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The Supreme Court
Sitting as the High Court of Justice

HCJ 9961/03
HCJ 639/04

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The Petitioners in HCJ 9961/03

v.

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The Respondents in HCJ 9961/03

v.

The Association for Civil Rights in Israel

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The Petitioner in HCJ 639/04

Commander of IDF Forces in the Judea and Samaria Area et al.

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The Respondents in HCJ 639/04

Supplementary Updating Notice on behalf of the State

1. In accordance with the decisions of Honorable President Beinisch of February 12, 2009 and July 6, 2009, the State hereby respectfully submits this Updating Notice.
2. We would first like to update the Honorable Court that subsequent to the submission of the Updating Notice of May 25, 2009, the State Attorney's Office discovered that the information provided in the Updating Notice was **partially wrong, with respect to the area of the seam zone.**

A military inquiry held by the civil administration under instructions from the legal advisor to the Judea and Samaria Area revealed that the source of the error was the fact that the information provided to the State Attorney's Office and thereafter to the Court was calculated on the basis of maps which were not the most current. It was also revealed that the exact figures are in fact very similar to those provided in the State's Statement of Response. **Debriefings were held following the inquiry and protocols were reiterated for future reference.**

The State apologizes to the Honorable Court and the other Parties for the serious error.

3. In these circumstances, the State would ask that the Honorable Court ignore the statements contained in §§28-29 and 42 of the Updating Notice of May 25, 2009. The State shall present the accurate information with respect to the area of the seam zone in this Supplementary Notice.
4. In addition, in this Supplementary Notice, the State shall present the Court with figures on the number of applications for various permits to enter the seam zone between 2007 and 2009 and the decisions that were made in the aforesaid applications, in accordance with the decision of Honorable President Beinisch of February 12, 2009.
5. The State shall first note that the full figures on applications for permits and the area of the lands located inside the seam zone are attached in detailed tables which are attached as exhibits to this Supplementary Updating Notice. However, for the sake of convenience, the State shall also provide details with respect to the main relevant figures and refer to the figures in the attached tables for further details.
6. Furthermore, the State respectfully attaches to this Supplementary Notice the standing orders file entitled **Standing Orders for the Seam Zone and Protocol for Handling Misuse of Seam Zone Permits** (hereinafter: the **standing orders**). The standing orders list and enshrine the rules respecting residency, entry and remainder in the seam zone, including the criteria for granting certificates and permits, the validity of certificates and permits etc.

We also wish to update that staff work on updating the standing orders is currently underway.

A photocopy of the standing orders is attached and marked **R/32.**

The total area of lands included in the seam zone.

7. As stated, we hereinafter present accurate figures regarding the total area of lands included in the seam zone, as re-surveyed based on current maps, after the uncovering of an error in previous surveys.
8. Furthermore, the State respectfully attaches to this Updating Notice, tables detailing the total area of the lands belonging to villages in the seam zone according to the Mandatory distribution of the

village lands, while specifying the privately owned and non-privately owned lands for each village.

We wish, at this early stage, to call attention to the fact that the seam zone includes lands, totaling a small area, which, according to the Mandatory division of village lands, belong to Israeli communities (such as Umm al-Fahm and Baqa al-Gharbiyeh). Needless to say, inasmuch as these lands are owned by Israeli citizens and are not farmed by Palestinian residents, the fact that they are located in the seam zone does not impede free access thereto.

The area of the seam zone – phases A and B of the security fence

9. As of the present time, since the Statement of Response was submitted some two and a half years ago, there has been no change in the area of the seam zone along phases A and B of the security fence.
10. According to accurate calculations carried out based on current maps, the area of the seam zone along phases A and B is some 83,426 dunam [1 dunam = 0.1 square kilometers - translator note] (as opposed to an area of some 82,463 dunam as reported in the Statement of Response).

Some 52,378 dunam of the seam zone are private lands and the rest are state lands (as opposed to the figure quoted in the Statement of Response of 53,905 dunam of private lands).

These figures are thus very similar to the figures provided in the Statement of Response. The explanation for the small variation is that the area was now calculated according to accurate surveys of the route of the fence, conducted on the ground.

A table detailing the area of the seam zone along phases A and B of the fence according to village lands under Mandatory division is attached and marked **R/33**.

11. We add that the adjustments to the route of the security fence along phases A and B have not yet been completed and these will eventually reduce the total area of lands and the number of people located in the seam zone in these areas, as detailed below.
12. Building of the adjusted route of the security fence in Zufin East, a new route established following the judgment in HCI 2732/05 'Azzum Village Council v. Government of Israel, TakSC 2006(2) 3672 (2006), is scheduled to be completed in the near future.

It should be noted that after the adjusted route is completed and the current segment of the route is dismantled, the area of the seam zone detailed in §10 above would be reduced by 1,317 dunam, 680 dunam of which is privately owned land.

13. Work on adjusting the route of the security fence in the Alfe Menasheh area is also underway. The adjustment was made following the judgment in HCI 7957/04 Mara'abe v. Prime Minister of Israel, TakSC 2005(3) 3333 (2005).

The new route currently being built is based on Alternative Route A, which has been examined and found lawful by the Court in the context of petitions filed against it, HCI 10309/06 and HCI 10714/06 **Alfe Menasheh Local Council v. Government of Israel**, TakSC 2007(3) 3434 (2007) (hereinafter: the **second Alfe Menasheh**).

After the adjusted security fence route in the Alfe Menasheh area is completed and the existing segment of the fence is dismantled, the area of the seam zone detailed in §10 above will be reduced by 1,890 dunam, all privately owned land.

We further add, with respect to the route of the fence in the Alfe Menasheh area, that some months ago, several meetings were held between the Palestinian petitioners in the **second Alfe Menasheh** petition and their council, Adv. Sfar and individuals representing the Respondents. In these meetings, the Respondents agreed to favorably consider the possibility of shifting the new fence that is being built in the Alfe Menasheh area (which, as stated, was approved in HCJ 10309/06) toward Alfe Menasheh in order to reduce possible damage to the Petitioners' groves and a greenhouse located in the area.

Subsequently, Expropriation Order 02/40/t (outline adjustment no. 4), which implemented the changes requested by the Palestinian residents was issued. It should be noted that the total area detracted from the seam zone following this adjustment is insignificant and was therefore not measured accurately. Agreement has recently been reached on a further adjustment to the route of the fence which would further reduce the area of land taken by the fence in that location.

14. The route of the security fence in the vicinity of Falameya-Jayyus and Khirbet Jubara is under examination in petitions pending before this Honorable Court and awaiting judgment (HCJ 11344/03 **Faiz Salim v. Prime Minister**; HCJ 10905/05 **Mayor of Jayyus v. Prime Minister** and HCJ 11765/05 **Head of Khirbet Jubara Village Council v. Prime Minister**).

Inasmuch as the Honorable Court rejects the petitions against the amended seizure orders issued by the military commander in these areas and a fence is built on the amended route in these areas instead of the one in existence today, the area of the seam zone detailed in §10 above would be reduced by a further 3,930 dunam, 3,789 dunam of which is privately owned land.

15. The seizure orders issued in order to build the security fence in the vicinity of 'Azzum 'Atma were also challenged in petitions submitted to this Honorable Court (HCJ 8222/08 **Dayka Ltd. v. IDF Commander in the Judea and Samaria Area**; HCJ 9144/08 **'Azmi Sudki Ahmed Salameh v. IDF Commander in the Judea and Samaria Area**; HCJ 9113/08 **Oranit Local Council v. IDF Commander in the Judea and Samaria Area**). These petitions are scheduled for a hearing within a few months.
16. To complete the picture, we add that with respect to the area of Barta'a ash Sharqiy, staff work on examining adjustments to the route of the fence has begun and has yet to be completed. This adjustment, if it is carried out, will remove a large area of lands from the seam zone.

The area of the seam zone – phases C and D of the security fence and the “greater Jerusalem”.

17. The seam zone, along phases C and D of the fence, and in the “greater Jerusalem”, was announced just a few months ago, as detailed in the Updating Notice of May 25, 2009.
18. According to a survey by the civil administration, the total area of the seam zone along phases C and D and in the “greater Jerusalem” comes to approximately 36,112 dunam, of which some 727.6 dunam is in the process of being purchased by Israelis and the rest is state land.

A table detailing the area of the seam zone along phases C and D of the fence in the greater Jerusalem according to village lands under Mandatory division is attached and marked **R/34**.

19. In addition, with respect to the route of the fence in the area of Bil'in, on April 20, 2009, an amended seizure order was issued by the military commander following the judgment in HCJ 8414/05 **Yassin v. Government of Israel**, TakSC 2007(3) 3557 (2007) and other proceedings subsequently held before this Honorable Court with respect to this segment of the route.

Building the fence on the adjusted route would result in some 700 dunam, including 530 dunam of privately owned lands, which are currently located west of the fence, on the “Israeli” side, moving to the east side of the fence.

It should be noted that at the present time, there has been no declaration of a seam zone with respect to the area adjacent to Bil’in (west of the existing security fence)

Figures on applications for seam zone certificates and permits for 2007 to 2009

20. The State respectfully submits to the Court three tables detailing the figures on applications for seam zone certificates and permits for the years 2007 through 2008 and figures for **January to July, 2009**.

The three tables are organized by the type of certificates and permits granted in the seam zone: seam zone permanent resident, seam zone permanent farmer, seam zone seasonal farmer, seam zone trade, seam zone education, seam zone international organization staff, seam zone infrastructure worker, seam zone medical crew, seam zone personal affairs and employment.

The following figures are presented for each type of certificate/permit:

- a. Total number of applications filed in the specific year.
- b. Total number of applications approved.
- c. For approved applications – figures on the validity period of the certificates/permits granted (up to one month, between one and three months, between three and six months, between six and 12 months, more than one year). Approved applications with permits valid for less than 48 hours were not included in these figures.
- d. Total number of applications denied.
- e. For denied applications – details of the reasons for the refusal (divided into the following reasons for denial: inability to prove land ownership; missing details or documents; forged application; application refers to land in the Judea and Samaria Area; security objection; application fails to meet criteria; previous permit still valid, illegal use of permit; other).
- f. Total number of applications cancelled.
- g. For cancelled applications – details of the reasons for cancellation (divided into the following reasons for cancellation: unclaimed permits; reprinting; confiscation; criteria update; applications which were updated with new information for a new permit; other).

In 2007, a total number of 42,835 applications for seam zone certificates and permits were filed. Of these, 30,278 were approved (some 70.68%), 10,676 were denied and 3,057 were cancelled.

In 2008, a total number of 41,283 applications for seam zone certificates and permits were filed. Of these, 29,048 were approved (some 70.36%), 10,786 were denied and 2,576 were cancelled.

In the first six months of 2009, a total number of 24,610 applications for seam zone certificates and permits were filed. Of these, 17,197 were approved (some 69.87%), 6,516 were denied and 1,258 were cancelled.

For clarity, it should be noted that the total number of applications for each year does not equal the sum of approved, denied and cancelled applications as applications which were cancelled

after being approved and remaining valid for at least 48 hours are calculated **both** as approved and as cancelled applications.

The table of figures on applications for permits for 2007 is attached and marked **R/35**.

The table of figures on applications for permits for 2008 is attached and marked **R/36**.

The table of figures on applications for permits for 2009 (up to July 1, 2009) is attached and marked **R/37**.

The number of valid certificates/permits between 2007 and 2009

21. The State respectfully submits to the Court two tables detailing the number of certificates and permits which were valid between 2007 and 2009 by year and by quarter, divided into the types of certificates and permits. A graphic representation is attached to each table.

In 2007, 31,573 local Palestinian residents had valid seam zone certificates and permits. Of these, 4,944 residents had seam zone permanent resident certificates.

In 2008, 28,654 local Palestinian residents had valid seam zone certificates and permits. Of these, 5,148 residents had seam zone permanent resident certificates.

As at July 1, 2009, 23,805 local Palestinian residents had valid seam zone certificates and permits. Of these, 5,496 residents had seam zone permanent resident certificates (the increase in permanent resident certificates in 2009 is largely a result of the declaration of the seam zone along phases C and D of the fence and the greater Jerusalem).

A table detailing the number of certificates/permits valid between 2007 and 2009 per year and a graphic representation of the table are attached and marked **R/38** and **R/39**.

A table detailing the number of certificates/permits valid in each quarter between 2007 and 2009, and a graphic representation of the table are attached and marked **R/40** and **R/41**.

22. As detailed in §31 of the Statement of Response, the vast majority of seam zone work permits are granted to relatives and employees of Palestinian farmers in order to help farmers who own land carry out their work, particularly during the relevant agricultural seasons, such as the olive harvest. Farmers who own land themselves receive seam zone farmer permits (temporary or permanent), which are valid for longer periods than the work permits.

We note that in §119 and §129 of the Statement of Response, the State clarified that there are plans for a stricter distinction between persons receiving farmer permits and persons receiving work permits, as follows:

119. It shall be noted that the security establishment did initially implement a very liberal policy regarding issuance of permits for the seam zone.

However, there is real concern that this policy would be used for the purposes of illegally entering Israel such that residents of the area who received a permit to enter the seam zone would abuse these permits in order to enter Israel without a permit and not for the purpose of cultivating lands in the seam zone.

As a result of the aforesaid concern, which is not at all insignificant, the respondents now wish to ensure that applicants

do indeed have substantive ties to farmlands in the seam zone, which would diminish the inherent concern that obtaining the permit was meant for the purpose of unauthorized entry to Israel

...

129. Additionally, it is understandable that laborers whose entry into the seam zone is for the purpose of performing time-limited specific work for farmers who have lands in the seam zone, such as the harvest, receive permits to enter for the period of the harvest only.

23. As indicated by the tables and graphs attached as exhibits R/38 – R/41, indeed, in the years that have passed since the State submitted its Statement of Response, there has been a significant decrease in the number of permanent farmer permits and a parallel increase in the number of temporary farmer permits and work permits.

24. The State also respectfully submits to the Court a table detailing the number of farmer permits (permanent and temporary) and the number of work permits (which, as stated, are primarily given to farming laborers) per month as well as a graphic representation of the table, marked as R/42 and R/43.

The table and particularly the graph, clearly illustrate the significant increase in work permits issued during the main agricultural season, namely, the olive harvest in the fall.

Figures on the work of hearing committees for denied applicants

25. In addition to the statements contained in §69 of the Updating Notice of May 5, 2009, there is an avenue for appealing denied applications. These are heard by a committee which hears the resident and delivers a decision. We note that figures relating to proceedings before the hearing committees are attached to this Updating Notice.

A table detailing figures with respect to proceedings before the hearing committee between 2007 and 2008 and the first six months of 2009 is attached and marked R/44.

Conclusion

26. The State renews its request that the Honorable Court dismiss the petitions.

27. The facts detailed in this Updating Notice are supported by the affidavit of Colonel Ofer Hindi, Head of the Rainbow Administration in the Central Command and Colonel Ahwat Ben-Hur, Deputy Head of the Civil Administration in the Judea and Samaria Area.

Today 9 Av 5769
30 July 2009

[signed]
Aner Helman, Att.
Attorney in charge of HCJ
petitions
State Attorney's Office