At the Supreme Court **HCJ 3066 /21**
Sitting as the High Court of Justice

In the matter of:

1. **_____ Ziad, ID No. _____**
   Palestinian resident of the occupied territories

2. **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:

a. Why petitioner 1 shall not be given a seam zone entry permit valid for three years, to maintain his proprietary ties to his land in the seam zone and to enable his regular access thereto;

b. Why permission shall not be granted to prove proprietary ties to seam zone lands which passed by way of inheritance, for the purpose of receiving entry permits to lands located in the seam zone, by submitting land registration extracts in testators' names together with inheritance orders, proving that ownership in the lands had been transferred from the registered owners thereof to their heirs.

This is one of five petitions filed with this honorable court regarding respondent's refusal to give farmers seam zone permits due to the fact that the heirs of the lands were not registered as the land owners *in lieu* of the testators.

No alternative remedy

1. Section 5A(a) to the Courts for Administrative Affairs Law, 5760-2000 authorizes the Court for Administrative Affairs in Jerusalem to adjudicate a "petition against a decision of any authority or body listed in the fourth addendum, acting in Judea and Samaria… 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.

2. Section 3(e) to the fourth addendum provides as follows: "A specific decision of an authority concerning entry permit into an area constituting a seam zone".

3. The petitioners filed on July 25, 2019, an administrative petition with the District Court in Jerusalem (AP 62855-07-19 **Ziad v. The Military Commander for the West Bank**) in which the court was requested to order the respondent:

    a. To issue to petitioner 1 a seam zone entry permit, valid for two years, to maintain his proprietary ties to his seam zone land;

    b. To cease refusing to issue farmer seam zone permits valid for two years to persons who have inherited lands in the seam zone, due to the fact that they have not acted to change the registration of the rights in the lands in the *Tabu* (the Land Registry).

4. On March 3, 2020, a hearing was held in the petition and in four additional administrative petitions which had been filed by HaMoked Center for the Defence of the Individual (HaMoked) in that matter, and eventually a judgment was given which held as follows:

> In the hearing today and following thereto, petitioners' counsel clarified that even if the court accepts respondent's interpretation of section 12 to chapter C of the Collection of Seam Zone Standing Orders from February 2017 … and the identical provision of section 13 to Article A, Chapter C of the Collection of Seam Zone Procedures from September 2019… the petitioners still argue that it is an inappropriate provision, illegal and unreasonable, that should be revoked by the court for the reasons specified in the petitions.
>
> Having read the petitions and the responses thereto, and having heard the arguments of the parties in the hearing today, I accept respondent's position regarding the correct interpretation of the provisions of the above sections 12 and 13, according to which a "copy of a land registration extract" should be attached to a farmer permit application, when regulated land is concerned. According to said interpretation, when regulated land is concerned, it does not suffice to attach a land registration extract in the name of the testator together with an

> inheritance order in favor of the applicant, but rather, a copy of a land registration extract should be attached specifying applicant's name according to the inheritance order…
>
> Given the above, the petitioners still have available to them the argument contesting the lawfulness and reasonableness of a procedural provision requiring to attach a land registration extract in the name of the applicant who filed a seam zone permit application for agricultural needs where regulated land is concerned, rather than an inheritance order in favor of the applicant together with a land registration extract in testator's name. **This is a general argument against respondent's procedures, rather than a specific argument concerning the implementation of the procedure in a specific case. Therefore, it is not "a specific decision of an authority concerning entry permit into an area constituting a seam zone",** as stated in item 3(e) to the fourth addendum of the Courts for Administrative Affairs Law, 5760-2000, which is the only matter that the court for administrative affairs is vested with the authority to adjudicate concerning the seam zone.
>
> Consequently, petitioners' arguments in the five petitions concerning the interpretation of the relevant sections of the 2017 Standing Orders and 2019 Procedures – are denied. **Petitioner's arguments in the five petitions concerning the lawfulness and validity of the above sections – are deleted for lack of subject matter jurisdiction** (emphases added, T.M.).

The minutes of the hearing and the judgment of the Court for Administrative Affairs are attached and marked **P/1**.

5. Hence, the petitioners do not have an alternative remedy.

Factual Infrastructure

The Permit Regime

6. 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)).

7. 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 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.

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

9. 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.

10. 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).

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

12. According to data recently received from the Respondents, **the percentage of seam zone permit applications for agricultural purposes submitted by landowners and denied by the Respondents has increased over the last five years from 24% to 72%.** Hence, the current implementation of the permit regime is totally different from what was argued before the court when the legality of the permit regime was examined. The persons harmed by Respondent's practice of denial are forced to file with the court specific petitions in a bid to receive the permits they need, similar to the case at hand.

A copy of Respondent's letter dated November 26, 2018, is attached and marked **P/2.**

The Parties

13. **Petitioner 1** (hereinafter: the **Petitioner**) is a landowner in the seam zone. He applied for a seam zone entry permit to maintain his proprietary ties with his land, but his application was denied for reasons which kept changing from time to time, the last one being that he had to register the lands inherited by him in his name in the *Tabu*.

14. **Petitioner 2** is a non-profit association working to promote the human rights of Palestinians in the Occupied Territories.

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

Main Facts and Exhaustion of Remedies

16. The Petitioner, born in 1957, is married and has four sons and three daughters. He lives in Zabda in the Jenin district.

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

17. The Petitioner owns land located on Zabda's lands, in the seam zone. He inherited the land from his father, Mr. _____ _____ _____ Ziad, who had passed away in 1997. The plot spreads over an area of 50.57 dunam. Olive trees and carob trees are grown in the plot. In the past the family members had also grown in the plot legumes and tobacco, but stopped due to the difficulties involved in the renewal of the permits rendering it impossible to handle the crops that should be attended to on a daily and continuous basis.

    A copy of the plot's land registration extract is attached and marked **P/4**;

    A copy of the Petitioner's father's Inheritance Order is attached and marked **P/5**.

18. Since the construction of the separation fence the Petitioner has been repeatedly given seam zone entry permits, without difficulties. He had a farmer permit – the permit type given to land owners in the seam zone – valid from June 29, 2016 through June 28, 2018.

    A copy of Petitioner's permit is attached and marked **P/6.**

19. The Petitioner submitted three permit renewal applications with the Zabda local council. The last one was transferred by the Palestinian Coordination Office to the DCO on November 22, 2018.

20. On December 24, 2018, HaMoked wrote to the Civil Administration Public Liaison Officer and requested to be informed of the status of Petitioner's application.

    A copy of HaMoked's letter dated December 24, 2018, is attached and marked **P/7.**

21. On January 15, 2019, the Petitioner was informed that his application had been denied based on the argument that his plot was "miniscule". He was provided with a denial form bearing the stamp "denied" and the wording "260 sq. meter miniscule", signed by the civil coordination officer at the Jenin DCO, Mr. Bahajat Zaher.

A copy of the denial form is attached and marked **P/8**.

22. On that day a letter was received by HaMoked from the Civil Administration Public Liaison Officer which stated as follows: "His application was denied due to lack of agricultural need. It is a miniscule plot."

A copy of the Civil Administration Public Liaison Officer's letter dated January 15, 2019 is attached and marked **P/9**.

23. On January 20, 2019, HaMoked filed an application for a hearing before the Head of the DCO (HDCO hearing) concerning the denial. The application stated as follows:

> Due to the fact that Mr. Ziad has proprietary ties to agricultural lands in the seam zone, he is entitled to a farmer permit, valid for two years (sections 2 and 4 to the Chapter "Permits for agricultural needs in the seam zone", 2017 Seam Zone Standing Orders).
>
> Based on his proprietary ties to land in the seam zone Mr. Ziad received seam zone entry permits for agricultural purposes. The last permit in his possession was given to him for a period of two years and expired on June 28, 2018. Since then he submitted several renewal applications. In your letter dated January 15, 2019 you informed us that "his application was denied due to lack of agricultural need. It is a miniscule plot."
>
> As is known, an injurious provision was added to the last collection of standing orders according to which "**agricultural worker permits** shall be issued for a farmer's relative part in the land… as a general rule, no sustainable agricultural need shall exist when the size of the plot for which the permit is requested is of a miniscule size, not exceeding 330 sq. meter." (Section 7, emphasis was added).
>
> Section 9(a) to the standing orders provides that "the farmer, **having** the proprietary ties to the agricultural land, **shall not be included in the employment quota**." (Emphases appear in the original).
>
> As aforesaid, Mr. Ziad is a joint owner of the relevant plot. He has proprietary ties to the land and the relevant permit for him is a farmer permit, rather than an agricultural worker permit. Therefore, the size of the plot is irrelevant in his case.

> In addition, Mr. Ziad's needs as a farmer to access his land have not changed. The only thing which has changed is your position which became more rigorous and oppressive.

A copy of the HDCO Hearing application dated January 20, 2019 is attached and marked **P/10**.

24. On January 27, 2019, notice was received from the seam zone non-commissioned officer at the Jenin DCO whereby the Petitioner was invited for an HDCO Hearing which had been scheduled for January 30, 2019.

A copy of the HDCO Hearing notice is attached and marked **P/11**.

25. The HDCO Hearing's minutes state as follows:

> The above argues that he has land which he should farm and he argued that he could not enter and farm it.
> The above argues that he did not receive an olive harvest permit since then.
> According to the civil administration systems it seems that the lands are not farmed.
> The above is entitled to 262 sq. meter and therefore does not meet the seam zone farmer permit criteria. It was explained to him that he could submit a specific application when he wishes to enter and handle his miniscule plot, namely, plowing, cultivating, pruning.

A copy of the HDCO Hearing minutes dated January 30, 2019 is attached and marked **P/12**.

26. On February 4, 2019, HaMoked appealed the aforesaid HDCO decision in which it reiterated its argument that a land owner's application for a farmer permit, the purpose of which is to maintain the proprietary ties between the land owner and their land, should not be denied based on an argument concerning the size of their plot.

A copy of the appeal dated February 4, 2019, is attached and marked **P/13**.

27. On February 20, 2019, a summons was received for a hearing before the Appeal Committee in the matters of six of HaMoked's clients, including the Petitioner. Among the six, five are land owners whose permit applications were denied based on the argument that their plots are "miniscule". The sixth appeal was not filed for permit application denial but for the number of gates which were registered in the permit that was given. The hearings in the six appeals were scheduled for March 11, 2019.

A copy of the summons to the appeal committee is attached and marked **P/14**.

28. On March 5, 2019, a letter was received from the Civil Administration Public Liaison Officer which stated that "the resident is summoned to the Appeal committee".

A copy of the letter the Civil Administration Public Liaison Officer of is attached and marked **P/14**.

29. The minutes of the hearing before the Appeal committee state as follows:

> **Chairman of the committee**: This appeal committee is convened in appellant's matter.
> **The chairman of the committee presents the attendees**.
> **The Appellant**: The appellant held permits for agricultural needs in the seam zone the last of which was valid [should be until, T.M.] to June 28, 2018. Since then he has been trying to renew it unsuccessfully.
> **Chairman of the committee**: What is the size of your plot?
> **The Appellant**: The total size of the plot is 50 dunam divided between my uncles and my siblings as my father's heirs. In addition, my wife who owns parts in the land sold me about 160 meter.
> **Chairman of the committee**: What is the size of your part in the land?
> **The Appellant**: I understand that according to the military's calculation it amounts to 226 meter. I personally have not made any such calculation.
> **Chairman of the committee**: What do you grow on the land?
> **The Appellant**: There are olive trees on a certain part of the land and on our part there are carob trees. Tobacco can be grown on the land. Currently it is empty.
> **Chairman of the committee**: Thank you for coming. Our decision shall be given within 10 days.

A copy of the minutes of the hearing before the Appeal committee is attached and marked **P/16**.

30. More than ten days passed from the date of the hearing before the Appeal committee and no decision had been received in any one of the appeals. Therefore, on March 24, 2019, HaMoked wrote to the Civil Administration Public Liaison Officer and requested to receive the decisions without any further delay.

A copy of HaMoked's letter dated March 24, 2019, is attached and marked **P/17**.

31. On March 27, 2019 HaMoked received the decision of the chairman of the appeal committee, dated March 20, 2019 which stated as follows:

> **Background**
> The appeal concerns appellant's application… for a seam zone entry permit to farm his land… the appellant held seam zone farmer permits over the years. The last permit expired in June 2018 but his last application was denied. In an HDCO Hearing held in appellant's matter… in view of the denial of his seam zone farmer permit application, the appellant was denied since he had not shown an agricultural need to farm his land. The size of the plot is 263 sq. meter. In addition, according to a DCO examination appellant's plot was not farmed, despite the fact that throughout the years he received a daily

permit to farm the land and used it to pass through Reihan crossing, almost every day…

The Hearing before the committee

In the hearing before the seam zone appeal committee, the appellant argued that over the years he had been granted seam zone farmer permits, but his last application was denied due to the miniscule size of the plot (263 sq. meter). The appellant noted that olive trees and carob trees were grown in the plot for which the permit was requested. The appellant argued before the committee that the land spread over 50 dunam, divided between his uncles and siblings being the heirs of his father. In addition, the appellant argued that his wife, who owns part of the land, sold him 160 sq. meter.

Decision

Having considered the information received in appellant's matter and the arguments raised by him in the hearing before the committee, I decided to deny his application.

In his seam zone farmer application, the appellant argued that he needed to access the land on a daily basis for two years to farm his land and that he had received it over the years. It should be noted in this context that it is not clear what the appellant has been doing in his plot over the last few years in which he received permits, since he entered the seam zone almost daily but the plot remained totally uncultivated.

According to the documents which were filed in the context of the application, the appellant has ties to a plot consisting of 226 sq. meter, rather than 50 dunam as he argued.

Conclusion:

The committee cannot accept appellant's application concerning the plot that he has proven ties to. According to the information presented to me, a need for a daily farmer permit valid for two years to cultivate the plot does not seem to exist. However, should the appellant apply for a permit for personal needs to access his land, his application shall be reviewed accordingly.

A copy of the decision of the chairman of the appeal committee dated March 20, 2019, is attached and marked **P/18**.

32. As aforesaid, the size of Petitioner's plot is 50.57 dunam, as stated in the land registration extract (attached as P/4). The decision of the chairman of the appeal committee is based on Respondent's policy which shall be described below.

Respondent's refusal to issue permits based on the argument that the seam zone plots are "miniscule"

33. For the last three years the Respondent applies a practice in the framework of which it divides the plots in the seam zone by the number of their owners, although in fact the lands are not divided and are farmed jointly. Based on said division, the Respondent

determines that each sub-plot created by it is miniscule and does not require cultivation. The above, contrary to judicial precedent obligating the Respondent to maintain, to the maximum extent possible, the farming status of the seam zone lands as it was prior to the construction of the separation fence, and also contrary to Respondent's procedures limiting the right to receive permits based on the size of the land only to agricultural workers, as opposed to permits given to the land owners.

The chapter "Permits for agricultural needs in the seam zone" in Respondent's procedure valid at the relevant time is attached and marked **P/19**;

The chapter "Permits for agricultural needs in the seam zone" in Respondent's procedure currently valid is attached and marked **P/20**.

34. HaMoked filed a host of petitions regarding said practice, firstly with the High Court of Justice and after the amendment to the Court for Administrative Affairs Law, with the Court for Administrative Affairs.

35. The first petition in which a hearing was held is HCJ 6896/18 **Ta'ame v. The Military Commander of the West Bank** (hereinafter: **Ta'ame**). The hearing was held on May 15, 2019 in which the court criticized Respondent's practice. The head of the panel, the Honorable Justice Barak-Erez, stated as follows:

> I speak on behalf of myself and say that the petition at hand raises a significant matter, and the state's obligations with respect to the seam zone were clear. Particularly in view of the fact that the plots here are not small when the calculation is made.

36. Respondents' counsel argued that permits were given to answer needs, and the head of the panel noted that "these are not only needs but also the right to own property".

37. The head of the panel asked Respondents' counsel as follows:

> Beyond that, and it already means that there is something here, can Madam explain how a 17.5 dunam plot is considered miniscule? Only because according to the way of life ownership is jointly held by many people.

And also:

> Looking to the future we have here a 17.5 dunam plot, *prima facie* anyone submitting, two years shall pass and then according to this method anyone submitting shall come across the same problem? Maybe some people shall be preferred over others?

38. Respondents' counsel said that "when an applicant proves that he has an agricultural need in the land a permit is given to them. It is a rebuttable presumption". In response, the head of the panel noted as follows:

> **Why is it a presumption at all?** Do you also apply it to large estates? If you said that it applied to fragments of estates it would have been a different thing. But this is not the case. After we have consulted, we understand from Madam that there is still administrative work which has not yet been completed. There are also arguments that have no answer. How do you deal with relatively large plots and it is unclear who receives and who doesn't… there are many practical questions which were not answered (emphasis added, T.M.)

A copy of the minutes of the court hearing in **Ta'ame** dated May 15, 2019, is attached and marked **P/21**.

39. In the decision from that day it was held as follows:

> During the hearing many questions arose with respect to the solution given to plots which are not small but are held by many owners, all considering the principles which apply to the preservation of the ties to the lands as outlined in the judgments of this court.
>
> With the recommendation of the court and under the specific circumstances of this case, subject to Petitioner's undertaking to meet all conditions imposed on him, the Respondents shall agree to give the Petitioner "a permit for personal needs" until an updating notice is filed on their behalf, namely, by August 15, 2019.

A copy of the decision in **Ta'ame**, is attached and marked **P/21**.

40. The state attorney's office applied the same arrangement to all specific petitioners in the series of petitions filed by HaMoked regarding the same practice by that date. In the framework of said proceeding a new and more rigorous version of seam zone entry procedures was published, consisting of the same provisions regarding "miniscule plots", and in addition, provisions limiting the entry of farmers into the seam zone, including the land owners themselves, and limiting it to quotas of several entries per annum to their lands. Following the change in the procedures an amended petition was filed which is currently pending.

41. In any event, to overcome Respondent's refusal to give the Petitioner a permit, based on the argument that his plot consists of 226 sq. meter, the Petitioner purchased from his wife, Mrs. _____ _____ _____ Ziad, ID No. _____, her part in the plot. Petitioner's wife is also his cousin, and also one of the heirs of the plot. She inherited her land from her father, Mr. _____ _____ _____ Ziad, who had passed away in 2002. The plot is not actually divided between the heirs, but according to Respondent's calculation, the size of her part amounts to 162 sq. meter. Accordingly, in total, according to Respondent's formula, the size of petitioner's plot currently amounts to 388 sq. meter – above the minimal bar established by the Respondent.

Copies of Petitioner's wife land registration extract and inheritance order are attached and marked **P/23**;

A copy of an irrevocable power of attorney given by Petitioner's wife to the Petitioner is attached and marked **P/24**.

42. As stated in the HDCO Hearing application and in Petitioner's appeal, the minimal size for agricultural work permits given to land owners' employees, according to Respondent's procedures, is 330 sq. meter. No minimal size was established for permits given to the land owners themselves. The Respondent acts unlawfully, artificially dividing the plot between its joint owners, such that each sub-plot created by the Respondent is smaller than the minimal bar it set, and none of the owners meets the criteria allegedly required to receive a permit. However, even according to said illegal practice, the Petitioner currently meets Respondent's permit criteria from that respect.

43. On April 6, 2019, the Petitioner filed a new farmer permit application. The documents pertaining to the land inherited by him and the documents concerning the purchase of his wife's share in the land were attached thereto. The application was transferred by the Palestinian coordination office to the Salem DCO on April 7, 2019.

44. On April 16, 2019, HaMoked wrote to the Civil Administration Public Liaison Officer and requested to be informed of the status of Petitioner's new application.

A copy of HaMoked letter dated April 16, 2019, is attached and marked **P/25**.

45. On that day a response was received from the Deputy Civil Coordination Officer at the Jenin DCO, according to which the matter "shall be handled after the holidays".

A copy of the response dated April 16, 2019, is attached and marked **P/26**.

Changing the grounds for denial for other grounds pertaining to the registration of the plot in the *Tabu*

46. On April 29, 2019, notice was received from the seam zone non-commissioned officer at the Jenin DCO, whereby the Petitioner "should register his land in the *Tabu*."

A copy of the notice dated April 29, 2019, is attached and marked **P/27**.

47. On May 16, 2019, HaMoked filed an HDCO Hearing application regarding the new denial. The application stated as follows:

> At the outset we would like to emphasize that this case clearly demonstrates once again the cumbersome, depressing and exhausting nature of the "permit regime" bureaucracy
>
> Due to the fact that Mr. Ziad has proprietary ties to agricultural lands in the seam zone, he is entitled to a farmer permit, valid for two years (sections 2 and 4 to the Chapter "Permits for agricultural needs in the seam zone", 2017 Seam Zone Standing Orders).

Based on his proprietary ties to land in the seam zone Mr. Ziad received seam zone entry permits for agricultural purposes. The last permit in his possession was given to him for a period of two years and expired on June 28, 2018. Since then he submitted several renewal applications.

In your letter dated January 15, 2019 you informed us that "his application was denied due to lack of agricultural need. It is a miniscule plot." In view of the above and following our applications an HDCO Hearing was held for Mr. Ziad on January 30, 2019 and on March 11, 2019, he appeared before the seam zone appeal committee.

On March 27, 2019 we received the decision of the chairman of the appeal committee dated March 20, 2019, according to which his application was denied on the grounds that "a need for a daily farmer permit valid for two years to cultivate the plot does not seem to exist."

Since Mr. Ziad owns another plot which he purchased from his wife, he filed a new seam zone "farmer" permit application. Documents regarding the two plots owned by him were attached to said application…

On April 29, 2019, we have received notice from the Jenin DCO: "The above should register his land in the *Tabu* ".

According to your procedures Mr. Ziad who has proprietary ties to agricultural lands in the seam zone, is entitled to a farmer permit, valid for two years (sections 2 and 4 to the Chapter "Permits for agricultural needs in the seam zone", 2017 Seam Zone Standing Orders).

Conditioning a person's access to their lands on updating or changing the registration of their documents has no legal basis and is contrary to judicial precedent, and the harm inflicted by it on the land owner's fundamental rights is disproportionate.

It should be noted that in the framework of a petition filed with the High Court of Justice (6415/18) against the Civil Administration's refusal to give land owners seam zone entry permits due to the fact that they have not taken action to change the registration of their rights in the lands in the *Tabu*, we received notice on January 23, 2019, whereby "the respondents updated the state attorney's office that in order to review their practices concerning matters relating to the petition, they intend to hold a meeting with all relevant bodies."

A copy of the HDCO Hearing application dated May 16, 2019, is attached and marked **P/28**.

48. On May 26, 2019, notice was received from the seam zone non-commissioned officer at the Jenin DCO, inviting the Petitioner for an HDCO Hearing which was scheduled for May 28, 2019.

A copy of the notice dated May 26, 2019, is attached and marked **P/29**.

49. On May 27, 2019, a letter was received from the Civil Administration Public Liaison Officer stating that "the resident was summoned for an HDCO Hearing".

A copy of the letter of the Civil Administration Public Liaison Officer dated May 27, 2019, is attached and marked **P/30**.

50. According to the Petitioner the HDCO Hearing lasted for about ten minutes and was attended by the Head of the DCO, Mr. Salim Sa'ad, another officer and the person who recorded the minutes. In the beginning of the HDCO Hearing, the Petitioner was told that an ISA preclusion was outstanding against him. The reason for the ISA preclusion was not disclosed to the Petitioner. Thereafter, the soldiers calculated the division of Petitioner's land and told him that the size of his part of the land amounted to 226 sq. meter. They told the Petitioner to register his land in his name in the *Tabu*. The Petitioner noted that he had also purchased his wife's part in the land and told them that the size of her part (according to military calculations) amounted to approximately 160 sq. meter. He noted that the purchase was made through a lawyer. The Head of the DCO took the land documents from the Petitioner and gave him an HDCO Hearing summary form. The soldiers refused to give the petitioner a permit and told him that he could file a permit application only after he registered his plot in his name in the *Tabu*, at which time he would be given a permit "for personal needs" valid only for three months.

51. The HDCO Hearing summary form stated as follows:

> The above was denied for a miniscule plot of 263 sq. meter. He claims that he purchased new land of 180 sq. meter from a woman called _____, ID _____.
>
> In addition he argued that he used a lawyer to open a *Tabu* transaction with the Land Registration Office but he did not have documents [unclear, T.M.].
>
> I decided that he would receive personal needs for three months subject to ISA examination. I explained to the above that _____ would not be able [unclear, T.M.] land because she does not have land registered in her name in the *Tabu*. Therefore both of them should open a transaction in the *Tabu* during said three months, or else the permit shall not be renewed.

A copy of the HDCO Hearing summary form dated May 28, 2019, is attached and marked **P/31**.

52. Obviously, Mrs. _____ Ziad cannot register the land in her name in the *Tabu* since she sold her part and is no longer the owner of the land.

53. On May 30, 2019, HaMoked filed an appeal against the decision of the Head of the DCO, which stated as follows:

> According to your procedures Mr. _____ Ziad, who has proprietary ties to agricultural lands in the seam zone, is entitled to a "farmer" permit, valid for two years (sections 2 and 4 to the Chapter "Permits for agricultural needs in the seam zone", 2017 Seam Zone Standing Orders).
>
> Conditioning a person's access to lands inherited by them and which have been farmed by them before the separation fence had been built, on updating or changing the registration of their documents, and conditioning the permit on another person's action (the "Seller") to change the registration of the land documents, are contrary to your procedures as published in the "2017 seam zone standing orders". They also have no legal basis and are contrary to judicial precedence and the harm inflicted by them on the land owner's fundamental rights is disproportionate.
>
> In addition, we wish to note that on September 6, 2018, a petition was filed with the High Court of Justice on behalf of HaMoked (6415/18) in which the respondents were requested to show cause "why they would not stop refusing to grant seam zone farmer permit applications valid for two years to persons who inherited lands in the seam zone, due to the fact that they have not taken action to change the registration of their rights in the lands in the *Tabu*."
>
> On November 22, 2018, we have received notice from the respondents stating that "Currently the respondents re-examine their practices concerning issues relating to the petition. In addition, following the above re-examination, a meeting is expected to be held by the HCJ Department on this matter."

A copy of the appeal dated May 30, 2019, is attached and marked **P/32**.

54. On June 2, 2019, notice was received from the seam zone non-commissioned officer at the Jenin DCO which stated as follows:

> According to the decision made in the HDCO Hearing and after security bodies have examined the residents, _____ Ziad… was approved by the relevant security bodies. His permit was issued and shall be transferred later today to the Palestinian Coordination Office.

A copy of the notice of the seam zone non-commissioned officer at the Jenin DCO dated June 2, 2019, is attached and marked **P/33**.

55. However, the Petitioner did not receive said permit. On June 10, 2019, notice was received from the Palestinian Coordination Office that no permit has been received for the Petitioner.

56. On June 12, 2019, a letter was received from the Civil Administration Public Liaison Officer stating that the Petitioner and two additional individuals represented by HaMoked, were summoned for a hearing before the appeal committee, scheduled for June 19, 2019. The three persons who were summoned are seam zone land owners, who have inherited their lands, and who had received in the past permits to their lands based on the land registration extracts and inheritance orders submitted by them, but their applications to renew the permits were denied based on the argument that they should register the lands in their names in the *Tabu*.

A copy of the letter of the Civil Administration Public Liaison Officer dated June 12, 2019, is attached and marked **P/34**.

57. As aforesaid, when the Petitioner was previously summoned for a hearing before the appeal committee, **in March 2019**, six of HaMoked's clients were summoned for the same day, five of whom had submitted permit applications which were denied. All denials were made on the grounds that applicants' plots were "miniscule".

58. In April 2019, several hearings were held on the same day before the appeal committees for eight of HaMoked's clients and for an additional person who was not represented by HaMoked. On that day too, all denials of applications submitted by HaMoked's clients were made on the grounds that the plots were "miniscule". The Respondent did not give timely decisions in the appeals, and after enquiries made by HaMoked, on May 7, 2019 the decisions of the chairman of the appeal committee were received, dated May 2, 2018 [sic], which stated as follows:

> As is known, according to the seam zone standing orders, as a general rule, when the size of a plot is less than 330 sq. meter sustainable agriculture may not be maintained and it does not justify a farmer permit.
>
> The consistent position of the Civil Administration on the general issue of the justification for granting a farmer permit for miniscule plots has recently been detailed in a preliminary response in HCJ 6896/18 **Ta'ame et al. v. The Military Commander et al**. The hearing in said case is scheduled for May 15, 2019.
>
> Under these circumstances, in view of the upcoming hearing, and for reasons of efficiency, I decided to delay the decision and wait for the court's decision in the general issue… The resident can apply for a permit for personal needs according to the need for which he wishes to enter the seam zone.

A copy of one of the decisions made on May 7, 2019, is attached and marked **P/35**.

59. In May 2019, several hearings were held on the same day before the appeal committee for five of HaMoked's clients. On said day too, all denials mentioned in the summons to the appeal committee were made on the grounds of "miniscule plot".

60. And then in June 2019, shortly after the hearing in Ta'ame, in which the court has criticized denials which were based on the alleged size of the lands, all decisions to deny made by the appeal committee were based on a different grounds, namely, the land owner's obligation to register the lands under their name in the *Tabu*. The applications of two of the three land owners who were summoned for hearings on that day, including the Petitioner, were denied several months earlier based on the argument that their plots were miniscule, and not because the plots were not registered in their name.

61. The conclusion arising from the above is that following the criticism of the honorable court of Respondent's prior grounds for denial which had been extensively used by it to deny applications, the Respondent decided to use new grounds for denial *in lieu* of the previous one. The above, instead of discontinuing its denial policy and allowing land owners to access their lands, as required by judicial precedent.

62. In any event, the hearing in Petitioner's appeal was held on June 19, 2019. The minutes of the hearing states as follows:

> **Chairman of the committee**: This appeal committee is convened in appellant's matter.
> **The chairman of the committee presents the attendees**.
> **Appellant's counsel**: Appellant's farmer permit application was denied after he received such permits for about three years. The Appellant purchased the plot of a family member (cousin from his father's side) consisting of 160sq. meter. Accordingly, the total area currently owned by him consists of about 366 sq. meter. According to the arguments that farmer permit should be granted to a resident having proprietary ties to the land the purpose of which is to preserve his connection to the land, farmer permit should be granted to the Appellant as aforesaid rather than agricultural worker permits (and permits for personal needs in the case at hand) as was recently done.
> **Chairman of the committee**: Did he receive by the HDCO committee a permit for personal needs?
> **The Appellant**: I understood that a permit for personal needs was issued for me valid for three months and that the permit is still at the DCO.
> **Chairman of the committee**: You were requested by the DCO to bring the purchase documents. Does he have documents proving that he owns the land and that he purchased the additional land? Were the appropriate documents presented when the application was submitted to the DCO?
> **Appellant's counsel**: According to the HDCO Hearing the reason for the denial of the permit application was that the plot consisted of 262 sq. meter, and the Appellant was requested to submit a specific application to receive in miniscule land. At the request of the chairman

> of the committee we now submit the documents attesting to the acquisition of the cousin's part as specified above, namely, an addition of about 160 meter to Appellant's plot (the documents were provided in the hearing to the Legal Advisor's representative).
> **Chairman of the committee**: Has the transaction which was carried out been registered with the Civil Administration Land Registry?
> **The Appellant**: No.
> **Chairman of the committee**: Does he intend to do it?
> **The Appellant**: I am not familiar with the Civil Administration procedures. I know that it is registered in the *Tabu*.
> **Chairman of the committee**: Where does he enter in the morning in the last few days?
> **The Appellant**: Barta'a
> **Attorney General's representative**: Why hasn't this transaction been registered with the Civil Administration Land Registry?
> **Appellant's counsel**: As stated by the Appellant above, he is not familiar with the Civil Administration registration procedures. It is not customary.
> **Chairman of the committee**: He purchased the land from his cousin. Is the land owned by joint owners?
> **The Appellant**: Yes. There are joint owners and they appear in the land registration extract.
> **Chairman of the committee**: Did he purchase the entire part of the cousin or only 160 sq. meter thereof?
> **The Appellant**: I purchased the cousin's entire part and according to calculations made it is an area of 160 sq. meter.
> **Chairman of the committee**: The committee is adjourned. Answers shall be given within two weeks.

A copy of the minutes of the hearing before the appeal committee dated June 19, 2019 is attached and marked **P/36**.

63. On July 1, 2019, a decision was given by the chairman of the appeal committee, which stated as follows:

> This appeal concerns Appellant's application… to receive seam zone entry permit for agricultural needs…
> In the hearing before the committee the Appellant argued that for the purpose of proving his ties to the land, which is regulated land, a land registration extract in his name is not required and that a land registration extract in his father's name together with an inheritance order would suffice. The Appellant has also argued that the demand to register the land was a new demand which did not reconcile with seam zone standing orders.
> At the outset it should be noted that the demand for a land registration extract is not new. Accordingly, for instance, it has already been written in paragraph 121 to the state's response to HCJ 9961/03 and 639/04 (the **permit regime judgment**), in response to the argument that the

residents do not know which documents should be presented by farmers to prove their ties to the land, that it was only obvious that **in regulated land, a land registration extract should be attached to the application** and in unregulated land other evidence would suffice such as a property tax registration extract (*maalya*).

Moreover, the need to present a land registration extract to prove the applicant's ties to the land is well entrenched in the 2017 seam zone standing orders (hereinafter: the "standing orders") published on the COGAT website. For this purpose reference is made to Chapter C of the standing orders, section 12(c)(1) according to which **if the land is regulated a copy of a land registration extract should be attached**.

It should be emphasized that the primary way of proving proprietary ties to regulated land is by the presentation of a land registration extract in the name of the person arguing to have such ties.

I am therefore of the opinion that the DCO's decision in petitioner's matter, which decided to give him permits for personal needs enabling him to enter the seam zone until the registration of the inheritance in the *Tabu* is arranged, is reasonable and should not be interfered with.

Ex gratia and to enable the Appellant to finalize the registration of the land in his name with the land registration office, I decided to enable him at this time a permit, valid for three months, subject to security check, and to the extent additional permits are required, the Appellant may apply to the DCO and a decision in his matter shall be subject to the completion of the registration procedure in the *Tabu*.

I direct the secretary of the committee to refer Appellant's matter for security check.

A copy of the decision of the chairman of the appeal committee dated July 1, 2019, is attached and marked **P/37**.

64. However, as indicated by the minutes of the hearing before the appeal committee, the decision does not correctly reflect what happened in Petitioner's matter or the arguments raised by him in the hearing. The hearing in Petitioner's matter focused on the registration of Petitioner's purchase transaction rather than on changing the registration of the lands inherited by him. The decision pertains to arguments raised in other appeals rather than in Appellant's appeal, and indeed, the same decision was also made in all other appeals which were heard on that day.

Copies of the other decisions given on that day are attached and marked **P/38**.

65. However, had this argument been raised in Petitioner's hearing, the petitioners would have indeed noted that a land registration extract in Petitioner's name was not necessary and that the presentation of the current land registration extract together with an inheritance order was sufficient. The Respondent is familiar with petitioner 2's position in that regard from another petition filed on this matter, as shall be described below. Petitioner 2 does not argue that said demand has no mention in the permit regime judgment or in Respondent's procedures, but rather that said demand is contrary to the law and is not necessary, and the Respondent himself did not require it throughout the

years from the construction of the separation fence until recently, as evidenced by the mere fact that the Petitioner himself received permits throughout the years without changing the registration in the *Tabu* which is currently demanded.

66. No explanation was given in the decision of the appeal committee for Respondent's stricter demands, such that documents which were received by it throughout the years as sufficiently proving ownership in land are currently insufficient. The only thing which was stated in the decision was that the demand to present a land registration extract (rather than to **change** the registration in the *Tabu*) was mentioned in the response to the permit regime petitions and in Respondent's procedures, and that the "primary way" of proving proprietary ties was to register the lands in the *Tabu* in owner's name. However, as is known, when fundamental rights of protected persons are concerned, the question is not what is the primary way, but rather, whether the means chosen to obtain the purpose is the less injurious means. In the case at hand, the answer is obviously not. There is no need to deny land owners' permit applications to access their lands due to the fact that their ownership in the lands was proved by a land registration extract and inheritance order, and was not registered in the *Tabu*, to achieve the purpose of a closed seam zone – a security purpose, as argued by the Respondent.

67. On July 7, 2019, a letter was received from the Civil Administration Public Liaison Officer, according to which "the resident was summoned for an appeal committee on June 19, 2019."

A copy of the letter of the Civil Administration Public Liaison Officer dated July 7, 2019, is attached and marked **P/39**.

68. On July 25, 2019, an administrative petition was filed in Petitioner's name (AP 62855-07-19) in which the court was requested:

> a. To give petitioner 1 a seam zone entry permit, valid for two years, to maintain his proprietary ties to his land located in the seam zone;
>
> b. To stop refusing to grant seam zone farmer permits valid for two years to persons who have inherited lands in the seam zone, due to the fact that they have not acted to change the registration of the rights in the lands in the *Tabu*.

69. On December 10, 2019, a decision was made which stated as follows:

> Since it is argued in the petition (for instance in paragraph 78) that petitioner 1 is entitled to a seam zone farmer permit according to the language of the standing orders and Respondent's past policy concerning the interpretation of the standing orders, I did not find reason to strike off *in limine* remedy A requested in the petition for lack of subject matter jurisdiction. The jurisdiction concerning remedy B shall be discussed at a later stage.
> Before I decide on the format of the proceeding, the Respondent is requested to specify whether there exists and if there exists, what is it –

> a distinction between the case at hand and the case contemplated in HCJ 6415/18 with respect of which notice was filed by it on July 31, 2019 with the Supreme Court whereby "After Petitioner 1's case was reviewed once again by the authorized bodies, and considering its specific circumstances, it was decided to give him a seam zone entry permit, valid for two years, subject to absence of security preclusion" (Quote taken from the judgment in the above proceeding dated August 7, 2019)…

HCJ 6415/18 Abid v. Military Commander in the West Bank

70. The proceeding mentioned in the decision of the court for administrative affairs dated December 10, 2019, HCJ 6415/18 **Abid v. Military Commander in the West Bank** (hereinafter: **Abid**), also discusses the change in Respondent's policy, according to which farmer permits are no longer given to heirs of lands in the seam zone based on land registration extracts together with inheritance orders proving the transfer of ownership in the land to the applicant, as was customarily done throughout the years, and currently, applications made on the basis of the same documents are denied based on the argument that the permit applicant must register the land in his name in the *Tabu*.

71. In Abid order nisi was requested ordering the respondents to show cause:

> a. Why they should not give petitioner 1 seam zone entry permit, valid for two years, to maintain his proprietary ties to his lands;
>
> b. Why they should not stop refusing to grant seam zone farmer permits valid for two years to persons who have inherited lands in the seam zone, due to the fact that they have not acted to change the registration of the rights in the lands in the *Tabu*.

72. On November 22, 2018, the respondents filed an application for an extension which stated that "currently the respondents are conducting a re-evaluation of their policy on issues relating to the petition. In addition, following said examination a meeting is expected to be held at the HJC departments in that regard".

    A copy of the application for extension dated November 22, 2018, is attached and marked **P/40**.

73. On January 23, 2019 an additional application for an extension was filed by the respondents which clarified that "the respondents informed the state attorney's office that for the purpose of examining their policy on issues relating to the petition, they intend to hold a meeting with all relevant bodies. In view of the above, the respondents need an additional period of time to formulate their position and file a response on their behalf".

    A copy of the application for extension dated January 23, 2019, is attached and marked **P/41**.

74. On July 22, 2019, an additional application for extension was filed which stated that "The respondents informed that the examination of their policy concerning issues relating to

the petition has ended, and that their position shall be forwarded to the state attorney's office within the next few days".

A copy of the application for extension dated July 22, 2019, is attached and marked **P/42**.

75. On July 24, 2019, a letter was received from the state attorney's office which stated as follows:

> The petition at hand mainly concerns petitioner's application… to be issued a seam zone entry permit valid for two years. The above, as specified in the petition, to maintain his proprietary ties to his lands.
>
> Please be advised that after petitioner's matter has been re-examined by the respondents' authorized bodies, and given petitioner's specific circumstances, in view of which the petitioner has received seam zone entry permits for many years – it was decided to issue to the petitioner a seam zone entry permit, valid for two years, subject to absence of security preclusion. It should be clarified that nothing in the above constitutes consent to the arguments raised in the petition regarding the requirements set-out in the seam zone standing orders (Chapter C, section 12C(1)). However, under the circumstances, there is no need to discuss them.
>
> Therefore, since the main remedy requested in the petition was given to the petitioner - seam zone entry permit valid for two years – it seems that the petition became redundant, and the court's decision in the remedies required therein is no longer required…

A copy of the letter dated July 24, 2019, is attached and marked **P/43**.

76. On July 31, 2019, the respondents filed a response which argued that "since the petitioner has received the requested remedy… the petition in its current form became redundant, and the court's decision therein is no longer required… the general remedy requested in the petition bears no immediate actual effect on the petitioners since it was decided to give the petitioner a seam zone entry permit valid for two years. Furthermore, according to the respondents this is not one of those extraordinary cases in which the honorable court may give a general, principled remedy in the absence of a specific need".

A copy of the response dated July 31, 2019, is attached and marked **P/44**.

77. The petitioners informed on August 7, 2019 that they decided to proceed with the petition. Petitioners' notice stated as follows:

> The respondents were of the opinion that certain aspects of their policy relating to the petition should have been re-examined. Said examination took a long time and involved a host of state officials. However, upon the conclusion of said examination, the respondents refrained from presenting its results before the honorable court. The respondents decided not to implement their policy in petitioner's case, but it also

> seems that they have decided not to change their policy, such that others in petitioner's situation would receive the same remedy. The above is troubling, to say the least. Since it has apparently been decided that the denial of petitioner's permit application could not be upheld, the respondents should stop denying similar applications.
>
> Therefore, and since regretfully, the general, in principle remedy which was requested from the honorable court still stands, the honorable court is requested to deny respondents' application to dismiss the petition and order them to stop denying farmer permit applications 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 the rights in the lands in the *Tabu*.

A copy of petitioners' notice is attached and marked **P/45**.

78. On that day judgment was given which stated as follows:

> In the petition before us the respondents were requested to issue to Petitioner 1 a seam zone entry permit valid for two years, to maintain his proprietary ties to his lands. In addition a general, principled remedy was requested directed towards respondents' policy in the seam zone.
>
> On July 31, 2019, after several extensions, a response was filed on behalf of the respondents, which stated that after petitioner 1's matter had been re-examined by the authorized bodies, and considering his specific circumstances, it was decided to give him a seam zone entry permit valid for two years, subject to absence of security preclusion.
>
> It therefore seems that the petition in its current form has been exhausted. Petitioners' general arguments are reserved to them.

Petitioners' administrative petition

79. On March 3, 2020, a hearing was held in the administrative petition filed by the petitioners and in four additional administrative petitions on the same matter. Upon the conclusion of the hearing, judgment was given according to which the correct interpretation of Respondent's procedure was that the land registration extract which should be submitted for the purpose of receiving a farmer permit should bear the name of the person requesting the permit, and that a land registration extract in the name of the testator together with an inheritance order in favor of the person requesting the permit did not suffice. With respect to petitioners' argument that said provisions were unreasonable and unlawful, the judgment held that the court for administrative affairs was not authorized to adjudicate these type of arguments, and that said arguments were deleted for lack of subject matter jurisdiction.

80. Hence the petition.

Respondent's general policy

Legal Background

81. Respondent's procedures concern the ways proprietary ties to land should be proved for the purpose of receiving seam zone entry permits. With respect to permits for agricultural purposes it is provided as follows:

> **Documents proving the applicant's proprietary ties to agricultural land located in the seam zone shall be attached to the application:**
>
> 1) If the land is regulated: copy of land registration extract.
> 2) If the land is not regulated: original *maliya* or any other document proving their ties to the agricultural land.
> a) Applicant who inherited a plot: shall submit inheritance orders proving the chain of succession, together with all documents proving testator's ties to the agricultural land.
> b) Applicant who purchased a plot: shall submit an agreement and irrevocable notarial power of attorney, together with all documents proving seller's ties to the agricultural land.
> c) Applicant renting/leasing a plot: shall submit a copy of the lease, together with all documents proving lessor's proprietary ties to the specific agricultural land, and lessor's declaration acknowledging that during the term of the lease their rights to use the leased land are waived (section 13.C to the chapter "Permits for agricultural needs in the seam zone", emphases appear in the original).

82. An identical provision was included in Respondent's former procedures, section 12.C to the chapter "Permits for agricultural needs in the seam zone".

83. With respect to permit applications for commercial needs Respondent's procedures provide as follows:

> **Documents proving the applicant's proprietary ties to the business and its location in the seam zone shall be attached to the application:**
>
> 1) If the land is regulated: copy of land registration extract.
> 2) If the land is not regulated: original *maliya* or any other document proving their ties to the agricultural land.
> 3) **Applicant who inherited a plot**: shall submit inheritance orders proving the chain of succession, together with all documents proving testator's ties to the agricultural land…
>
> **If a business is leased in the seam zone, the lease should be submitted together with lessor's declaration** acknowledging that during the term of the lease their rights to use the leased business are waived (section 9.E to the chapter "Permits for commercial needs in the seam zone", emphases appear in the original).

The "Permits for commercial needs in the seam zone" chapter in Respondent's procedures is attached and marked **P/46**.

84. An identical provision was included in the 2017 seam zone standing orders, section 9.E. to the "Permits for commercial needs in the seam zone" chapter.

85. Namely, to receive permit for commercial needs, heirs can prove their ties to the land by an inheritance order, whether the land is regulated or not, but to receive permit for agricultural needs, they can prove their ties by an inheritance order only if the land is not regulated.

86. There is no reason for distinguishing between the above permit types since there is no connection between the type of the requested permit and the ways by which the inheritance is proved. Anyway, according to the section pertaining to permits for commercial needs, inheritance of land may also be proved by inheritance orders when regulated land is concerned.

87. The requirement to present a land registration extract as a condition for receiving a permit has indeed been mentioned in the permit regime judgment:

> The state has also responded to petitioners' argument concerning the difficulties in proving ownership of land in the Area, as a condition for proving a connection which gives rise to a right to obtain a permanent farmer permit. According to the state – the requirements raised by it for the purpose of proving a connection to the land are reasonable – in regulated lands a land registration extract, and in unregulated lands other evidence, such as property tax registration extract etc. (paragraph 33)

88. However, the dispute in this matter was only mentioned but was not clarified, and in any event it did not refer to the requirement to change the registration in the *Tabu* but rather to petitioner's following argument:

> The permit regime imposes impossible burdens of proof on the applicants
>
> For each step a protected person is required to apply for a permit, and for each permit they must provide different pieces of evidence supporting their application. Accordingly, for instance, a person wishing to keep on farming their lands in the closed zone, must prove with documents proprietary ties. Since many lands were transferred over the years by way of inheritance without any reference, it shall be difficult for many farmers to provide proof of ownership which may lead to the loss of their property and livelihood.

89. The respondents answered to said argument as follows:

> The petitioner in HCJ 639/04 claims that proving ownership of land in the Judea and Samaria Area is not simple, inter alia in view of the fact that bequeathing lands without registration is a common practice in the Area… In addition, it has been argued in HCJ 639/04 that residents do not know what documents a farmer must present in order to prove that they have "ties" to the land.
>
> This claim is inaccurate since it is clear that for regulated lands the application must include a land registration extract and for unregulated lands, other evidence is sufficient, such as property tax extracts (*maliya*) etc.
>
> In addition, it should be noted that demands for evidence such as the aforementioned to prove the existence of ties by the applicant to lands in the seam zone are reasonable demands which do not impose an unreasonable burden on the residents (paragraphs 118-121 to the statement of response filed on behalf of the state).

90. Therefore, Respondent's argument concerning the reasonableness of the requirement to provide a land registration extract did not refer to the change of ownership registration in the *Tabu* from testator's name to inheritor's name, but rather to the argument that land owners do not have documents proving that the lands were transferred to them by way of inheritance, namely, **they do not have inheritance orders**, and in addition, to the argument that the residents do not know which documents are required of them to prove their ties to the lands. The state responded to these arguments that the land owners should submit land registration extracts or property tax extracts. A demand to make registration changes in the *Tabu* is not mentioned in respondents' response, nor does it state that anyone who can prove to have inherited the lands and the problem does not arise in their case should also submit a land registration extract in their name or else would not be given a permit.

The change in Respondent's policy

91. HaMoked's experience shows that Respondent's policy concerning registration changes in the *Tabu* became more rigorous during the last three years, after many years during which a more lenient policy was applied.

92. HaMoked has engaged in the representation of individuals applying foe seam zone entry permits since 2009. To date, HaMoked has represented more than one thousand individuals in this area, most of whom are individuals who applied for permits for agricultural needs. Most of these individuals are represented by HaMoked on an ongoing basis, over many years, since the permits which are issued to them are temporary. Over the years a considerable amount of information has been accumulated by HaMoked with respect to the processing of seam zone permit applications, and permit applications for agricultural needs in particular.

93. Over the years, owners of regulated lands who were represented by HaMoked received farmer permits without having been required to transfer the registration of the lands in

the *Tabu* to their names. The Respondent was satisfied with a land registration extract together with an irrevocable power of attorney when the lands were purchased from the registered owner, or an inheritance order, when they passed by way of inheritance. Throughout these years, HaMoked handled only a few single cases in which a registration change in the *Tabu* had been required, and said cases were easily resolved. Only about three years ago the Respondent has started to implement a policy whereby farmer permit applications are denied due to the fact that the transfer of the rights had not been registered in the *Tabu*.

94. The Petitioner himself had repeatedly received in the past seam zone entry permits without the currently required change in the registration of the rights in the lands. His last farmer permit was valid until June 2018.

Respondent's explanations for his policy

The explanations given in 2017

95. On September 6, 2017, HaMoked wrote to the Civil Administration Public Liaison Officer regarding the demand to change the registration of ownership in the lands.

96. On October 17, 2017, a letter from Major Amos Zuaretz, Head of Seam Zone and Crossings Division, was sent to HaMoked which stated as follows:

> With respect to the argument against **the obligation to arrange the registration of the division of the land in the *Tabu* although proprietary ties to the land were proved**:
>
> 1) As is known, any transaction in land (including the transfer of proprietary rights according to an inheritance order) requires registration, pursuant to local law, and particularly the Ottoman *Tabu* Law from 1869. A review of the inheritance order shows that indeed appellant's probable proprietary connection to the land being the subject matter of his application may not be negated. However, considering the fact that the inheritance order does not specifically refer to the properties held by the testator and which have ostensibly passed to the appellant and his family members, I found cause to ascertain that the lands being the subject matter of the seam zone farmer permit application have also passed to the applicant under the inheritance order.
>
> 2) Given the fact that we are concerned with fully regulated land, it is not an unreasonable demand (which under the circumstances is not complex, unlike in cases concerning unregulated lands). In my opinion the opposite is true. It is a demand which reconciles with the law which applies in the area, and even if in certain cases the authorities take a more lenient approach, it is not necessary to do so in the case at hand considering its specific circumstances.

3) I shall add further, with respect to the argument that the demand to register the rights in the *Tabu* does not appear in the standing orders. Section 12(c)(1) which specifies the documents that should be submitted to prove applicant's proprietary ties to agricultural land in the seam zone, provides as follows:

1) "If the land is regulated: copy of land registration extract".

On the other hand, section 12(c)(2) which specifies the documents that should be submitted to prove applicant's proprietary ties to agricultural land in the seam zone in unregulated land, provides as follows:

2) "If the land is not regulated: original *maliya* or any other document proving their ties to the agricultural land.

a. Applicant who inherited a plot: shall submit inheritance orders proving the chain of succession, together with all documents proving testator's ties to the agricultural land".

4) Hence, according to the standing orders the way to prove proprietary ties to regulated land located in the seam zone, such as in the case at hand, is only by presenting a copy of a land registration extract, contrary to unregulated land.

5) The above also reconciles very well with the purpose of the standing orders, namely, to enable farmers to access their lands while protecting security needs, considering the unique circumstances and difficulties characterizing each type of land, and particularly in a bid to avoid harming persons having proprietary ties to unregulated lands, whose chances to complete the registration of their rights within a reasonable period of time is low, and who shall suffer substantial damage if seam zone entry permits are not issued to them. This is not the case when regulated land is concerned, in which case the registration and transfer of ownership to inheritors name in the *Tabu* may be done relatively easily.

A copy of the letter of Respondent's Head of Seam Zone and Crossings Division dated October 17, 2017, is attached and marked **P/47**.

97. HaMoked responded to these arguments in Abid. In the petition it was clarified that according to the permit regime judgment, harming the fabric of life which existed in the area prior to the closure of the seam zone was permitted only when it was required for security reasons, and only when the harm was necessary.

98. However, neither one of the arguments specified in Respondent's letter refers to any security need underlying his new policy, and not without reason, since there is no connection between security needs and the ways by which proprietary ties to land are proved. Therefore, the above policy does not reconcile with judicial precedent on the permit regime.

99. It has also been explained in the petition that Respondent's said policy disproportionately harms the fundamental rights of the local farmers to own property, to freedom of occupation and freedom of movement. The petition discussed the reasons raised by the Respondent in his letter and refuted them, as follows.

Respondent's argument that his demand stems from local law

100. Firstly, it is difficult to accept the argument that the change in the position of the Israeli military on the issue of seam zone entry permits stems from the Ottoman *Tabu* law from 1869. It is not the Ottoman legislation which guides the Israeli military in making its decisions on the limitation of the freedom of movement of Palestinian residents, and anyway, it is a very old law, and therefore it does not explain the change in Respondent's policy.

101. In any event, on the registration requirement mentioned in the *Tabu* law it was written as follows:

> As explained above the Ottoman land laws established a mandatory registration system. **Nevertheless, in many cases *miri* and *muwakefa* lands were held without registration**… The Turkish government was aware of said situation and in 1331 (1931) it published a special Cadaster law. **But the law was not implemented and in fact became a dead letter** (Moshe Dukan, **Land Laws in the State of Israel** 371-372 (Second Edition, 5713), hereinafter: **Dukan**).

102. Paragraph 3.c.(2) of Respondent's letter states that "It is a demand which reconciles with the law which applies in the area, and even if in certain cases the authorities take a more lenient approach, it is not necessary to do so in the case at hand considering its specific circumstances…", namely, also currently the public Palestinian authorities do not enforce the registration of the rights in the *Tabu*.

103. Moreover, section 54 to the Ottoman Land Law, 1274 (April 21, 1858) provides that the rights in *miri* land pass from the testator to their heirs automatically, upon death, regardless of registration:

> Upon the death of the possessor of *miri* and *muwakefa* lands, their lands shall pass by way of inheritance to their sons and daughters for no compensation, in equal parts, whether they reside where the lands are located or in another country.

104. The above law was discussed by the Israeli court which held in that regard as follows:

> Rights in *miri* land pass to the heirs without any need on their part to give notice that they demand their right… If applicant's argument is true that she is Mr. Lapitzky's sole heiress, then **upon the deceased's death his entire rights in *miri* land registered in his name in Israel passed to her by operation of law, and she could have exercised his rights with respect to said property even without registration in the land registry**, as was held by the Supreme Court at the time of the British Mandate in CA 153/44 (ALR 1945 p. 28)… **At issue is a person who has not registered his rights in the land for 20 years and is nevertheless entitled to claim adverse possession rights** (Application (Tel Aviv) 57/53 **Lapitzky v. Zytomirsky**, TakDC 19 376, 378-379 (1958)).

105. It also seems that according to military legislation in the West Bank the requirement to register transactions in the *Tabu* pertains only to transactions in the ordinary sense, and not "including the transfer of proprietary rights according to inheritance order" as argued in Respondent's letter.

106. Section 2 to the Real Estate Transactions (Judea and Samaria) (No. 25) Order 5728-1967 (hereinafter: the **Real Estate Transactions Order**) provides as follows:

> A person shall not make a transaction in connection with real estate, either personally or through another, either directly or indirectly, without a license from the competent authority.
>
> The competent authority may give license either pursuant to the request of the parties to the transaction, or any of them, or any other interested party, or without any such request.

The Real Estate Transactions Order is attached and marked **P/48**.

107. It is clear that said provisions are neither practical nor sensible when we are concerned with a transfer of rights due to the land owner's death.

108. In addition, Section 1 to the Real Estate Transactions Order defines the terms "transaction", and it seems that said definition does not include inheritance according to the law:

> "Transaction – economic or another act, in cash or otherwise, with or without consideration, including an agreement to make a transaction and lease transaction in businesses and residential buildings within municipal areas or within the jurisdiction of local councils.

109. For the purpose of implementing the Real Estate Transactions Order, Real Estate Transactions (Transaction License (Judea and Samaria) Regulations, 5775-2015 were promulgated, making it even clearer that the Order does not apply to inheritance. According to regulations 1 and 2(c), a Real Estate Transaction Application, as defined in

the Real Estate Transactions Order should be submitted in the form attached as addendum to the regulations. The addendum to the regulations includes a form in which the following should be completed: "the details of the purchaser applicant" and "the details of the seller", for "the nature of the transaction" one of the following options should be checked: "sale, lease, rental/other", "for whom the purchase is made" and what is the "purpose of the purchase".

The Real Estate Transactions (Transaction License (Judea and Samaria) Regulations, 5775-2015 are attached and marked **P/49**.

110. Namely, the Order relates to the requirement to register transactions in their ordinary sense, which does not include inheritance according to the law.

111. Another manifestation of the distinction between transactions in their ordinary sense and inheritance according to the law, for registration purposes, is found in the Registration of Transactions in Certain Real Estate (Judea and Samaria) (No. 569) Order, 5735-1974, which provides as follows:

> Any real estate transaction to which the provisions of section 2 apply requires registration with the licenses registry.
>
> A transaction which was not registered is regarded as an undertaking to enter into a transaction but shall have no force opposite the commissioner…
>
> Nothing in this section shall derogate from the rights of an heir according to applicable law or according to the Inheritance Law, 5725-1965 (section 4).

Registration of Transactions in Certain Real Estate (Judea and Samaria) (No. 569) Order, 5735-1974, is attached and marked **P/50**.

112. Said order does indeed apply only to "governmental property" and "land seized for military purposes or acquired for public needs as defined by order of the commander of the area", but the distinction included therein between transactions and inheritance reconciles with the provisions of the law specified above and with the Israeli law.

113. Hence, it arises from the above that the ownership rights of inheritors of *miri* lands are not conditioned on their registration in the *Tabu*.

114. In any event, it is well known and clear that the limitations imposed on the access of inheritors to their lands do not stem from applicable land laws, but rather from the separation fence and the work procedures of the Israeli military, which do not derive from Ottoman legislation.

Respondent's claim that rights passed through inheritance are uncertain

115. The Respondent argued in his letter that in the absence of specific reference in the inheritance letter to the land being the subject matter of the application "it should be

ascertained" that the land has indeed passed to the applicant by way of inheritance (paragraph 3.c.(1)). It is a peculiar argument for several reasons.

116. Firstly, the inheritance order referred to by the letter, like the inheritance order submitted by the Petitioner, was issued by a recognized Sharia court and it relates to the testator's entire assets. The argument that a matter that has already been resolved by a Sharia court should be re-examined is inappropriate and does not reconcile with Respondent's argument that his new policy derives from the local law. It should also be mentioned that inheritance orders relating to unregulated land do not specify the particulars of testator's assets, but are nevertheless acknowledged by the Respondent.

117. Secondly, *miri* land pass by way of inheritance upon the demise of their owners by operation of law, and therefore there is no need to note that the land is included in the inheritance order. In addition, Ottoman law does not enable to bequeath *miri* land by will (Dukan, page 250). As argued in Respondent's letter he does not give effect to **transactions** which were not registered. Therefore, according to the Respondent, ownership in land could not be transferred from one person to another unless it is manifested in registration. Hence, there is no room for the question of whether the lands registered in testator's name are included in the inheritance order.

118. Thirdly, as specified below, **the Respondent registers inheritances in the *Tabu* based on said inheritance orders**. In the website of the Ministry of Justice, on a page bearing the title "Application for the registration of inheritance in land in Judea and Samaria", the following is stated: "The registration of the inheritance is based on an inheritance order. An inheritance order is an order regulating the distribution of the estate of a deceased who did not make a will. The order determines the identity of the deceased's heirs and their rights in the inheritance. The inheritance order should be approved by the Inheritance Registrar or by a competent religious court" (https://www.gov.il/he/service/inheritance_registration_samaria, attached hereto as P/52).

119. Fourthly, preventing a person from accessing lands owned by them severely harms their fundamental rights for freedom of movement, freedom of occupation and property. After a person has proved their ties to their lands by administrative proof like a land registration extract together with an inheritance order, he should not be denied access to his lands for the need to "ascertain" things, in the absence of administrative evidence contradicting their arguments, particularly when no person claims to have conflicting rights in the plot.

Respondent's argument that the registration procedure of regulated land is simple relative to the registration procedure of unregulated land

120. The Respondent argues in his letter that the registration procedure of rights to regulated lands is less complex than the registration procedure in unregulated lands, and therefore the harm inflicted by the new policy is not too severe (paragraphs 3.c.(2) and 3.c.(5)).

121. However, it is clear that this argument does not address the argument that the fabric of life in the area prior to the declaration has been injured and that the permit procedure applied by the Respondent in the past has been made more complicated.

122. Violation of fundamental rights beyond what is necessary is prohibited according to the law. The fact that more injurious violations of fundamental rights may be inflicted does not justify the violation, but rather, the Respondent should prove that **less** injurious means do not exist.

123. As aforesaid, for many years and until recently, the Respondent recognized the rights of heirs in their lands, on the basis of documents proving their proprietary ties thereto, without demanding that the rights be registered in the *Tabu*. Therefore, the injury caused by the new policy is not necessary.

124. Several attempts were made in Respondent's letter to explain the demand to register the rights in the *Tabu* as such, but no attempt was made to clarify why the need arose to change the policy in that regard, namely, why isn't it possible to continue recognizing the rights of heirs in their lands, as was done in the past. Here too, the comparison between the complexity of the registration procedure of regulated and unregulated lands does not give an answer.

125. As shall be specified below, fees amounting to several percentages of the value of the land should be paid for the registration of the rights in the *Tabu*, in addition, obviously, to legal fees which should be paid to a lawyer for handling the registration and the bureaucratic procedure involved in the permit application itself.

126. Any obstacles added to the procedure for receiving permits to enter the seam zone affect the viability of the entire procedure for landowners, and may prevent persons who are entitled to receive permits according to the law from submitting permit applications, thus contributing to the disconnection of farmers from their lands, without any security justification, and completely contrary to the judgments of the honorable court.

127. In addition, the difficulties involved in the registration of the land can explain Respondent's decision not to require owners of unregulated land to regulate their lands and provide land registration extracts, but rather to allow them to prove their connection to their lands by *maliya* or other documents, but it cannot explain the distinction drawn by the Respondent between owners of regulated lands and owners of unregulated lands for the purpose of proving inheritance of land by inheritance orders. For this purpose there is no difference between regulated and unregulated land.

128. As aforesaid, in the section of the procedures concerning permits for commercial purposes, the section allowing inheritors of land plots to prove their ties to the lands by inheritance orders appears as a separate section rather than as a sub-section under unregulated lands, and therefore it also applies to owners of regulated lands. There is no reason to draw a distinction between permits for commercial needs and permits for agricultural needs for the purpose of proving inheritance. In the permit regime judgment it was held that the purpose of the seam zone entry procedures was to reduce the harm caused as a result of the closure of the seam zone. According to this purpose, according to common sense and for ensuring coherence in the procedures, inheritors should be allowed to prove their ties to their lands by inheritance orders also when they apply for agricultural permits, and not only when the apply for commercial permits.

129. The above arguments were raised in Abid. Following the petition the respondents informed that they were re-examining their policy and that they intended to hold a meeting on the matter with the participation of "all relevant bodies", and an additional meeting in the HCJ department at the State Attorney's Office. Eventually, the respondents informed that they decided to give petitioner 1 the specific remedy which was requested in the petition. However, they did not give any information regarding the results of the reexamination of their policy. The respondents requested that the petition be dismissed *in limine* based on the argument that the specific remedy was given and that "the general remedy requested in the petition has no immediate practical effect on petitioners' case."

130. Since then, the Respondent continued to deny applications based on the same policy. However, in response to petitions filed against said decisions new reasons were given for the same policy.

Respondent's new explanations of his policy

131. In response to an administrative petition filed by the petitioners the Respondent argued as follows:

> Respondent's position is that the petitions should also be denied on their merits. The demand to prove proprietary connection to the land by a conformation of rights issued by the land registration office is a reasonable demand under the circumstances which does not impose an unreasonable burden on the residents of the seam zone and there is no reason to interfere with it. The presentation of a rights registration extract from the land registration office is the primary way of proving proprietary ties to land. No justification was found to waive said demand as requested by the petitioners. Said demand was established to ascertain that individuals applying for permits do indeed have an actual connection to agricultural land in the seam zone, thus reducing the inherent concern that the purpose of the permit is to enter without authorization to the territory of the state of Israel.
>
> Said demand applies to each one of the petitioners claiming to have rights in an area consisting of many dunams while their relative rights in the plot relate to several dozens of sq. meters, and in one case to about 260 sq. meters only. These are miniscule plots, which according to the opinion of professionals at the civil administration, do not enable sustainable agriculture. Only orderly registration with the land registration office shall provide a clear and certain picture to both the petitioners and the respondent regarding the status and scope of the rights of each applicant…
>
> Moreover, in the absence of registration, questions and difficulties may arise with respect to the rights of each and every applicant and particularly with respect to the scope of their rights. Non-registration

> entails errors and vagueness with respect to rights in land and the demand to present a registration extract can ensure that only the person having proper rights in regulated land receives a farmer entry permit. Furthermore, the registration requirement assists in preventing land-grab and land takeover practices and the submission of conflicting demands by different parties for permits concerning the same land. It also constitutes a realization of the military commander's duties to prevent such phenomena by virtue of the authority vested in him as the substitute sovereign in the area (just like that!)
>
> The respondents wish to emphasize that giving an opportunity to receive a farmer permit without proving the rights in the land in the customary way may intensify the inappropriate phenomenon whereby seam zone entry permits are misused to enter Israel illegally, with all the security and other ramifications arising therefrom.

A copy of the preliminary response, without its Exhibits, I attached and marked **P/51**.

132. During the hearing in the petition Respondent's counsel argued as follows:

> The demand to present a land registration extract beyond the certainty of who is entitled to receive a seam zone entry permit, the size of the plot should also be known. The size of the plot cannot be accurately ascertained. The inheritance order requires additional calculations by us and does not state A is entitled to 200 meter. Therefore a land registration extract is required. It is actually the basis for Respondent's discretion, the documents that he requires to see following the application. It enables to know who owns the rights and what the scope of the rights is.
>
> The petitioners argued in the petitions that the law in the area does not require that the rights be registered in the *Tabu* to give them effect. It is not at all relevant… in any event it is not relevant because we are not concerned here with the need to prove proprietary rights in the context of a dispute, but rather with Respondent's discretion and what he needs to see to give a permit. The procedures require that a land registration extract be presented. They do not contest the procedures.

133. Hence, the Respondent no longer argues that his demand that the registration of the lands in the *Tabu* be changed, as a condition for granting seam zone entry permits to inheritors, is based on local law. Now the Respondent argues that his demand does not impose an unreasonable burden on the protected persons; that his demand is necessary to ascertain that the applicant has ties to land in the seam zone; that his demand is necessary to ascertain the size of the plot in the seam zone; that his demand shall prevent individuals from entering Israel without a permit; and that his demand is aimed at preventing takeover of applicants' lands.

Respondent's argument that his demand does not impose an unreasonable burden on farmers

134. According to the case law, the closure of the seam zone to Palestinians has severely violated their fundamental rights, and particularly the rights of landowners in the seam zone who were disconnected from their lands. It is incumbent on the military commander to prove that the arrangements established by him satisfy the proportionality tests (paragraph 29 to the permit regime judgment).

135. Therefore, Respondent's argument that his demand, on the basis of which he denies landowners' permit applications to access their lands, does not impose an unreasonable burden on protected persons does not suffice, but it is incumbent on the Respondent to prove that a less injurious demand does not exist.

136. As aforesaid, a less injurious alternative was applied by the Respondent until recently and for many years, namely, the acceptance of a land registration extract in testator's name together with an inheritance order as proof for the transfer of the rights in the lands by way of inheritance. This alternative is also currently applied to prove proprietary ties to a business in the seam zone, and there is no reason to require that proprietary ties to agricultural land should not be proved in the same way that proprietary ties to a business are proved.

137. The requirement that inheritors be registered as landowners of their lands in the *Tabu* for the purpose of receiving entry permits to their lands entails the payment of fees for "service" they are not interested in. In fact, they are required to pay fees in order to access lands owned by them.

138. According to the governmental service and information website, the registration of inheritance of lands in the West Bank requires the payment of file-opening charges, and thereafter the payment of inheritance registration fees. According to the governmental payment service website, the file opening charges amount to NIS 38, and the inheritance registration fees amount to 1% of the value of the land, according to appraisal of the governmental appraiser. The fees for obtaining a new land registration extract, after the registration of the inheritance, also amount to NIS 38, according to item 20 to the Addendum of the Land Registration Fees Regulations [Consolidated Version].

    The state's internet page describing the processing procedure of applications to register inheritance of lands in the West Bank is attached and marked **P/52**;

    The internet page of the governmental payment service is attached and marked **P/53**;

    The Land Registration Fees Regulations [Consolidated Version] are attached and marked **P/54**.

139. The farmers have no need or interest in the procedures imposed on them, nor in paying for this purpose from their money to the Israeli military. The farmers only wish to access the lands in their ownership. This is a poor population, whose livelihood largely depends on odd jobs and agriculture, and there is no room for collecting fees from these people as a condition for approving their permit applications to access their lands. Some farmers are also concerned that the change in the registration of the lands made by the military may prejudice the rights of other inheritors from their family living abroad. Many of the farmers also oppose the demand to make changes in the registration of their lands in the

Tabu administered by the Israeli military for political reasons, and anyway, it is neither customary nor acceptable in this community, as explained in the hearing in Petitioner's matter before the appeal committee (the minutes were attached as P/36). The vast majority of farmers represented by HaMoked have not been registered as landowners *in lieu* of the testators and have no interest in doing so.

140. Hence, Respondent's demand imposes an unnecessary burden on the protected persons and obligates them to pay fees unlawfully. This demand is not necessary. The Respondent can reaffirm applications of inheritors of lands for entry permits to their lands based on a land registration extract in the name of the testator together with an inheritance order, as he used to do for many years, and this is what he should do.

Respondent's argument that his demand is necessary to ascertain that the permit applicant has ties to land in the seam zone

141. Beyond the difficulties, economic costs and obstacles involved in the demand to change the registration of the lands in the *Tabu*, it is also not needed, since **the documents which are required to register the inheritance in the *Tabu* are the same documents which were submitted until now to receive seam zone entry permits and which the Respondent currently refuses to accept**. According to the "Application for registration of inheritance in land in Judea and Samaria" page on the state's website, the documents which are required for the purpose of filing such an application are land transaction application form; updated land registration extract; valid powers of attorney; original inheritance order or a notarial copy; and payment confirmation of file opening fees (see P/52).

142. If an inheritor's ownership of land may be recognized for the purpose having their rights registered in the *Tabu* based on a land registration extract and an inheritance order, there is no preclusion for recognizing their ownership in the land on the basis of the same documents for the purpose of issuing a seam zone entry permit for them. A land registration procedure is not required to ascertain that the permit applicant is the landowner. An examination of the documents proving that they are entitled to be registered as landowners suffices for this purpose.

143. Not only that the documents which are required for the registration of the ownership are the same documents that were submitted by the Petitioner to the Respondent to prove his ownership in his land, and which the Respondent refused to accept, it appears from Respondent's procedures that the same body at the Respondent handling seam zone entry permits also handles inheritance registration. Respondent's seam zone entry permits procedures provide that "the Administration and Land Registration Coordinator at the DCO shall check the truthfulness of the documents proving the connection between the applicant and the type of land" (section 14.a.3. to the chapter "Permits for agricultural needs in the seam zone").

144. Hence, the Respondent can ascertain inheritor's ownership in their land for the purpose of approving their seam zone permit application in exactly the same manner as it can do it for the purpose of registering their ownership in the *Tabu*. The examination of the documents proving applicant's connection to the land by the land registration coordinator

is one of the examination stages of permit application for agricultural needs, and there is no need to make this examination in the context of a land registration proceeding. Therefore, the argument that registration of ownership is required to ascertain that the permit applicant has ties to the land that they wish to farm, has no merit.

145. Since the inheritor can be registered as a landowner on the basis of a land registration extract in testator's name together with an inheritance order, and the body in charge of the examination of the documents for the purpose of issuing a farmer permit is the same body in charge of land registration, there is no need to change the registration of the land for the purpose of approving the permit application. Applicant's ownership of the land may be examined, and their application may be approved, and there is no need to register the conclusion in the *Tabu* as a condition for issuing the permit. As aforesaid, this was Respondent's practice which has been implemented by him for many years.

146. Therefore, Respondent's demand imposes a completely unnecessary burden on landowners in the seam zone. There is no need to register the lands in inheritor's name to approve their application to access their lands. On the other hand, Respondent's demand forces the inheritor to conduct additional procedures vis-à-vis the military, beyond the permit application and as a preliminary condition therefore, and even obligates them, indirectly and without authority, to pay fees in the context of said procedures, only to allow them to access land that is anyway owned by them and which is not within the territory of Israel.

147. As aforesaid, the relevant question is not whether Respondent's demand is necessary or beneficial, but rather whether a less injurious alternative exists. There is no doubt that the answer to this question is positive. There is no need to deny the permit applications of these people which would enable them to access their lands because of the fact that the inheritance of the lands was not registered in the *Tabu*. Applicant's rights in the land by way of inheritance may be established by examining a land registration extract and an inheritance order, and if the rights are so established, the application should be approved and the Respondent should stop denying them access to their lands. Since there is a way to avoid harming landowners who were disconnected from their lands by the separation fence, the Respondent should act accordingly, instead of implementing means which unnecessarily injures them, since the injury is neither necessary nor proportionate.

Respondent's argument that his demand is necessary to establish the size of the plot in the seam zone

148. In the preliminary response to the administrative petition filed on behalf of the Petitioners and in the hearing thereof, the Respondent argued that Petitioner's plot was "miniscule", and that the exact size of the plot could not be established if the inheritor was not registered as the owner of the plot *in lieu* of the testator. Said argument is erroneous and peculiar.

149. The Respondent stipulated in its procedures that the term "plot size" does not refer to the actual size of the plot but rather to the size of the entire plot multiplied by the applicant's relative ownership rate in the plot" (section 6 to the chapter "Permits for agricultural needs in the seam zone"); that "agricultural worker permits shall be issued for the farmer's

relative share in the land, according to documents" (*Ibid*., section 14.a.7.); and that "as a general rule, no sustainable agricultural need shall exist when the plot for which the application is filed is of a miniscule size, not exceeding 330 sq. meters (*Ibid.*).

150. Since the publication of the above provisions in the 2017 seam zone collection of standing orders, the Respondent has rejected a myriad of seam zone entry permit applications for landowners, their family members and workers, based on the argument that the plots are "miniscule", usually specifying the "size" of the plot, as calculated by him, namely the outcome arising from dividing the area by the number of the inheritors.

151. In view of the above the Respondent argued in the case at hand that the "Petitioner presented documents establishing proprietary ties to land in the size of about 260 sq. meters" (paragraph 16 to the preliminary response).

152. This figure was obtained from the division of the area of the plot, as specified in the land registration extract, by the inheritor's ownership rate specified in the inheritance order, without Petitioner's registration as the landowner in the *Tabu*. Hence, the calculation may be made in this manner and there is no need to change the registration of the land in the *Tabu* to divide the area of the plot by the inheritor's ownership share (although the Petitioners are of the opinion that this data is not at all relevant and cannot justify the denial of a farmer permit application). The Respondent has systematically made his calculations in this manner and on this basis he has rejected a large part of permit applications for agricultural needs ever since the 2017 seam zone standing orders had been published.

153. As aforesaid, HaMoked filed numerous petitions against said rejection policy and against specific decisions made thereunder. The Respondent has never stated that he was uncertain of the exact size of the plots or of the scope of the inheritor's rights when his rejections were based on factual arguments on these matters. If the "size of the plot" cannot be ascertained or if the relative ownership share of the inheritor in the land cannot be precisely established, there was surely no room for all of these rejections on the claim that the plots were "miniscule", based on the division of the area by the number of inheritors, including the decision made in Petitioner's case.

154. The argument that the registration of the lands in the *Tabu* should be changed because the plots are "miniscule" and because unless the registration of the lands in the *Tabu* is changed, the size of the plots and the scope of the rights may not be accurately ascertained is paradoxical. The argument that the plots are "miniscule" is based on a calculation made on the basis of the land registration extract and inheritance order. The Respondent could not have raised this argument had he not been able to procure the required information from said documents.

Respondent's argument that his demand would prevent individuals from entering Israel without a permit

155. The Respondent argued that his demand to make changes in the registration of the lands in the *Tabu* "was made to ascertain that the individuals applying for permits do indeed have an actual connection to agricultural land in the seam zone, **thus reducing the**

inherent concern that the purpose of the permit is to enter without authorization to the territory of the state of Israel".

156. As aforesaid, there is no need to change the registration of the lands in the *Tabu* to ascertain that the individual applying for a permit is the landowner. According to Respondent's procedures, the applicant's ownership of the land may be ascertained in the framework of the examination of the permit application in the same manner that it is done by the Respondent for the registration of the inheritance in the *Tabu*, and it is apparently done by the same body at the Respondent.

157. There is no connection between the manner by which the land is registered and the question of whether the permit holder may enter Israel without a permit. The demand concerning the manner of registration of lands in the *Tabu* relates to the entry into Israel only in that it prevents anyone who inherited regulated lands from accessing their lands located on the other side of the separation fence, alongside Respondent's factual assumption that anyone applying for seam zone entry permit is suspected of entering Israel unlawfully.

158. Respondent's procedures regulate the handling of Respondent's suspicion that seam zone entry permits may be misused, including the suspicion that the permit may be used to enter Israel. The procedures enable the Respondent to confiscate and revoke permits in such an event, and to refuse to grant its owner another permit during a period of one year.

    The chapter "Misuse of Seam Zone Permits Handling Procedure" in Respondent's procedures is attached and marked **P/55**.

159. Seam zone permit applications should not be declined due to a general suspicion that any seam zone entry permit is intended to be used to enter Israel, while using the manner by which the land is registered as grounds for their denial.

<u>Respondent's argument that his demand is intended to prevent applicants' lands from being taken over</u>

160. Respondent's argument that his refusal to grant farmers permits allowing them to access their seam zone lands, due to the manner by which the lands are registered, is intended to prevent their lands from being taken over is absurd and not at all convincing.

161. Land owners in the seam zone are at risk of being deprived of their lands due to the fact that the lands remained behind the separation fence, on its "Israeli" side, and that the permit regime obligates land owners to receive from the Respondent permits to access lands belonging to them, while, at the same time, it allows entry into the seam zone without permit to Israeli citizens, Israeli residents, people entitled to immigrate according to the Law of Return and tourists (section 3 to the "General Guidelines" chapter in Respondent's procedures). **The absence of the landowners and their workers from their lands due to Respondent's decisions denying their applications, is the reason causing their lands to be taken over, rather than the manner by which their ownership in their lands is registered in the *Tabu***.

162. No civil disputes are pending regarding the farmers' ownership of their lands, as noted by Respondent's representative in the hearing which took place in the Petitioners' administrative petition. The only body that does not recognize their ownership of their lands is the Respondent, and the only reason giving rise to the concern that their lands would be taken over is his refusal to enable them to access their lands, while Israeli residents are given free access to said lands.

163. Hence, there is no justification for Respondent's current policy, in which land inheritors' applications for permits to access their lands in the West Bank are denied, due to the fact that they were not registered in the *Tabu* as landowners *in lieu* of the testators.

The Legal Argument

164. The Petitioners shall argue below that Respondent's refusal to issue to the Petitioner, and to other individuals in his situation, fully valid farmer permits as prescribed by its procedures, due to the fact that their ownership in lands inherited by them has not been registered in the *Tabu*, disproportionately violates their fundamental rights to own property, to freedom of occupation and to freedom of movement; has no lawful basis and is contrary to the judgments of the honorable court regarding the permit regime.

Respondent's new policy in view of the case law on the permit regime

The early permit regime judgments

165. The court has addressed more than once the permit regime while examining the legality of the separation fence and the route chosen for it. It arises from said judgments in those days, when the lawfulness of the fence was examined by the court, that the permit regime was limited to farmers' crossing arrangements to their lands beyond the separation fence. The possibility that the mere ownership of the lands would be questioned was not discussed at all.

166. Accordingly, for instance, it was held in HCJ 2056/04 **Beit Sourik Village Council et al. v. Government of Israel**, paragraph 82 (reported in Nevo, June 30, 2004):

> 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 section of the separation fence which is the subject of this petition. The length of the section of the separation fence to which these orders apply is approximately forty kilometers. It causes harm to the lives of 35,000 local inhabitants. 4000 dunams of their lands are taken up by the route of the fence itself, and thousands of olive trees growing along the route itself are uprooted. The fence separates the eight villages in which the local inhabitants live from more than 30,000 dunams of their lands. The great majority of these lands are cultivated, and they include tens of thousands of olive trees, fruit trees and other agricultural crops. The registration regime which the military commander wishes to establish cannot prevent or substantially decrease the extent of the severe injury to the local farmers. Access to the lands depends upon **the possibility of crossing**

> **the gates,** which are very distant from each other and not always open. **Security checks**, which are likely to prevent the passage of vehicles and which will naturally cause long lines and many hours of waiting, **will be performed at the gates**. These do not go hand in hand with the farmer's ability to work his land. There will inevitably be areas where the security fence will have to separate the local inhabitants from their lands. In these areas, the commander **should allow passage which will reduce, to the extent possible, the injury to the farmers** (all emphases in the petition were added, unless otherwise noted, T.M).

And, in a host of additional judgments, for instance:

> 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, the permit regime and the crossings to the lands which remained west of the fence are interrelated. Petitioners' groves and grazing lands were severed by the separation fence. In these circumstances, it is incumbent upon the respondents to make sure it establishes reasonable **crossing arrangements and an accessibility regime** to the petitioners' lands, reducing, to the maximum extent possible the injury inflicted on them. With respect to the route in the Budrus area, **a gate was built allowing passage by vehicle and on foot**. It is located, at an aerial distance, 750 meters north of the northern hill and 1,400 meters north of the southern hill. Shortly before the reminder hearing before me regarding the crossings and the permit regime (on February 15, 2006), **the respondents added another, agricultural gate**, very close to the southern hill, **providing better access to petitioners' lands,** which remained west of the fence. The respondents have also noted that to the extent Budrus residents wish to farm their lands which remained west of the fence, the proper permits shall be given. It seems that in doing so, the respondents have fulfilled their obligation to reasonably reduce, to the maximum extent possible, the injury inflicted on the petitioners (HCJ 4825/04 **'Alian v. Prime Minister,** paragraph 16 (reported in Nevo, March 16, 2006).

And

> 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 principle, in the examination of the harm caused by the fence, the geographic route, the permit regime and the crossings to the lands which remained west of the fence are interrelated (HCJ 4825/04 **'Alian v. Prime Minister** (not yet reported) paragraph 16). Lands belonging to the petitioners were severed by the separation fence. In these circumstances, it is incumbent upon the respondents to make sure that reasonable **crossing arrangements and accessibility regime** are

established to petitioners' lands, reducing, to the maximum extent possible, from the perspective of security considerations, the harm inflicted on them. We were advised that **2.5 km. north of the hill, Hizmeh crossing is being built, allowing passage "to the west" 24 hours a day**. However, **passage is conditioned on coordination in advance and on having a permit**. The petitioners do not request the construction of another crossing closer to the hill. The petition does not at all concern the **crossing arrangements and the permit regime.** The respondents, on their part, object to the construction of **another gate**, near the hill, for security reasons. In these circumstances, in view of the fact that the petition is not directed against the **gate policy and the crossing arrangements in the security fence,** we do not express any opinion on this issue, and it does not derogate from the conclusion that the route of the fence does not violate the second sub-test of proportionality (HCJ 6451/04 **Halawa v. Prime Minister**, paragraph 16 (reported in Nevo, June 18, 2006)).

And:

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 principle, in the examination of the injury caused by the fence, the geographic route, the permit regime and the crossings to the lands which remained west of the fence are interrelated (see Shuqba, paragraph 16). Lands belonging to the petitioners were severed by the separation fence. **In these circumstances, it is incumbent upon the respondents to make sure that reasonable crossing arrangements and accessibility regime are established to petitioners' lands,** reducing, to the maximum extent possible, from the perspective of security considerations, the harm inflicted on them. We were advised that an agricultural gate would be installed south of Elqana, which would be opened at times to be established in coordination with the residents. The petitioners do not request that additional crossings be installed or that the opening hours be changed. Their petition does not address the crossing arrangements or the permit regime at all. In this state of affairs, in view of the fact that it is not directed against **the gate policy and the crossing arrangements in the security fence**, we do not express any opinion on this matter, and it does not derogate from the conclusion that the route of the fence does not violate the second subtest of proportionality. This finding is based [on] the presumption that the petitioners will have **reasonable access to their lands through reasonable crossing arrangements in the fence**. Inasmuch as this presumption does not withstand the test of reality, they are free to turn to the court once again." (HCJ 6027/04 **Taleb Hussein Radad Head of az-Zaweiya Village Council v. Minister of Defense**, paragraph 21 (reported in Nevo, August 17, 2006)).

And:

Having heard the arguments of the parties and the different experts and having reviewed the material presented to us, we have no alternative but to conclude that the route of the fence does not meet the requirement of proportionality. The interim alternative severely injures the residents of Na'alin. The injury is caused as a result of the confiscation of land for the purpose of building the fence, uprooting trees growing on the route, and locking farmed agricultural areas on the "Israeli" side of the fence. The route of the fence occupies 326 dunam, all consisting of private lands. In addition, the route disconnects the residents of Na'alin from more than one thousand dunam of private lands and farmed agricultural land. These lands are dedicated to olive growing, seasonal crops and grazing. **Access to these lands shall be limited to crossing at a checkpoint and an agricultural gate for permit holders, with all difficulties associated therewith**. It should also be noted that in view of respondents' intention to change the route of the fence near road 466, **the future crossing arrangements for Na'alin residents in the checkpoint** have not yet been thoroughly clarified. The interim alternative aggravates the harm, which is anyway severe, inflicted on Na'alin residents as a result of the construction of the fence. The interim alternative elongates the fence by more than 500 meter. It requires the confiscation of an additional 45 dunam, the vast majority of which are agricultural lands. The interim alternative enlarges the seam zone by approximately 200 dunam, the vast majority of which are private lands. Half of them are agricultural areas. The respondents do not deny the fact that harm is inflicted on the residents of Na'alin, but they are of the opinion that said harm is reasonable and proportionate. We cannot accept this position. The interim alternative exceeds the balance between security needs and the needs and wellbeing of the local residents (HCJ 2577/04 **al-Khawaja v. Prime Minister**, paragraphs 39-40 (reported in Nevo, July 19, 2007)).

And:

After it was found that the second subtest was met, we should examine whether the third subtest is met – namely, the proportionality test in its narrow sense. The question according to this test is whether a proper balance exists between the harm inflicted on the petitioners by the route, and the security advantage gained by the fence. In the case at hand, the route of the fence being the subject matter of the confiscation order is about to separate between the residents of Walaja village and some of their agricultural lands located beyond the "Israeli" side of the fence. **Their access to their agricultural lands in the triangular area shall no longer be free and prompt**, but rather limited and subordinated to entry permits. Clearly, the above violates petitioners' protected rights to freedom of movement and to their property…

We accept the fact that the mere construction of the fence poses difficulties for the residents of Walaja seeking to farm their agricultural

lands, including additional lands located in the municipal are of Jerusalem. However, it should be noted that these additional areas should have remained outside the planned fence (north-west thereof) even if the route proposed by the petitioners in this petition had been accepted by us, namely, had the route been moved to the municipal line of Jerusalem. Therefore, we do not think that the data presented by the petitioners, in and of themselves – can tip the scale in the implementation of the third subtest of proportionality on the circumstances of the case before us. In addition, we have taken into account respondents' undertaking to **establish two agricultural gates alongside the route, such that the distance that the landowners would have to pass from the gates to their lands would only amount to several hundred meters**. During the petition's second hearing, the head of the military administrative division in charge of the construction of the route, Colonel Ofer Hindi, stated before us that **the agricultural gates would open for several hours, three times a day, allowing relatively high accessibility to the lands**. We wish to add to the above that the respondents should **establish the accurate location of the two gates, in a manner providing to the residents of the village convenient and orderly access to them, including by agricultural vehicles,** to minimize the harm to the current agricultural work routine and to the feasibility of the transfer from traditional farming to modern farming, to the extent necessary in the future (HCJ 9516/10 **Walaja Village Council v. Military Commander in the West Bank**, paragraphs 15-16 (reported in Nevo, August 22, 2011)).

And:

We shall add to the above that the route being the subject matter of the petition also meets the third subtest, namely, the proportionality test in its "narrow sense", which examines whether a proper relation exists between the injury inflicted by the route on the residents of Mas'ha, and the advantage embedded therein; The current route of the fence provides, as aforesaid, great security advantage. Against this advantage stands the severe injury inflicted by the route on Mas'ha's residents. It left west of the fence, in the seam zone, thousands of dunams of agricultural lands, including olive growing on which the livelihood of many of the village residents depended, as well as grazing lands and areas on which additional crops are grown. The above, even if we rely on respondents' more limited assessment of lands belonging to Mas'ha residents being the subject matter hereof.

However, as we have noted in the beginning, changes are expected to occur in the route of the fence in the area of 'Azzun 'Atma, in the proximity of which the lands cultivated by the residents of Mas'ha village are located. According to said change, 'Azzun 'Atma village and the lands in its surrounding area would be "set" to the "Palestinian" side of the security fence, and shall no longer be in the seam zone. Said

change, in and of itself, may significantly make things easier for the residents of Mas'ha village owning lands in the area of 'Azzun 'Atma and reduce the harm caused to the fabric of their life. **As a result of the change, the residents of the village having lands in the area of 'Azzun 'Atma, shall no longer be dependent on the opening hours of the 'Azzun 'Atma gate, and they shall be able to freely access their lands**.

Nevertheless, it is clear that said change cannot completely abolish the injury inflicted on the residents of Mas'ha village, in view of the fact that a large part of their lands shall continue to be in the seam zone… one of the ways proposed by the respondents to create a balance between the harm caused by the route of the fence and the advantage arising therefrom is by establishing **crossing arrangements through gates installed in the fence and through the access ways to and from the gates – to the lands of the residents of the village**. In that regard Respondent's counsel argued before us that south of Mas'ha village, near road No. 5, a gate existed which is opened three times a day enabling village residents to cross over. It was also argued that in a bid to improve the access to that gate an agricultural road was being paved from Mas'ha village to the underground passage leading to the gate. Respondent's counsel also noted that the agricultural road being paved would also enable the **passage of agricultural vehicles through that gate**. It was also noted that **Etz Efraim and Elqana gates were opened in the harvest season** to enable Mas'ha residents to access their lands located near these settlements. It was argued that in the past said gate was opened more often, bust considering the low number of individuals using it to pass through, it was currently used as a seasonal gate, in coordination with the Palestinian coordination headquarters. With respect to Elqana gate, it was noted that it was an operational rather than an agricultural gate, and that despite the security difficulties involved in using it as a crossing, it was also opened in the harvest season.

We have therefore reached the conclusion that **all crossing arrangements described above**, reflect a proper balance between the harm caused to the residents of Mas'ha village as a result of the current route of the security fence, and the advantage gained therefrom, namely, the protection it provides to Israeli settlements. We assume that the respondents have upheld their obligations as those were presented to us in the last hearing in the petition, namely – **to complete paving the agricultural road from Mas'ha village to the underground passage and to open the gate located near road No. 5 three times a day**. It should be noted that no update notice has been received regarding the pavement of said agricultural road. If the respondents have not yet upheld their above obligations, we assume that they will do so shortly.

> Moreover, as noted by us in the 'Azzun 'Atma case, the contemplated change of the route in the 'Azzun 'Atma area shall require the **installation of additional gates in the new route which shall be built**:
>
> "After the construction of the fence in the planned route, the military commander shall have to examine the location of the gates and the quantity of permits which shall be required to farm the agricultural land remaining in the seam zone as delineated, according to the needs of the residents and to minimize the harm inflicted on them to the maximum extent possible. We hope that on that aspect the Palestinian petitioners and the representatives of the military commander shall cooperate in a manner which would improve the **crossing arrangements** and enable **easy access** to the maximum extent possible of farmers to their lands" (*Ibid*., paragraph 35).
>
> In addition, in view of said change, changes may also occur in the number of individuals passing through the gates located near Mas'ha village, which shall require to re-examine the current **crossing arrangements** including, *inter alia*, **the opening frequency of Elqana and Etz Efraim gates**. We assume that these needs shall be meticulously examined by the respondents in cooperation with the representatives of petitioner 1.
>
> Subject to the above, we hold that under the circumstances the route of the fence being the subject matter of the petition, also satisfies the third condition of proportionality (HCJ 4387/06 **Mas'ha Village Council v. Prime Minister**, paragraphs 24-25 (reported in Nevo, April 11, 2010)).

167. Respondent's new policy reflects a drastic and unfortunate change in Respondent's understanding of his role in maintaining landowners' ability to continue to access and farm their lands. According to judicial precedent, in the past, the Respondent regarded himself as only having the authority to determine the landowners' crossing arrangements through the separation fence. Conversely, currently the Respondent also examines, while issuing the permits, the mere ownership of the land, and also requires that changes be made in the registration of the ownership to give it effect, even in cases in which no changes have occurred in the ownership as of the construction of the separation fence. It is, in fact, a serious deterioration in the recognition of the right of the local residents to continue conducting, to the maximum extent possible, the same life routine which they conducted before the construction of the separation fence and to not abandon their lands.

The permit regime judgment

168. The permit regime judgment was penned after the vast majority of the general, principled, petitions concerning the route of the fence had been heard, and it stated as follows:

> We agree that the harm inflicted on this group is severe. Individuals who cultivated their lands in the seam zone, conducted their businesses

> there and established family and social relations, are forced at this present time, in order to preserve their ways of life, to apply for an entry permit based on several limited causes… **These injuries require the establishment of arrangements which preserve, to the maximum extent possible, the fabric of life which preceded the declaration, subject to security needs which require same**. It seems to us, that as a general rule, the arrangements which were established satisfy this requirement (paragraph 33).

169. It was further held in this judgment as follows:

> We shall analyze the proportionality of the decision of the military commander to close the area on three interrelated levels – (a) the mere decision to close the area; (b) the various rules which were established under the "permit regime" which was applied thereto; (c) aspects which concern the implementation of such arrangements in practice – from the handling processes of the various applications and through the actualities of life which was referred to by the state as the "crossing regime". The conduct of such a multi-layered examination is mandated by the logic of things, and is also required in view of the state's position that the proportionality of the harm inflicted on the inhabitants is drawn from a multi-layered examination of the unique gamut of arrangements which was established in the seam zone, which forms a comprehensive system consisting of various measures **the purpose of which is to minimize the harm caused as a result of the fact that the zone was a closed area** – on the level of the procedures which were established as well as on the level of the acts taken by the state **to ensure that the lives of the inhabitants were not burdened beyond the extent required by security need**... As stated above, and as will be further elaborated below, **the acts taken by the state in the implementation of the arrangements which were established in the seam zone directly affect the proportionality of the harm inflicted on the rights of the protected residents, and on the manner by which the rights are realized *de facto*** (paragraph 29).

170. Namely, Israeli law obligates the Respondent to preserve the ways of life in the area which preceded the closure of the seam zone. Harming the fabric of life which preceded the closure of the area is permitted only when it is required for security needs, and only when the harm is necessary. Respondent's undertaking to implement his procedures in a manner which shall not encumber the lives of the residents beyond the extent required by security need played an important role in the determination of the honorable court that the harm inflicted on the Palestinian residents as a result of the closure of the seam zone is proportionate.

171. However, Respondent's current policy runs contrary to said determinations.

172. Firstly, until the closure of the seam zone, a person who inherited lands in the area was not precluded from accessing their lands due to the fact that their rights were not

registered in the *Tabu*. Therefore, the new policy severely harms the fabric of life which preceded the declaration.

173. Secondly, as aforesaid, the Respondent undertook to implement his procedures leniently, in the absence of a security need to act in a different manner, and in view of the above it was held the harm inflicted by the closure of the seam zone was proportionate. Nevertheless, the Respondent started implementing a cumbersome requirement, which had not been required by him in the past, whereby ownership rights in the *Tabu* should be registered in the inheritor's name, otherwise a permit shall not be issued to the inheritor, who is the lawful owner of the land.

174. As aforesaid, we are concerned with individuals who have inherited their rights in the lands from their parents, lands which have been farmed by the same family for dozens of years. Nobody doubts the family's ownership in the land and nobody requires from the inheritors to update the registration of the rights in the *Tabu* to give effect to their rights, other than the Respondent.

175. It should be remembered that landowners are required to prove to the Respondent their ownership in the lands solely because the route of the fence chosen by the state separates them from their lands. In view of the above, Respondent's evidentiary and procedural requirements, which they are required to comply with as a condition for preserving their connection to their lands, should be examined.

The proportionality of the harm inflicted on landowners, against the backdrop of the permit regime judgment

176. The permit regime judgment examined the harm inflicted by the closure of the seam zone on Palestinians according to the three proportionality sub-tests: the rational connection between the means and the goal, the least injurious measure test, and the proportionality test in its narrow sense.

177. The judgment clarified that the burden to prove the argument that the harm is proportionate lies with the military commander (paragraph 29 to the judgment).

178. With respect to the **rational connection test**, it was held in the judgment that the purpose of closing the seam zone to Palestinians is to prevent terror attacks in Israel; that the purpose of the seam zone entry permit arrangements is to supervise the entry of Palestinians into the seam zone and their exit therefrom, and that a rational connection exists between the purpose of the arrangements and the purpose of closing the seam zone.

179. With respect to **the least injurious measure test**, it was held in the judgment that assuming that the respondents recognize the residents' right to continue farming their lands, and assuming they preserve the situation whereby the lands are farmed by their owners, the arrangements satisfy the least injurious means test.

180. In response to petitioners' argument that in fact, the permit regime prevents many landowners from farming their lands, the court referred the injured parties to file specific petitions.

181. With respect to **the proportionality test in its narrow sense**, it was held in the judgment that "the decision to close the zone along with the establishment of entry and presence arrangements and the taking of various measures to improve the handling of permit applications and to ease the passage into the seam zone – minimizes the injury inflicted on the Palestinian population". Therefore, the injury inflicted on the Palestinian population "is not of the kind which may be regarded as over-riding the security benefit which arises from the closing of the zone" (paragraph 41). However, in fact, the judgment does not discuss the relation between the closing of the area to Palestinians and the security advantage gained therefrom, but rather the relation between the harm inflicted by the permit regime in its current form, and the harm inflicted by stricter regimes which could have been applied.

182. In any case, the petition at hand engages with one element of the arrangements currently applied by the Respondent – the requirement that landowners register their rights in the lands in the *Tabu*, as a condition for receiving a permit.

183. As specified below, the reasons underlying the determination that the harm inflicted by the permit regime on Palestinians is proportionate do not support the argument that the harm caused by the policy contested in the petition at hand is proportionate. Moreover, Respondent's above policy puts in doubt the assumptions underlying the court's determination that the harm inflicted by the permit regime on Palestinians is proportionate.

184. With respect to the **rational connection test**, Respondent's demand that inheritors' rights be registered in the *Tabu*, does not relate to the purpose of the arrangements – supervising Palestinians' entry into the seam zone and their exit therefrom – nor to the purpose of closing the seam zone to Palestinians – preventing terror attacks in Israel.

185. As aforesaid, the Respondent argued that the arrangements established by him for the issuance of seam zone entry permits were intended, in addition to the above security purpose, to reduce the harm inflicted on Palestinians as a result of the closure of the seam zone. However, Respondent's refusal to give farmer permits to individuals who proved that they had inherited lands in the seam zone, due to the fact that they have not changed the registration of the lands in the *Tabu* following the inheritance, certainly does not promote said purpose and does not satisfy the rational connection test.

186. As to the **least injurious means test**, the demand that inheritors' rights be registered in the *Tabu* as a condition for the issuance of permits is not necessary, since it has not been applied in the past. As aforesaid, according to early judgments on the separation fence it seems that initially, the permit regime focused solely on arranging the crossings in the separation fence.

187. In addition, as aforesaid, according to Respondent's procedures, when permits for commercial needs are concerned, the Respondent does not need an updated registration in the *Tabu* to recognize inheritors' ownership in the property inherited by them, and he has acted in the same manner until recently also with respect to permits for agricultural needs.

188. The petitioner himself received entry permits to his land throughout the years based on a land registration extract and an inheritance order, without changing the registration in the *Tabu*, and his permit renewal application was not initially denied on the grounds that he should change the registration in the *Tabu* but rather on the grounds that his plot was miniscule – an argument which has been recently retracted by the Respondent.

189. Hence, undoubtedly less injurious ways exist to achieve the security purpose of the permit regime.

190. With respect to the proportionality test in its narrow sense, as aforesaid, the permit regime judgment referred in this context to Respondent's efforts to reduce the harm inflicted by the permit regime on the Palestinian population. Therefore, in the absence of such efforts, the conclusion that the harm is proportionate is no longer relevant. All the more so when efforts are made to designate new reasons for denying landowners' permit applications to access their lands, after the honorable court has criticized the previous reasons which had been used to deny the applications.

191. In our opinion, the proportionality test in its narrow sense focuses on the relation between the harm caused by the act and the advantage gained by it. In the case at hand, we are concerned with the relation between the harm caused by subjecting landowners' right to access their lands on changing the registration of the lands in the *Tabu*, and the alleged security advantage of supervising the individuals entering the seam zone and exiting it to prevent terror attacks. Since the registration of ownership rights in the *Tabu* has no effect whatsoever on supervising individuals' entry into and exit from the seam zone, the relation between the harm inflicted on the fundamental rights of landowners by said demand and the security advantage gained therefrom is totally unreasonable.

The violated rights

Violation of the rights to property and freedom of occupation

192. 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).

193. 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)).

194. Respondent's refusal to recognize person's rights in lands inherited by them, and to give them fully valid farmer permits to enable them to preserve their proprietary ties to their lands and cultivate them, severely violates their fundamental rights to property and freedom of occupation.

<u>Violation of the right to freedom of movement</u>

195. The right to freedom of movement is well recognized as a fundamental right by both Israeli and international law. It was so held in paragraph 15 to the judgment of the Honorable Justice Beinisch in **Bethlehem**:

> Freedom of movement is one of the basic human rights and it has been recognized in our law both as an independent basic right and as a right that is derived from the right to liberty and there are some authorities who believe that this freedom is also derived from human dignity (see paragraph 15 to the judgment and the references mentioned there). Freedom of movement is also recognized as a basic right in international law and is entrenched in a host of international treaties.

196. 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 **belongs to them**. In such circumstances, **where the movement is taking place in a private domain, especially great weight should be afforded to the right to freedom of movement and the restrictions imposed on it should be reduced to a minimum.** It is clear that restrictions that are imposed on the freedom of movement in public areas should be examined differently from restrictions that are imposed

on a person's freedom of movement within the area connected to his home and the former cannot be compared to the latter.

197. Respondent's refusal to give the Petitioner an entry permit into the seam zone prevents him from accessing land privately owned by him, in the West Bank, thus severely violating his fundamental right to freedom of movement.

Conclusion

198. The Petitioner has the right to receive a fully valid seam zone farmer permit, to enable him to cultivate his land and preserve his connection thereto. The Respondent refuses to give him such a permit based on the argument that he should be registered in the *Tabu* as the landowner in order to receive the permit. The same demand is also made of other inheritors of land that have previously been recognized as the owners of their lands and received farmer permits for years, without having been registered in the *Tabu* as the owners of the lands.

199. The refusal to give fully valid farmer permits to landowners, as set forth in Respondent's procedures, severely violates their property rights and their rights to freedom of occupation and freedom of movement. The Respondent actually undermines Palestinian farmers' ownership of lands which have been owned and cultivated by them and by their family members for generations, despite the fact that the ownership of the farmers has been proved to the Respondent, that it is not in doubt and that no conflicting claims were raised with respect thereto.

200. In view of all of the above, the honorable court is requested to direct the Respondent to give the Petitioner a fully valid seam zone entry permit to preserve his proprietary ties to his seam zone lands and to enable him to regularly access his lands; and to enable persons to prove proprietary ties to seam zone lands inherited by them, for the purpose of receiving seam zone entry permits, by submitting land registration extracts in the names of the registered owners of the lands, together with inheritance orders, proving the transfer of ownership in the lands from their registered owners to their heirs. In addition, the honorable court is requested to obligate the Respondent to pay Petitioners' costs and attorneys' fees.

201. This petition is supported by an affidavit which was signed before a lawyer in the West Bank and transmitted to HaMoked by facsimile, following telephone coordination. The honorable court is requested to accept this affidavit and the power of attorney which was also sent by facsimile, considering the objective difficulties in arranging a meeting between the Petitioner and his legal counsels.

May 14, 2020.

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Tehila Meir, Advocate
Counsel for the Petitioners