minimum injury, and even with no injury at all, to the constitutional right for minimal dignified existence. Accordingly, for instance, a rebuttable presumption could have been established giving a person requesting a pension and holding or using a vehicle, an opportunity to prove that their ownership or use of a vehicle does not attest to that they have another income (or potential income)…

268. In the case at hand, fundamental rights of senior and elderly people, grandfathers and grandmothers, are injured unnecessarily in a manner which contributes nothing to the security purpose attributed to the closure of the seam zone to Palestinians – preventing perpetrators from entering Israel. Hence, the same purpose may be realized in a different, less injurious manner, by excluding Palestinians who may enter Israel without specific permits, due to their age, from the requirement to obtain a specific permit to enter the seam zone. Prohibiting the entry of Palestinians into the seam zone, which does not take into consideration the older population, to which the above security purpose does not apply, does not satisfy the least injurious measure test.

269. The honorable court has already stressed that harmful rules which were found to have been justified for security reasons at a certain point, should be re-examined from time to time, and that the authority has a continuing obligation to explore less injurious ways to maintain security:

> The Temporary Order can satisfy the proportionality test only so long as the taking of such measures is mandated by the security-political situation… Therefore, **beyond the caution which should be exercised in its adoption, it should also be reviewed and examined *de-novo* frequently**.
> The legislator should therefore be well-attentive to changes of circumstance, in several contexts. Firstly, one should hope that the security situation shall improve in the future in a manner reducing the need to take precautions, or shall at least make the risk involved in their partial or even full removal inevitable. Secondly, changes may occur making the specific examination more practical and efficient – raising the second sub-test (the "least injurious measure"). **The authorities should frequently check the security needs and the ability to**

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produce effective less injurious measures. They should also carefully examine the possibility to streamline the processing of exceptional cases; through the humanitarian committee as well as by devising additional mechanisms which would assist spouses who are currently prevented from doing so, to live together in Israel.

The position supporting the lawfulness of the Temporary Order does not exempt the legislator and the executive authority, from exploring ways to mitigate the decision for yet another reason: the right spirit of making an effort to accommodate those who did nothing wrong and pay – as unfortunately happens in situations of war – the price for those who have sinned. In many cases the security system is initially of the opinion that a certain security measure is unreplaceable, but thereafter – after extensive investment of thought and resources – proper replacement is found thereto. In the matter of A (MCrimApp 8823/07) I commented on the response of the security system to the judgment on the interrogation methods employed by the ISA (HCJ 5100/94 The Public Committee against Torture in Israel, IsrSC 53(4) 817):

> "After the judgment had been given… the security system was very concerned, to say the least; I served at that time as the Attorney General, and numerous meetings were held in different forums with respect to the implementation of the judgment and the new situation which was created, and legislative initiatives were even considered to avoid it. However, thank God, with time the system has developed creative solutions to the problems. One year after the judgment the difficult period known as the 'second intifada' has commenced, and tasks of the security system were extremely difficult; but it coped with them, within the limitations of the judgment, with considerable success" (paragraph 14).

Indeed, the above situation is not completely similar to the case at hand from the aspect of the legal infrastructure (which did not allow the interrogation methods which had been disqualified) and assuming that presently a specific examination may not provide a comparable alternative to the Temporary Order, but looking to the future the above should be remembered (Galon, paragraphs 47-49 to the judgment of the Honorable Justice Rubinstein).

270. Hence, even if in the past the state argued that there was no effective, least injurious measure, other than the application of a blanket ban on the entry into the seam zone to all Palestinians, excluding those having specific ties to the seam zone, it does not mean that things have not changed. The passage of time, the significant changes in the security circumstances, the technological developments and changes in the authorities' work methods which have occurred over the years, and the mere fact that currently, Respondent's procedures allow the Petitioners and others like them to enter Israel without specific permits, mandate that the possibility of replacing the measure which was chosen with a measure which would injure innocent people to a lesser degree, shall be re-examined. *Prima facie*, there is no preclusion preventing the adoption of the modest

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change proposed in the petition – the exclusion of men over 55 and women over 50 from the sweeping ban on the entry of Palestinians into the seam zone.

271. With respect to the proportionality test in its narrow sense, which examines the proportion between the violation of fundamental rights caused by the arrangement and the advantage gained by the arrangement, it was held that the relevant comparison is not a comparison between the violation of fundamental rights and the lack of **any** measure to safeguard security, but rather a comparison between the violation of fundamental rights and the **difference** between the contribution of the measure taken to safeguard security and the alternative, less injurious measure:

> And finally, it is required that a proper proportion exists between the nature of the violation of the right to a family and of the right to equality according to its strength, and the security advantage gained as a result of the denial of the requested unification (Amara, paragraph 11 of the President Barak's judgment). The scope of the security advantage which should be taken into account for the application of the narrow proportionality test is not necessarily the entire scope of the possible security advantage as compared to a situation in which no other preventive measure was taken against the security threat; The advantage which should be taken into account is only the marginal addition to the security gained from the cessation of the family unification procedure, as compared to the possible use of alternative security means, such as the grant of temporary residency permits renewable on a short time basis, thus allowing a periodic supervision by the authority of the real danger posed by the spouse, resident of the Area, who resides in Israel; tightening the supervision over the spouse who resides in Israel, obtaining his undertaking to sever any connection he may have with hostile parties and putting such an undertaking to a test, and such similar means (HCJ 7444/03 **Daqqa v. Minister of Interior**, paragraph 33 to the judgment of the Honorable Justice Procaccia (2010)).

272. In the case at hand the question is whether the inclusion of the group with which this petition is concerned, Palestinian men over 55 and Palestinian women over 50, in the general ban on the entry of Palestinians into the seam zone, contributes to achieving the security purpose underlying the closure of the seam zone to such a degree which justifies the violation of the fundamental rights to dignity, equality, freedom of movement, and in certain cases also the right to property and the right to freedom of occupation. The answer is obviously not. The injury inflicted on the above group does not promote **in any way** the security purpose underlying the closure of the seam zone, since the ban on the entry of the members of said group to the seam zone does not prevent them from entering Israel, which is allowed, and in addition, there is no security need for preventing them from entering Israel. Hence, there is no proper proportion between the violation of the fundamental rights of these persons and the purpose of the decision to close the seam zone to Palestinians.

273. It should be reminded that the long duration of the arrangement which violates fundamental rights, *de facto* turning it from a temporary into a permanent arrangement, also affects the arrangement's satisfaction of the proportionality test in its narrow sense. It was so written on this issue with respect to the Temporary Order:

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The fact that fundamental rights are violated in the context of a temporary order, due to needs of the hour, can only serve as an indication for the proportionality of the violation. The temporary nature of the violation, arising from the fact that the legislation was made in the framework of a temporary order affects the magnitude, depth and scope of the violation of fundamental rights. While opposite the additional advantage gained by the law or the decision of the administrative authority, stands the additional damage caused thereby to the fundamental right and the damage is temporary in nature, it shall constitute a significant consideration in the context of the proportionality test in its narrow sense. However, obviously, the final determination in the proportionality issue – including in the context of the third sub-test – is the result of the weighing of a collection of considerations and factors, and the fact that the violation is temporary, does not, in and of itself, tip the scale in favor of the proportionality of the violation.

In view of the above it can be assumed that such a sweeping ban on the ability of Israeli citizens to realize their right to family life in Israel was established in a temporary order based on the view that ostensibly, the arrangement is temporary in nature, and therefore the injury caused by it to fundamental rights is limited in scope, and therefore less severe.

This assumption may possibly stand in situations in which the limitation is indeed temporary or where the legislator changes the law from time to time while revisiting from time to time the need to continue the violation of the fundamental rights and its scope. This is not the situation in the case at hand.

Since the law had been enacted as a temporary order, it was extended twice by the Knesset and ten additional times by government resolutions which were approved by the Knesset plenum. Twelve extensions. Changes of this kind and another have occurred in the security reality, some more significant than others, but a significant change in the law – has not occurred. A review of the changes made in the law throughout the years which have passed since its enactment raises, at least, the concern that their purpose was not to mitigate the severe violation embedded in the law but rather to substantiate it… Currently, more than eight years after the enactment of the law, it seems that *de facto* the temporary arrangement became a permanent arrangement.

As was clarified, the Citizenship and Entry into Israel Law, is a temporary arrangement, which was intended to provide a solution to an acute and pressing situation… by enacting the prohibition against family unification with residents of the Area and nationals of risk-posing countries in the context of a temporary order, the legislator has manifested its view that it is a temporary arrangement, that it is and arrangement that should not be permanently included in our corpus of laws, or at least, that it is not obvious that it should be included in our corpus of laws. The legislator has refrained from establishing in a permanent legal arrangement the violation of the fundamental rights of

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its citizens, and apparently not without reason, since it is hardly familiar with the ramifications of this law…

The fact that the violation of the right to family life and equality is made on a continuing basis, using the relative flexibility of the legislative measure of temporary order to establish such a sweeping provision, refraining from enacting a "regular" law which would be subject to deliberation and scrutiny like any other law, and that the changes made in the law are immaterial, constitutes, in the circumstance at hand strong indication of the disproportionality of the law (HCJ Galon, paragraphs 25-27 to the judgment of the Honorable Justice Arbel).

and also:

I do not share the positions expressed by some of my colleagues whereby the risk posed by allowing family unification subject to specific examination or other means of examination justifies such an extensive violation of fundamental constitutional rights. I do not dispute the security need and its underlying data and evaluations. However, we must ascertain that using rules such as the precautionary rule – aimed at applying blanket arrangements to prevent a potential risk – do not themselves cause a substantial damage. The Citizenship Law – in its broad format and without providing for a specific examination of the family unification applicants – leads to very substantial damages. It affects our most fundamental democratic concepts. It severely violates the constitutional rights of the Arab citizens of Israel. It has a real slippery slope potential which may lead to the use of broad regulatory measures to prevent risks on different levels. All of the above should be taken into consideration. One should not only consider the risk which was prevented as a result of the application of the precautionary rule, but also the risks created by it.

I noted in the first judgment that "we must ensure that proper and proportionate balancing is made with respect to the violation of rights for security needs. A regime which is based on democratic values cannot allow itself to adopt measures that will give the citizens of the state absolute security. A reality of absolute security does not exist in Israel or in any other country. Therefore an educated and balanced decision is required with regard to the ability of the state to take certain risks in order to protect human rights". (the first judgment, pages 466-467). I am of the opinion that proper balancing did not exist when the law had been examined in the first judgment, and that the changes made therein did not bring it to a point enabling us to determine that the law is constitutional regardless of the fact that it violates human rights.

More than eight years have passed since the law was initially enacted. Many things happened since then. A state of war or a 'quasi state of war' still exists although many changes have occurred within and without Israel, apparently having an effect on

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the validity of the security argument and of the nature of the security threat. These changes are assumed to affect the justifications underlying the enactment of the law. The law is about to expire very shortly (on January 31, 2012), and it is an opportunity to examine whether another extension is needed and in which format…

In my opinion, as aforesaid, the law in its current format is also sweeping and all-inclusive, and therefore cannot stand due to its disproportionate violation of the right to family life and the right to equality. It is necessary, and possible, to mitigate the injury by changing the arrangement – either by conducting a specific examination to family unification applicants; or by providing an opportunity to refute the presumption of dangerousness or by expanding the possibility to receive status in Israel based on humanitarian reasons. All of the above should be embodied in legislation – in a comprehensive immigration arrangement or in interim arrangements until the enactment of an immigration law (*Ibid.*, paragraphs 13-16 to the judgment of the Honorable President (retired) Beinisch).

274. In the case at hand the arrangement which was defined as "temporary", continued to exist from the beginning of the century until this day, notwithstanding the significant changes which the security circumstances have undergone throughout the years. The proportionality of the closure of the seam zone in the midst of the second intifada or shortly thereafter cannot be compared to the proportionality of the same decision many years thereafter, during which actual changes have occurred in the security circumstances, and in addition, during said period the Respondent himself has permitted the Petitioners and others like them to enter the state of Israel itself without a specific permit. Furthermore, limiting the intra-state freedom of movement of protected persons and closing wide areas of the zone to its residents, for a short period of time, cannot be compared to the imposition of such limitations for decades. The fact that the violation has been continuing for so many years, for a period the end of which is not in sight, has significant ramifications on the proportionality of the violation. We are no longer concerned with preventing the Palestinian residents from entering the territory for a short period of time, against the backdrop of an emergency situation, but currently the concern arises that we are concerned with a final separation from a certain part of the West Bank and it is doubtful whether the older members of the protected population shall witness, in their lifetime, the separation fence dismantled and the accessibility of the Palestinian public returned to the territories east of the fence, certainly not without judicial intervention.

275. As aforesaid, in the case at hand the question is not what is the security advantage gained by closing the seam zone to Palestinians, compared to its violation of fundamental rights, but rather, what is the security advantage gained by including the older population in the ban on the entry of Palestinians to the seam zone, compared to its violation of fundamental rights, and there is absolutely no doubt that there is no reasonable proportion between them. The long duration of the violation and the fact that from a temporary violation it has become, *de facto*, a permanent violation, reinforce the conclusion that the violation is disproportionate.

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276. Hence, the ban on the entry of Palestinians to the seam zone violates the fundamental rights of protected persons beyond need. Therefore, it should be revoked and Palestinian men over 55 and Palestinian women over 50 should be allowed to enter the seam zone as they are entitled to enter Israel.

Conclusion

277. The construction of the separation fence in the West Bank, and the closure of the area behind the fence to Palestinians, violated and continue to violate the fundamental rights of millions of innocent people to intra-state freedom of movement and to dignity, and in many cases, similar to the cases of Petitioners 1-5, additional fundamental rights including the right to property and the right to freedom of occupation.

278. At least with respect to some of the group injured by said decisions - men over 55 and women over 50 – there is no security need in said injury nor does it contribute to achieving the security purpose underlying the closure of the seam zone, given the fact that said people may anyway enter the territory of the state of Israel without specific permits, due to their low risk level. According to judicial precedent, the purpose of the separation fence and of the closure of the area behind the separation fence is to prevent perpetrators from entering Israel and carrying out attacks therein. Preventing persons who are entitled to enter Israel due to their low risk level, from entering the seam zone, does not actually contribute in any manner to the realization of said purpose. We are concerned with protected persons, older people, and every effort should be made to refrain from injuring them when the injury is not necessary for security reasons.

279. In view of all of the above, the honorable court is requested to issue before it an order nisi as requested in the petition.

280. In addition, the honorable court is requested to obligate the Respondent to pay Petitioners' costs and attorneys' fees.

281. This petition is supported by affidavits which were signed before the undersigned by video conference and were sent to HaMoked: Center for the Defence of the Individual by WhatsApp, following telephone coordination. The honorable court is requested to accept these affidavits and the powers of attorney which were also sent by WhatsApp considering the objective difficulties in arranging a meeting between the Petitioners and their legal counsels.

January 21, 2021.

____

Tehila Meir, Advocate
Counsel for the Petitioners