

In the matter of:

1. \_\_\_\_\_ **Kabha ID No.** \_\_\_\_\_  
Palestinian resident of the occupied territories
2. \_\_\_\_\_ **Kabha, ID No.** \_\_\_\_\_  
Palestinian resident of the occupied territories
3. \_\_\_\_\_ **'Amar, ID No.** \_\_\_\_\_  
Palestinian resident of the occupied territories
4. \_\_\_\_\_ **Sabach, ID No.** \_\_\_\_\_  
Palestinian resident of the occupied territories
5. \_\_\_\_\_ **Yassin, ID No.** \_\_\_\_\_  
Palestinian resident of the occupied territories
6. **HaMoked - Center for the Defence of the Individual founded by  
Dr. Lotte Salzberger, Registered Association No. 580163517**

Represented by counsel, Adv. Tehila Meir et al.,  
of HaMoked - Center for the Defence of the Individual founded by Dr. Lotte Salzberger  
4 Abu Obeida St., Jerusalem, 97200  
Tel: 02-6283555; Fax: 02-6276317

**The Petitioners**

v.

**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**

**Reply on behalf of the Petitioners**

1. The petition at hand concerns Petitioners' application that the Respondent shall permit Petitioners 1-5 in particular, and Palestinian men over the age of 55 and Palestinian women over the age of 50, in general, to enter the seam zone without individual permits.
2. In the preliminary response it was argued that after the petition was filed the entry procedures into the seam zone were revised, and that currently "Palestinians who may enter Israel without submitting a request, due to their age, may also stay in the seam zone by virtue of said permit – as requested by the Petitioners" (paragraph 3). Namely, the Respondent argues that the requested remedy in the petition was received after the filing of the petition, and therefore concludes that the petition should be **dismissed**.
3. The Petitioners are of the opinion that both parts of Respondent's argument are incorrect. With respect to the argument that the requested remedy in the petition was received, first,

Respondent's decision to enable the population group being the subject matter of the petition to stay in the seam zone without individual permits has not been entrenched in legislation, and at this stage it does not reconcile with the existing legislation. Legislation trumps procedural directives. Therefore, the requested remedy has not yet been received, notwithstanding Respondent's willingness. Second, the current procedural directive referred to by the Respondent does not state, as drafted, the things attributed to it by the Respondent. Third, the Respondent does not enable older Palestinians to enter the seam zone without permits other than through a small number of checkpoints, with large distances between them. The Petitioners and other farmers in their condition, cannot access their lands through these checkpoints due to their long distance from their homes and lands, such that practically, they remain in the same situation with respect of which the petition had been filed, and they will be obligated to keep on submitting applications for individual entry permits into the seam zone, if Respondent's position is accepted. Hence, the Respondent may have **decided** to give the requested remedy in the petition, and the Petitioners welcome this, but in fact the remedy has not yet been given and the law does not yet provide the remedy requested in the petition. In addition, the inability of older Palestinians to enter the seam zone through the agricultural gates in the separation fence renders meaningless their theoretical ability to access their land by virtue of the general entry permit into Israel.

4. With respect to the argument that the petition should be dismissed *in limine*, the Respondent argues that the requested remedy was received after the petition had been filed. Even if Respondent's argument that the requested remedy was received is accepted, and a decision is made that there is no need to make legislative adjustments according to Respondent's decision, to amend the language of the procedural directives, or enable the older farmers to enter the seam zone through gates within walking distance from their lands or homes, by virtue of their general permit, dismissing the petition is not the appropriate relief to a situation in which after the filing of the petition the requested remedy was given.

#### **The normative framework at this point in time**

5. As specified in the petition, the Declaration concerning the Closure of Area No. S/2/03 (Seam Zone)(Judea and Samaria), 5764-2003, provides as follows:

By virtue of the power vested in me as the commander of the IDF forces in the Judea and Samaria area, and according to sections 88 and 90 to the Order regarding Security Regulations (Judea and Samaria) (No. 378), 5730-1970... and my other authorities pursuant to any law and security legislation, and given the special security circumstances in the area and the need to take necessary steps in order to prevent terror attacks and the passage of perpetrators from the areas of Judea and Samaria to the state of Israel, I hereby declare as follows:

2. I hereby declare that the seam zone is a closed area as defined in this order.
3.
  - a. No person will enter the seam zone or stay therein
  - b. Any person in the seam zone is obliged to leave it immediately.
4.
  - a. Section 3 of this declaration shall not apply to:
    1. An Israeli.
    2. Any person who was given a permit by me or by anyone on my behalf to enter the seam zone and stay therein, all according to the conditions set in the

permit. A permit according to this section can be general, for a specific type, individual or special.

- b. Notwithstanding the provisions of sub-section (a), a military commander may determine that section 3 to this declaration shall apply to a person or to any class of persons entering the seam zone or staying therein.

6. The term "Israeli" was defined in the declaration as follows:

Each one of the following:

- a. A citizen of the state of Israel.
- b. Resident of the state of Israel registered in the Population Registry in Israel, according to the Population Registration Law, 5725 – 1965, as in effect in Israel from time to time.
- c. Any person entitled to immigrate to Israel according to the Law of Return, 7510-1950, as in effect in Israel from time to time (Section 1).

A copy of the Declaration concerning the Closure of Area No. S/2/03 (Seam Zone)(Judea and Samaria), 5764-2003 is attached and marked **PR/1**.

7. Section 1 of the Order regarding Security Directions (Judea and Samaria)(No. 378), 5730-1970, "General Permit to Enter the Seam Zone and Stay Therein" provides as follows:

Permit to enter the seam zone, as defined in the declaration, and to stay therein is hereby given to every person belonging to the class of persons specified in the appendix to this permit, according to the conditions specified in the appendix (Section 1).

8. The appendix provides as follows:

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

A copy of the Order regarding Security Directions (Judea and Samaria)(No. 378), 5730-1970, General Permit to Enter the Seam Zone and Stay Therein, is attached and marked **PR/2**.

9. Namely, the military legislation establishes a prohibition against the entry of individuals into the seam zone. Several groups were excluded by the legislation from said prohibition - Israelis, persons who received permits to enter and stay in the seam zone, persons who are not residents of the West Bank holding a valid foreign passport and a valid visa to stay in Israel, persons holding work permits in settlements located in the seam zone, and persons holding entry permits into Israel. However, with respect to persons holding entry permits into Israel, the legislation provides that they are only entitled to **pass** through the seam zone "to depart the area to Israel". It emerges from the Preliminary Response that said legislation is still in force and was not amended (see paragraph 17). Namely, **the legislation still prohibits Palestinians holding entry permits into Israel from staying in the seam zone for any purpose other than to "depart the area to Israel", unless they hold entry permits into the seam zone.** The Respondents decided to allow it and the Respondents welcome said decision, but at this stage the military legislation has not been amended according to Respondent's said decision.

10. Respondent's procedures which were mentioned in the petition, the "2019 Seam Zone Entry Procedures and Guidelines" provide as follows:

A person who may enter the seam zone without an individual permit is:

- a. A citizen of the state of Israel.
- b. A resident of the state of Israel registered in the Population registry in Israel according to Population Registration Law, 5725-1965, as in force in Israel from time to time.
- c. Any person entitled to immigrate (make '*aliya*') to Israel according to the Law of Return, 5710-1950, as in force in Israel from time to time.
- d. A Palestinian holding an entry permit into Israel, **for passage only.**
- e. Any person who is not a resident of Judea and Samaria holding a valid stay permit in Israel (Section 3 of the "General Guidelines", emphasis appears in the original).

The relevant page from Respondent's 2019 procedures is attached and marked **PR/3**.

11. Namely, the previous procedures reflected the provisions of the existing legislation regarding the exclusion of different groups from the prohibition against entry into the seam zone.

12. Respondent's revised procedures, the "2021 Seam Zone Entry Procedures and Guidelines" provide, instead of the above section, as follows:

A person who may enter the seam zone without an individual permit is:

- a. A citizen of the state of Israel.
- b. A resident of the state of Israel registered in the Population registry in Israel according to Population Registration Law, 5725-1965, as in force in Israel from time to time.
- c. Any person entitled to immigrate (make '*aliya*') to Israel according to the Law of Return, 5710-1950, as in force in Israel from time to time.
- d. A resident holding an entry permit into Israel, **according to the terms of the permit in his/her possession.**
- e. Any person who is not a resident of Judea and Samaria holding a valid stay permit in Israel (Section 3 of the "General Guidelines", emphasis appears in the original).

The relevant page from Respondent's 2021 procedures is attached and marked **PR/4**.

13. Even if the Respondent intended, by changing Section 3.d. of the "General Guidelines" chapter of its procedures, to permit anyone holding an entry permit into Israel to stay in the seam zone without an individual entry permit into the seam zone, for any lawful purpose, the legislation still does not allow it. As known, legislation trumps procedural directives. However, the Respondent is not only the executive authority on behalf of the state of Israel in the West Bank, but is also the legislator, and it has the power to amend the legislation according to its decision, namely, to provide by military legislation, that a person holding an entry permit into Israel may enter the seam zone and stay therein without an individual permit. Since the Respondent decided to allow it, the legislation should also reflect said decision, to reconcile the actual practice with the legislation, according to the rule of law.

**The language of Section 3.d. of the "General Guidelines" chapter of Respondent's procedures**

14. In the Preliminary Response it was argued that "On January 31, 2021... it was decided..., to amend the entry procedures such that persons holding entry permits into Israel shall also be allowed to enter the seam zone without an additional permit, including the holders of an Advanced Age Permit whose entry shall be allowed as aforesaid" (paragraph 29).
15. The section referred to by the Respondent in its response is section 3 of the "General Guidelines" chapter, stating that "A person who may enter the seam zone without an individual permit is... a resident holding an entry permit into Israel - **according to the terms of the permit in his/her possession**" (emphasis appears in the original).
16. Even if the Respondent intended thereby to permit anyone holding an entry permit into Israel to enter and stay in the seam zone for any lawful purpose, it is not the interpretation which arises from the language of the section. The simple interpretation of the section is that anyone holding an entry permit into Israel may enter the seam zone without an individual permit only "according to the terms of the permit in his/her possession". Since we are concerned with persons holding an entry permit into Israel, the terms of the permit are, obviously, entry into Israel rather than entry into the seam zone, for the purpose specified in the permit, and for no other purpose. Accordingly, for instance, an entry permit into Israel for work purposes obviously does not enable entry into the seam zone for agricultural purposes, since these are not the "terms of the permit". In addition, the members of the class being the subject matter of the petition – Palestinian men over the age of 55 and Palestinian women over the age of 50 – do not physically receive entry permits into Israel. Their permits are virtual (a procedural directive), and therefore these persons do not hold permits in their "possession".
17. Therefore, although the Respondent decided to allow anyone holding a permit of entry into Israel to stay in the seam zone without an individual entry permit into the seam zone, and the Petitioners welcome this, it does not arise from the procedural directive referred to by the Respondent in its Preliminary Response. Therefore, there is a real concern that the procedural directive shall not be interpreted in this manner in the future, after years go by, state officials will be replaced and the chain of event behind the proceedings at hand will be forgotten. The above applies even more forcefully in view of the fact that Respondent's current interpretation of the procedural directive does not reconcile with and is contrary to legislative provisions.
18. The Petitioners are of the opinion that Respondent's decision to enable persons holding entry permits into Israel to enter and stay in the seam zone without individual entry permits into the seam zone is an appropriate and important decision. However, the Petitioners are of the opinion that according to the rule of law, this decision should be

entrenched in legislation, and that the procedure should be compatible with the legislation. In addition, both legislation and procedure should be drafted clearly, in a manner clarifying their intention in order for them to be correctly implemented by any person who shall be responsible to implement them, and to avoid any further proceedings in the future as a result of disputes in connection with the interpretation of these provisions.

19. Namely, since the Respondent decided that persons holding entry permits into Israel may enter and stay in the seam zone without individual entry permits into the seam zone, it must be established in the legislation and in the procedures that persons holding entry permits into Israel may enter and stay in the seam zone without individual entry permits into the seam zone, rather than that a resident holding an entry permit into Israel may enter the seam zone "according to the terms of the permit in his/her possession."

**Older Palestinians are unable to pass through the agricultural gates located near their homes and lands**

20. In the Preliminary Response it was clarified that the Respondents did not agree to enable the older Palestinians to enter the seam zone through the agricultural gates in the separation fence, but only through the checkpoints specified in the Announcement regarding the Designation of Crossing Points (Judea and Samaria), 5766-2006. A photocopy of the Announcement regarding designation of Crossing Points was attached to the Preliminary Response as **RS/2**, and 11 checkpoints are specified therein.
21. All of the Petitioners stated that they would not benefit from the possibility to enter the seam zone without an individual permit if passage would only be allowed through the checkpoints into Israel, since the closest checkpoint which is relevant for them is so far from their homes and lands as to render the passage therefrom to their lands impractical. If this is the result of the petition, all of the Petitioners (and obviously other persons in their condition), shall be forced to keep on submitting applications for individual entry permits into the seam zone, just to enable them to pass through the agricultural gates in the separation fence, rather than through the checkpoints into Israel, and Respondent's principled agreement to enable them to enter the seam zone without individual permits shall have no practical effect. The specific Petitioners were not "chosen" according to their place of residence, and the distance between their homes and lands and the checkpoints is random. Nevertheless, all five Petitioners describe a similar situation, whereby the closest checkpoint is so far, as to render passage therefrom to their lands impossible. It may be reasonably assumed that many other persons, members of the class being the subject matter of the petition, are in a similar situation.
22. **Petitioner 1**, born in 1958, stated that he was accessing the lands leased by him through gate 300 in the separation fence, with a horse and carriage. The distance between gate 300 and his home is about two kilometers. The closest checkpoint to his home is the Barta'a checkpoint (referred to by the military as the Reihan Crossing). The distance between said crossing and Petitioner 1's home is about ten kilometers, and about eight kilometers from the lands cultivated by him in the seam zone. In addition, passing through the Barta'a checkpoint by horse and carriage is not allowed. Namely, to access his lands through the closest "checkpoint", **Petitioner 1 shall be required to travel about 18 kilometers, at least 8 of them by foot**, all of the above before starting his agricultural work. By the end of his work day – hard physical work – he will have to take the same way back, to return to his home.
23. **Petitioner 2** stated that his lands are very close to gate 300 in the separation fence, and that gate 300 is walking distance from his home. For him too, the closest checkpoint to

his home is the Barta'a checkpoint. The distance between said checkpoint and his home is about ten kilometers, and the distance between said checkpoint and his lands is about ten kilometers (since his lands are close to his home). Accordingly, passage through the Barta'a checkpoint will require him to travel another twenty kilometers in each direction. As specified in the petition, Petitioner 2 has already complained in the past that the Barta'a checkpoint appeared in his entry permit into the seam zone instead of gate 300. Petitioner 2 explained then that he was 55 years old and was suffering from heart disease, and that the requirement to pass through the Barta'a checkpoint instead of through gate 300 extended his journey and made his trip more expensive (paragraph 112).

24. **Petitioner 3**, born in 1957, stated that entering the seam zone through a checkpoint to Israel shall not make it easier for him but shall rather encumber him. As specified in the petition, Petitioner 3 resides in Qaffin and is the owner of ten plots located on Qaffin lands. Some of his lands are closer to Qaffin gate in the separation fence and some of them are closer to Aqaba gate. The distance between Petitioner 3's home and Aqaba gate is about two kilometers, and the distance between Aqaba gate and the lands which are close to this gate is about three kilometers. The distance between Petitioner 3's home and Qaffin gate is one kilometer, and the distance between Qaffin gate and the lands which are close to this gate is about two kilometers. The checkpoint to Israel closest to Petitioner 3's home is the Barta'a checkpoint. The distance between the Barta'a checkpoint and Petitioner 3's home is about 10-15 kilometers, and the distance between the Barta'a checkpoint and Petitioner 3's lands is about the same. Namely, the distance from Petitioner 3's home to his lands through the closest checkpoint is **about 20-30 kilometers**.
25. **Petitioner 4** stated that she did not wish to access her land through the checkpoints to Israel. Petitioner 4, born in 1958, resides in Qaffin and her land is located on Qaffin lands. She explained that her land was in a walking distance of about 10-15 minutes from her home. The closest checkpoint to her home, the Barta'a checkpoint, is far from her home and she cannot walk from her home to the checkpoint, or from the checkpoint to her land, and certainly not from her home to her land through the checkpoint. The Barta'a checkpoint is a driving distance of about 10-15 minutes from Petitioner 4's home. An additional 15-20 minute drive is required from the checkpoint to Petitioner 4's land. Petitioner 4 is not permitted to enter the seam zone by car. Therefore, in order to reach her land from the Barta'a checkpoint she will be required to use paid transportation. Therefore, the possibility to enter the seam zone without a seam zone entry permit is of no use as far as Petitioner 4 is concerned if entry is permitted only through the checkpoints to Israel. The purpose of the petition, as far as Petitioner 4 is concerned, was to be provided with a solution enabling her to access her land without a permit in a **reasonable and practical manner**, rather than in such a cumbersome and expensive way which she cannot use.
26. **Petitioner 5** also stated that he did not wish to access his land through the checkpoint to Israel and that it would only encumber him. Petitioner 5 was born in 1946. He resides in 'Anin and his land is located on 'Anin lands. He accesses his land through 'Anin gate 214. This gate is walking distance from Petitioner 5's home and his land is very close to the gate. Conversely, the checkpoint to Israel closest to Petitioner 5's home is the Barta'a checkpoint. The distance from the Barta'a checkpoint to his home is about 15 kilometers, and the distance from the checkpoint to his land is also about 15 kilometers. Petitioner 5 is currently 74 years old and it is unreasonable for him to travel **about thirty kilometers in each direction** to access his land.
27. Namely, for all Petitioners, the possibility to enter the seam zone without an individual permit shall not make things easier for them and shall not be of any use for them, if entry into the seam zone is allowed only through the checkpoints to Israel. In this case, all of

the Petitioners shall be required to keep on submitting applications for individual entry permits into the seam zone from time to time, and deal with Respondent's failure to respond to applications and with his denial decisions, since **in the absence of the possibility to access their lands through the agricultural gates in the separation fence, the Petitioners will not be practically able to access their lands, even if it is permitted by law.**

28. The Respondent explained its refusal to enable older Palestinians to pass through the agricultural gates by virtue of their general permit to enter Israel arguing that "allowing passage through these gates to holders of the "Advanced Age Permit", namely, a group consisting of more than 200 thousand residents, may cause an unusual burden on said gates harming the ability to conduct a security check (which is not similar to the security check conducted in the regulated checkpoints) as well as the ability of persons having connection to land and holding an individual permit to quickly pass through" (paragraph 23).
29. It should be clarified that the Petitioners do not request to enable 200 thousand persons to pass through all agricultural gates at all times. The Petitioners request to enable older persons who are not subjected to any security preclusion to pass through the closest gate to their place of residence, according to their registered address.
30. Even if the group of persons being the subject matter of the petition at hand consists of more than 200 thousand Palestinians, it is clear that more than 200 thousand persons, members of said group, do not regularly enter Israel or the seam zone. The Preliminary Response did not specify the average number of Palestinians of the relevant ages that pass through the checkpoints to Israel per day, but only included an assessment of the total number of Palestinians of said age group. There is no reason to think that all Palestinian men over the age of 55, and all Palestinian women over the age of 50, shall wish to enter on a daily basis to Israel or the seam zone, and certainly there is no reason to think that all of them, or a large part of them, shall wish to precisely pass through the agricultural gates in the separation fence, if possible, rather than through the checkpoints to Israel. In fact, the figures are probably **much** smaller than those mentioned in the Preliminary Response, and we are probably concerned only with the individuals whose lands are located in the seam zone, and that the agricultural gates were intended to serve in the first place.
31. The agricultural gates in the separation fence do not lead to cities in Israel but rather to agricultural lands. In general, Palestinians are not allowed to pass through the agricultural gates by private cars and anyway, an orderly road infrastructure does not exist in these rural areas. In addition, most agricultural gates are opened only several times per day, for a short period of time, and the vast majority are not opened all week days but only twice or three times per week. Therefore, for the vast majority of the population, there is no reason to prefer passage through an agricultural gate rather than through a checkpoint to Israel. The opposite is true. The passage through these gates is inconvenient. The only persons who would prefer using them instead of using the checkpoints to Israel are the persons wishing to access their lands which are close to the gate. Therefore, there is no reason for the concern that tens and hundreds of thousands of persons shall use the agricultural gates in the separation fence, instead of the checkpoints to Israel, if made possible by the Respondent. Numerically, the effect of such a possibility will be negligible, while making things easier for the individuals who are currently subjected to the permit regime, saving them the bureaucracy involved in submitting individual applications and dealing with Respondent's failure to respond to applications and Respondent's denial decisions, as was described in detail in the petition. Namely, the number of persons who shall use the possibility to pass through the agricultural gates in

the separation fence without individual permits, if made possible, is not expected to be higher than the number of persons for whom the gates were originally intended.

32. In any case, as aforesaid, the Petitioners do not request to enable **any** Palestinian to pass through **any** agricultural gate or checkpoint. The Petitioners only request to enable the older persons who are not subjected to security preclusion to pass through the agricultural gate near their home, according to the registered address in their identification card. The soldiers staffing the agricultural gates can check the registered address of these persons before they pass through the gate, in the same manner they check the seam zone entry permits of the farmers before they pass through the gate.
33. The soldiers staffing the gates can also check whether security preclusions exist in the system with respect to these persons, in the same manner they check whether security preclusions exist in the system with respect to persons holding an individual entry permit into the seam zone, before they pass through the gate. When a security preclusion exists with respect to a person holding a valid entry permit into the seam zone, the soldier staffing the agricultural gate discovers it in a routine check conducted by him. He confiscates the permit of said person and prevents him/her from passing through the gate. The manner of handling and confiscating permits under these circumstances and the cancelation thereof is regulated by Respondent's seam zone entry procedures, in the chapter "Misuse of Seam Zone Permits – Handling Procedure". According to these procedures, valid seam zone entry permits are confiscated by the "security body authorized to exercise power in the area" including the soldiers staffing the gates – including, inter alia, the soldiers serving in the military police and civil administration – when a security preclusion exists with respect to a person for whom a permit was issued. Namely, security checks are also conducted in the agricultural gates.

The chapter "Misuse of Seam Zone Permits – Handling Procedure" of Respondent's procedures is attached and marked **PR/5**.

34. Nothing prevents the Respondent from performing the same examination currently performed in the agricultural gates also with respect to older Palestinians entering the seam zone by virtue of their general permit, rather than by virtue of individual permits. The persons in the age group being the subject matter of the petition at hand are defined, *ab initio*, by the security bodies, as being of **low risk**. It is not clear why the Respondent is of the opinion that the security check which is currently performed in the agricultural gates with respect to Palestinians of all ages is not strict enough when older persons are concerned.
35. Therefore, first, according to the information received from the Petitioners, the possibility to stay in the seam zone without an individual permit is of no use for them, in view of their inability to enter the seam zone through a gate which is located within a reasonable distance from their place of residence. In this state of affairs, the Petitioners, and probably all other persons in their condition, shall be forced to continue conducting bureaucratic proceedings *vis-a-vis* the Respondent for the purpose of obtaining individual entry permits into the seam zone, just to be able to enter the seam zone through a gate which is located within a reasonable distance from their home and land, rather than through a checkpoint into Israel. The petition concerns specifically the older population which, in particular, should be spared the need to walk dozens of kilometers before and after each work day.
36. Second, there is no real impediment actually preventing the Respondent from enabling the persons being the subject matter of the petition to pass through the agricultural gates in the separation fence, particularly if they are prevented from passing through any gate they wish, other than through the gate which is located in the area of their registered

address. According to this arrangement, no significant increase, if any, is expected in the number of persons passing through any agricultural gate and the soldiers staffing the gate can check whether a security preclusion exists in their matter, in the same manner they check whether a security preclusion exists in the matter of persons holding individual entry permits into the seam zone before they pass through the agricultural gates. This arrangement satisfies the state, security wise, with respect to persons holding individual entry permits into the seam zone, and it is not clear why stricter security checks are required precisely with respect to older persons, who may enter Israel as they please, without individual permits, due to the fact that they pose no risk.

37. It should be reminded that in HCJ 9961/03 HaMoked Center for the Defence of the Individual founded by Dr. Lotte Salzberger v. The Government of Israel, it was argued by the state that tens of millions of Shekels were invested in building convenient and advanced checkpoints and agricultural gates in the separation fence, to enable high level security check and short and convenient waiting time at the gates:

"... about 90% of the agricultural gates are located in an area the distance of which from the center of the village using an individual gate does not exceed 2.5 kilometers (and their distance from the houses located on the outskirts of the village is obviously shorter). Accordingly, the current operation of the gates provides, in respondents' opinion, an appropriate and reasonable solution to the "fabric of life" and to the regular agricultural activity in the area.

It should be emphasized that the central command and the civil administration, through the "Other Way" administration and the IDF construction center act to constantly improve the quality and service in the checkpoints, the agricultural gates and in the passage to the seam zone, as specified below:

- a. **Checkpoints**: more than NIS 30 million were invested in building high standard checkpoints, equipped by advanced security check measures enabling better security identification on the one hand, and a significant shortening of waiting times, on the other.
- b. **Agricultural gates**: more than NIS 20 million were invested in building agricultural gates. In most gates, waiting sheds were installed, in a large part of the gates the access roads to the gate were paved or improved, and in more than ten gates advanced security check structures were built enabling a better security check, and a shorter waiting period in a roofed and air-conditioned structure.
- c. **The quality of the service in the checkpoints**: about NIS 2.5 million were allocated to the "Quality Service" project in the checkpoints which includes, inter alia, the installation of different logistic measures such as benches, waiting sheds, air-conditioners, televisions, chemical toilettes, coolers, ashtrays, garbage bins, signage and more.

In addition to the above, it was decided to station 22 Arabic speaking officers and non-commissioned officers serving at the civil administration, in the major pedestrian checkpoints and goods

checkpoints, to ensure that a reasonable fabric of life is maintained in these checkpoints, and to help provide solutions for civil or administrative problems arising in the checkpoints. The above involves an investment of about NIS 4 million per annum...

It should be emphasized that the opening schedule of the different gates and checkpoints was not determined by the IDF arbitrarily, but rather after balancing between the needs of the local population in each and every area, and subject to coordination, to the maximum extent possible, with the residents of the specific villages... (Paragraphs 42-50 of the Response on behalf of the State in HCJ 9961/03 and in HCJ 639/04).

Copies of the relevant pages from the Response are attached and marked **PR/6**.

38. Hence, *prima facie*, there is no impediment preventing the Respondent from enabling older Palestinians in whose matter no security preclusion exists to pass through the agricultural gates located near the village in which they reside, according to their registered address as it appears in their identification cards. The purpose of the agricultural gates is to reduce the difficulties involved in accessing the agricultural lands in the seam zone. The state argued that it invested great resources in improving the security check in these gates and in facilitating the passage of Palestinians through them to the seam zone, and that it was constantly acting to improve the passage arrangements of Palestinians through the separation fence. Therefore, Petitioners' request, that an older Palestinian person, who is entitled to enter Israel without an individual permit, and the seam zone, according to the Respondent, shall be able to pass through the agricultural gate closest to his/her village, and shall not be required to walk dozens of kilometers for this purpose, reconciles with the position of the state in HCJ 9961/03, and *prima facie* the state has no reason to object thereto.

**Dismissing the petition *in limine* on the grounds that the requested remedy was given after the petition had been filed**

39. According to the Respondent, the petition should be dismissed because the remedy which had been requested in the petition was given. The Respondent argues that the petition had been filed on January 21, 2021 and that Respondent's procedures were revised on January 31, 2021. Therefore, the Respondent is of the opinion that the honorable court should dismiss the petition (in the Preliminary Response it was emphasized no less than four times, that it was not the petition which caused the Respondent to give the requested remedy, but rather the requests which preceded the filing of the petition, but this argument is irrelevant at this stage and is probably directed at the imposition of costs on the Respondent).
40. As aforesaid, Respondent's mere decision to change its policy or a procedural provision interpreted by the Respondent as permitting what was requested in the petition do not suffice. Respondent's decision should be manifested in legislation, such that a correlation is created between the authority's policy and the applicable law. In the current state of affairs, Respondent's position does not reconcile with the existing legal infrastructure and it cannot be said that the remedy which is requested in the petition was received. In addition, in view of the inability to pass through the agricultural gates in the separation fence, a person wishing to enter the seam zone to access the agricultural lands located therein cannot use Respondent's change of policy, even if properly entrenched in

legislation, since accessing the lands from the villages through the checkpoints to Israel, requires a long and difficult journey rendering it impossible. The above applies in particular to the population being the subject matter of the petition at hand – the older population.

41. However, even according to Respondent's assumption that the remedy which had been requested in the petition was received upon the amendment of the procedures on January 31, 2021 (it should be noted in other proceedings, such as AP 4754-02-21 and AP 44587-02-21, the Respondent argued that said procedures had been published on February 1, 2021), dismissing the petition *in limine* is not the appropriate result for the situation at hand. When a remedy is given after a petition is filed, the petition is usually deleted and not dismissed.
42. The Preliminary Response focuses on denying the argument (which has not yet been raised) that the requested remedy was given as a result of the filing of the petition, and it seems that it is mainly aimed at rebutting a future request for costs. The state did not inform Petitioners' counsel of the decision to give the requested remedy, as was customarily done in the past, and did not request to consensually terminate the proceedings. It seems that Respondent's application to dismiss the petition rather than to delete it is primarily made for image purposes, which are irrelevant, and is not aimed at reflecting the legal situation as it is. Dismissing the petition due to the fact that after the filing of the petition the Respondent stated its consent to give the requested remedy is an unwarranted and unacceptable result, which shall convey to the public an erroneous message.
43. As aforesaid, in any event the time has not yet ripened to conclude the proceedings, since several material issues requiring attention and arrangement are still pending.

June 3, 2021

---

Tehila Meir, Advocate  
Petitioners' counsel