

**At the Supreme Court**  
**Sitting as the High Court of Justice**

**HCJ /21**

In the matter of:

1. **XXXX Badir ID No. XXXXXXXXXX**  
Palestinian resident of the occupied territories
2. **XXXX 'Abid, ID No. XXXXXXXXXX**  
Palestinian resident of the occupied territories
3. **XXXX Aduan, ID No. XXXXXXXXXX**  
Palestinian resident of the occupied territories
4. **XXXX Hatab, ID No. XXXXXXXXXX**  
Palestinian resident of the occupied territories
5. **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: 073-3925590; 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 he would not take the necessary steps to open the Far'un seam zone agricultural gate;
- b. why he would not take the necessary steps to open the Far'un seam zone agricultural gate on time without delays;
- c. why he would not inform the public holding seam zone entry permits through the Far'un gate of the opening hours of the gate and update the relevant public of any changes in the opening hours thereof, when such changes take place.

### No alternative remedy

1. This petition concerns defects in the opening of one of the seam zone gates, in the West Bank. The gate serves the farmers holding seam zone entry permits to access their seam zone lands. The opening hours of the gate were determined by the military. According to the military's decision, the gate does not open all days of the week but only on three days of the week. On these days the gate is not opened all day long. It was decided that it would open for short periods of time spanning between ten to twenty minutes. However, in fact, since the beginning of 2021, the soldiers do not open the gate according to the arrangement which was established by the Respondent. When the gate opens, it is opened after great delay, and in many cases it does not open at all.
2. According to the Court for Administrative Affairs Law, 5760-2000, the district court is vested with the authority to adjudicate petitions against Respondent's decisions on seam zone entry matters, only when a specific decision concerning a seam zone entry permit is concerned (item 3.E. of the fourth amendment). In the case at hand neither specific decisions nor permits are concerned, and therefore the petitioners cannot apply to the court for administrative affairs for remedy, but only to this honorable court.

### Factual Background

#### The Permit Regime

3. 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, H CJ 2056/04 **Beit Sourik Village Council v. Government of Israel**, IsrSC, 58(5) 807 (2004); H CJ 7957/04 **Mara'abeh v. Prime Minister of Israel**, IsrSC 60(2) 477 (2005); H CJ 5488/04 **A-Ram Local Council v. Government of Israel**, (reported in Nevo, December 13, 2006); and H CJ 8414/05 **Yasin v. Government of Israel**, IsrSC 62(2) 822 (2007)).
4. 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.
5. 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 H CJ 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 as distinct from the harm caused by the fence itself.

6. 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.
7. It was further clarified in the judgment that the findings on the proportionality of the harm inflicted by the permit regime on Palestinians do not preclude the possibility that "in specific cases, severe harm 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 harm," 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).
8. 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 emerged in which the Respondent denies Palestinians access to their lands and workplaces in the seam zone.
9. According to data received from the Respondent, between the years 2014 to 2018 the percentage of denials of seam zone entry applications submitted by land owners has increased from 24% to 72%, and in the first half of 2020 the percentage of denials exceeded 84%. The current implementation of the permit regime is totally different from that which was presented to the court when the legality of the permit regime was discussed. The persons harmed by Respondent's denial policy are forced to apply to the court and submit individual petitions in order 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/1**.

A copy of Respondent's letter dated June 28, 2020 is attached and marked **P/2**.

10. However, occasionally, the approval of land owners' seam zone entry applications does not solve their accessibility problems to their lands, and the few people whose applications to enter the seam zone were approved by the Respondent are very limited in their ability to do so due to other accessibility problems arising from the military's conduct.

11. In the case at hand, we are concerned with a separation fence gate located in the West Bank. The military decided to open the gate only three days a week and only for a few minutes each time. The farmers are required to plan their daily schedule according to the gate's short opening times, and must arrive to the gate precisely on its opening and closing times. However, the military does not arrive to the gate on time and the farmers wait, as a matter of routine, for a long time until it is opened, in hot and cold weather and in the rain. Frequently, the military does not open the gate all day long. There is no justification for exhausting the landowners wishing to realize their basic right to access their plots of land and for the continuation of said treatment after the termination of the long and frustrating permit application process.

### **The Parties**

12. **Petitioners 1-4** own lands in the seam zone. They were given entry permits into the seam zone allowing them to access the lands through the Far'un gate which is installed in the separation fence, but frequently the gate does not open and when it does open it happens in great delay, not from time to time but as a matter of routine.
13. **Petitioner 5** is a non-profit association working to promote the human rights of Palestinians in the Occupied Territories. Among other things, it assists Palestinians to realize their right to enter the seam zone.
14. **The Respondent** is the military commander in the West Bank on behalf of the state of Israel.

### **Main Facts and Exhaustion of Remedies**

15. Petitioner 1, born in 1962, is married and has four children. His wife and children are all Israeli citizens. He resides in Far'un in the Tulkarm district and makes his living from agriculture. In addition, he volunteers in the Far'un municipality, where he handles all matters relating to the entry into the seam zone. Petitioner 1 owns a plot of land located in the seam zone, in the lands of Far'un village. He holds a "farmer in the seam zone" entry permit, valid from October 27, 2019 through October 25, 2021. The permit enables him to cross the separation fence through the Far'un gate only.

A photocopy of Petitioner 1's identification card is attached and marked **P/3**;

A photocopy of Petitioner 1's permit is attached and marked **P/4**.

16. Petitioner 2, born in 1975, is married and has eight children. He resides in Far'un in the Tulkarm district and makes his living from odd jobs. Petitioner 2 owns a plot of land located in Far'un lands, in the seam zone. He holds a "farmer in the seam zone" entry permit, valid from September 22, 2020 through September 21, 2023. The permit enables him to enter the seam zone through the Far'un gate only.

A photocopy of Petitioner 2's identification card is attached and marked **P/5**;

A photocopy of Petitioner 2's permit is attached and marked **P/6**.

17. Petitioner 3, born in 1965, is married and has five children. He resides in Far'un in the Tulkarm district. Petitioner 3 owns a plot of land located on Far'un lands, the vast majority of which is located in the seam zone. The separation fence was built on Petitioner 3's land, and about six dunams of the plot were taken from him for that purpose.

Petitioner 3 was given a "farmer in the seam zone" permit, valid from January 28, 2020 through January 18, 2023. The permit enables him to pass only through the Far'un gate. In the past Petitioner 3's permit was confiscated since he passed through the agricultural gate with olive oil, which is apparently prohibited by the military.

A photocopy of Petitioner 3's identification card is attached and marked **P/7**;

A photocopy of Petitioner 3's permit is attached and marked **P/8**.

18. Petitioner 4, born in 1965, is married and has four children. He resides in Far'un in the Tulkarm district and makes his living from agriculture. Petitioner 4 owns two plots of land located on Far'un lands, in the seam zone. He holds a "farmer in the seam zone" permit, valid from January 21, 2020 through January 19, 2023. The permit enables him to enter the seam zone through the Far'un gate only.

A photocopy of Petitioner 4's identification card is attached and marked **P/9**;

A photocopy of Petitioner 4's permit is attached and marked **P/10**.

19. The Far'un gate opens only on Sundays, Tuesdays and Thursdays, and the farmers cannot access their lands through any other gate. Consequently, in fact, the seam zone is closed to them most days of the week. The Petitioners intend to challenge Respondent's decision not to open the Far'un gate throughout the entire week separately, not within the framework of the petition at hand. This petition shall focus on the delays in the opening of the Far'un gate and on the failure to open the gate on the opening times which were determined by the military.

20. Petitioner 1 contacted HaMoked on January 12, 2021 and informed that the soldiers had failed to open the Far'un gate. He explained that the Far'un gate should have opened at 06:00, 11:00 and 16:00. Petitioner 1 and several other farmers had arrived to the Far'un gate before 06:00, but the soldiers did not open the gate. Petitioner 1 called the Israeli DCO and was told that "a closure was imposed." Petitioner 1 said that two days earlier the soldiers had opened the gate and requested more information about the closure. HaMoked's representative called the civil administration public liaison officer in that regard at 09:10. At 09:27 she called the Tulkarm DCO and was told that the matter was under examination. In addition she called a DCO officer called Osama, at 09:30. She was told by the DCO that "perhaps the soldiers did not know that the gate should be opened", and that they would inform the officer of same. The DCO officer told HaMoked representative that the matter was "handled by the officers". At 09:55 Petitioner 1 informed HaMoked that the farmers had given up waiting for the soldiers and returned to their homes – **after having waited for almost four hours**. Petitioner 1 understood from other farmers that on that day the gate did not open at 11:00 as well.

21. Two days later, on January 14, 2021, the soldiers did not open the gate again in the morning. Petitioner 1 waited near the gate from 06:00 until 08:00. A Machsom Watch representative called the DCO, but the DCO's phones were busy until 07:30 and the soldiers did not answer. At 09:00 a soldier answered her and claimed that the soldiers had arrived to open the gate and that "they may have been delayed", and that "the Palestinians as usual are winning" (in so many words!). The Machsom Watch representative asked the soldier whether they could verify that the soldiers would arrive to open the gate at 11:00 and the soldier said that they could not (!).

22. At 11:00 Petitioner 1 called HaMoked and informed that the soldiers had not opened the gate. HaMoked representative called the Tulkarm DCO operation room and was

answered by a soldier called Saar. The soldier had checked the matter and then notified that opening hours of the gate had changed and that currently the gate did not open at 11:00. Soldier Saar said that the new opening hours of the gate were 06:45-06:55; 13:20-13:40; and 16:00-16:20.

23. On January 19, 2021 the farmers informed that the gate had opened in the morning at 07:15, half an hour after its scheduled opening hour. Thereafter the gate did not open at all, neither at 13:20 nor at 16:00. The farmers who had entered the seam zone in the morning had to return to their homes through the holes in the separation fence, taking the risk that their permits would be confiscated (while the military treats the farmers having ties to lands in the seam zone more strictly and prevents them from accessing their lands by imposing stricter permit criteria and by failing to open the gates installed in the separation fence, it completely avoids maintaining the fence itself and keeping it in a proper condition. The fence has many large holes which can be freely passed, with or without a permit. Near the Far'un gate an entire part of the fence, several meters wide, is missing. It is not a hole in the fence, but rather an entire section which has no fence at all. Cement blocks were put there, but they can be easily passed by foot. The fact that the military does not think that fixing the holes in the separation fence and supervising the passage of persons through them is required, attests to the fact that the military does not actually think that the entry of Palestinians into the seam zone poses a real security risk. Nevertheless it severely harms the ability of the land owners in the seam zone to access their lands, without any justification).
24. On January 24, 2021 the soldiers opened the gate again only in the morning, and did not open it at all at midday and in the afternoon.
25. On February 7, 2021, HaMoked sent a complaint regarding the habitual delays in the opening of the Far'un agricultural gate to the OC Central Commander which stated as follows:

For about a month complaints are received by our organization concerning the opening of the Far'un gate 708, an agricultural gate which is installed in the separation fence, in Tulkarm district. According to the complaints, recently the soldiers do not open the gate according to schedule. From time to time there are delays in the opening of the gate, and often the soldiers do not open the gate at all...

As aforesaid, the opening and closing hours of the gate are limited, and the farmers plan their schedule accordingly. The farmers' ability to access their plots and return to their homes depends on the opening of the gate by the soldiers.

We ask that you make sure that the soldiers open the gate three times a day, on time and without any delays, to prevent unnecessary harm to the farmers.

In addition, we demand that if changes occur in the opening hours of the gate, the new hours shall be made known to the public in advance, to prevent the farmers from waiting in vain for the opening of the gate and from the need to learn of the change in retrospect.

The following is a partial list of cases in which the gate did not open or in which great delays occurred in the opening thereof:

January 12, 2021 the gate did not open at 06:00.

January 14, 2021 the gate did not open at 06:00 and at 11:00, the midday opening hour...

January 17, 2021 the gate did not open at midday (13:20) and in the afternoon (16:00).

January 19, 2021 in the morning the gate opened only at 07:15 instead of at 06:45 – the opening hour of which we were advised.

January 24, 2021 the gate did not open at midday and in the afternoon.

You are therefore requested to make sure that the soldiers open the gate at all opening hours of the gate, on time and without delays, to prevent unnecessary harm to the farmers.

A copy of HaMoked's letter dated February 7, 2021 is attached and marked **P/11**.

26. Petitioner 2 informed that on February 23, 2021 the gate did not open at all.
27. Two days later, on February 25, 2021, Petitioner 2 called HaMoked at 08:00 and informed that he and additional farmers had arrived to the gate early in the morning, and that since then the farmers did not open the gate. A military jeep passed by and the farmers approached the soldiers in the jeep regarding this, but the soldiers told them that they were not responsible for the opening of the gate. At 07:00 the farmers called the DCO and complained that the gate did not open and that they were still waiting at the gate. The soldier said that he would check the matter. The farmers had called the DCO again at 07:30 and were told that "nothing can be done". Some of the farmers gave up and returned to their homes. At 08:00 about 15 farmers were still waiting at the gate. HaMoked representative called the DCO officer Osama at 09:08. The officer said that there was only a hole in the fence and not a gate. Thereafter he said that there was indeed a gate but that it did not open. HaMoked representative said that the gate **should have** been opened, and the officer said that he would check the matter. At 09:40 the remaining farmers gave up and returned to their homes – **after having waited about three hours in vain**.
28. Petitioner 2 added that there were always problems and delays in the opening of the gate and that only in very rare cases the soldiers arrived on time to open it. In the morning they sometime open the gate at 07:30 and on other times they open it at 08:00 instead of at 06:45, and at midday they sometime open the gate at 14:00 and on other times they open it at 15:00 instead of at 13:20. Sometimes the soldiers do not open the gate at all in the morning – not even in delay. Some farmers call the DCO and complain of the failure to open the gate on time, but nevertheless the soldiers arrive late or fail to arrive at all. Petitioner 2 noted that near the gate, all along the fence, there are holes and that many people pass through said holes, but that he and many other farmers holding seam zone entry permits, make sure to cross the fence only lawfully – through the gate which appears in their permits – but the military does not enable it, thus pushing people to pass through the holes.
29. On that day, February 25, 2021, the gate did not open on time at midday as well. The gate should have opened at 13:20, but Petitioner 2 informed that at 13:30 the gate had not yet been opened. HaMoked representative called the Tulkarm DCO at 13:35 and spoke with a soldier called Saar. The soldier said that the gate opened at 11:20, and did not open at midday. HaMoked representative said that a month earlier, on January 14, 2021 the soldier advised her of different opening hours. The soldier called the military

police to find out what the updated opening hours of the Far'un gate were, and then informed that the gate should open on Sundays, Tuesdays and Thursdays at 06:45-06:55; 13:20-13:40; and 16:00-16:20. She finally said that the military police soldiers would return to open the gate. At 14:14 HaMoked was informed that the gate had been opened – about an hour after its due opening hour.

30. Later that day, on February 25, 2021, the soldiers did not arrive to open the gate at 16:00. HaMoked representative called the Tulkarm DCO operation room at 16:11 and the soldier Saar told her that she would inform of the failure to open the gate but that the matter was not under her responsibility. HaMoked representative called the soldier again at 16:35, since the farmers informed that they were still waiting for the gate to open. The soldier said that she we would check the matter. HaMoked representative called her again at 16:44, and the soldier said that she had not yet received an answer from the brigade and that she would check the matter again. HaMoked representative called her for the fourth time at 16:57, and again the soldier said that she had not yet received an answer. She called again at 17:00 and again at 17:09, and was then told by the soldier that the "force" was on its way to open the gate – more than an hour after the gate should have been opened.
31. The farmers informed that on February 28, 2021 several farmers arrived to the gate in the morning. The soldiers were there but did not open the gate. The farmers passed through the hole near the gate in the presence of the soldiers. The farmers informed that the soldiers were too lazy to open the gate and enabled people to pass through the hole instead of opening the gate, without checking their permits and identification cards.
32. After four weeks have passed from the date of HaMoked's letter to the central command and in the absence of any response, HaMoked sent a reminder in that matter on March 4, 2021.

A copy of the reminder dated March 4, 2021 is attached and marked **P/12**.

33. On March 8, 2021 a letter was received from the central command public liaison office, which stated as follows:

... it should be firstly noted that the letter dated February 7, 2021 referred to in your letter, had not been received in our office and we shall therefore appreciate it if you could send it again.  
Your letter was transferred to the relevant bodies. We shall respond to it as soon as the handling thereof is completed.  
In view of the fact that the e-mail address provided by you in your letter is erroneous, the following are, for your convenience, the contact details of the central command public liaison office...

A copy of the letter dated March 8, 2021 is attached and marked **P/13**.

34. However, the letter dated February 7, 2021, was also sent by fax to the number appearing at the bottom of the letter dated March 8, 2021 as well as to Respondent's legal advisor.

Copies of transmission confirmations of the letter dated February 7, 2021 are attached and marked **P/14**.

35. In any event, on March 16, 2021 notice was received from the civil administration public liaison officer which stated as follows:

After the matter was examined *vis-a-vis* DCO officials, it is currently being examined *vis-à-vis* the force which is responsible for the opening of the above gate.

A copy of the notice of the civil administration public liaison officer dated March 16, 2021 is attached and marked **P/15**.

36. On March 30, 2021 the soldiers failed again to open the gate on time. In the morning they opened the gate around 08:00, while the designated opening hour of the gate is 06:45. The soldiers told the farmers who were waiting at the gate that they had lost the keys to the gate. At midday the soldiers were late again. Petitioner 1 called HaMoked at 13:56 and informed that the soldiers had not yet opened the gate. As aforesaid, the designated opening hour of the gate at midday is 13:20. Petitioner 1 called the DCO a few times and was told that the matter was being taken care of. HaMoked representative called the civil administration public liaison officer with respect to the delay at 14:05. Meanwhile Petitioner 1 went to the military base located near the gate and was told by one of the soldiers there to return to the gate and that the soldiers would shortly arrive to open the gate. Subsequently a military jeep drove by the separation fence, within the seam zone. Petitioner 1 stopped the jeep and complained that the gate did not open on time. The soldiers asked him to wait and said that they would report the matter. The gate opened only at 14:38 – after a delay of about one hour and twenty minutes.
37. One of the farmers informed that on April 4, 2021 he and his brother entered the seam zone in the morning. His brother entered with his tractor. They arrived to the gate at 16:00 to return to their homes, but the soldiers did not open the gate. The brothers requested the soldiers in the military base located near the gate to open it, but the soldiers ignored their request. Eventually, the farmers had to leave the tractor in the seam zone unattended, and to return to their homes through a hole in the fence by foot. Two days later, on April 6, 2021, the owner of the tractor had returned to the seam zone to pick up his tractor, but discovered that meanwhile the tractor's battery had been stolen. He had to bring a new battery and could only then leave the seam zone with his tractor. Since then he no longer takes his tractor to the plot due to the concern that the soldiers would not show up to open the gate by the end of the day and he would not be able to leave the seam zone with his tractor.
38. The farmer added that great distress is caused to all farmers by the crossing arrangements at the Far'un gate. He noted that there are numerous delays in the opening of the gate and that sometimes the soldiers do not open the gate at all. The first opening hour of the gate is 06:45 and its last opening hour is 16:00. Accordingly, the delays in the opening of the gate at these times occur outside of HaMoked's working hours and the farmers have no one to help them to handle such delays.

39. Petitioner 2 informed that on April 8, 2021 the soldiers opened the gate at 17:30 instead of at 16:00 – after a delay of 90 minutes.
40. Petitioner 1 informed that on April 11, 2021 a farmer who was waiting at the gate called him at 07:30 and informed him that the soldiers had not yet opened the gate – 45 minutes after its designated opening hour. Eventually the farmers gave up and left the place.
41. Both Petitioner 1 and Petitioner 2 informed on April 11, 2021 that the delays in the opening of the gate continued. Petitioner 2 explained that the soldiers usually opened the gate in a delay spanning between half an hour to an hour, and only if there were farmers wishing to pass through the gate with a tractor or with a horse and carriage. When the farmers wish to pass through the gate by foot, the soldiers staffing the gate allow them to pass through a hole near the gate, instead of opening the gate. Petitioner 2 himself has a donkey and a wagon, but recently he leaves the donkey in the plot overnight and does not take it back home due to the delay and harassment caused by the delays in the opening of the gate by the soldiers.
42. HaMoked sent a reminder to the OC Central Commander on April 12, 2021 regarding its letter dated February 7, 2021 about the delays in the opening of the gate.

A copy of HaMoked's letter dated April 12, 2021 is attached and marked **P/16**.

43. On April 26, 2021 a letter was received from the civil administration public liaison officer which stated as follows:

This is to confirm that your above referenced letter was received by us. Difficulties arose in the examination of your complaint, since you specified dates and hours of the alleged delays in the opening of the gate.

However, and for the sake of good order, it was clarified to the relevant bodies that the gates should be opened on the designated times, and delays should be avoided to the maximum extent possible.

For your information.

A copy of the notice of the civil administration public liaison officer dated April 26, 2021 is attached and marked **P/17**.

44. On April 29, 2021 Petitioner 1 had arrived to the gate in the morning and waited there until 08:10 but the gate did not open. Petitioner 1 approached two soldiers who were near the gate and asked them to open the gate. They told him that they did not have the keys to the gate. Petitioner 1 then asked them if they would allow him to pass through the hole nearby, but they told him that it was prohibited. Petitioner 1 checked the matter with other farmers who told him that the lock of the gate had been replaced, and that the soldiers told the farmers that the lock did not belong to the military and that **the military did not have a key to the lock of the gate**. The military did not find a solution to this odd problem but simply did not open the gate. The farmers added that until a week earlier, most days of the soldiers have not opened the gate at all in the afternoon.

45. HaMoked wrote again to the OC Central Commander on May 3, 2021 as follows:

On April 26, 2021 we have received the response of the civil administration in the letter of the public liaison officer, First Lieutenant Yoav Bar-Ness. In said letter the public liaison officer points at the difficulty in the examination of the complaint "since you specified dates and hours of the alleged delays in the opening of the gate". This argument is not clear. These are testimonies of farmers who waited for the gate to open. The dates and times which were specified in detail should have made it easier to examine the facts *vis-à-vis* those responsible for the opening of the gate.

In addition, the public liaison officer adds that "for the sake of good order, it was clarified to the relevant bodies that the gates should be opened on the designated times, and delays should be avoided to the maximum extent possible."

However, after we have received the public liaison officer's above letter, it emerged from an examination conducted by us with the farmers who had contacted us with respect to this matter that, in fact, during last week (April 25, 2021 – April 29, 2021) the gate did not open at all. In response to the complaints of the farmers who had been waiting for the gate to open, the soldiers explained that they did not have in their possession the key to the gate (!) and were therefore unable to open the above gate.

We regard very severely the fact that the military prevents persons having proprietary ties to lands in the seam zone from accessing their lands due to this type of administrative flaw, which the military is also in no hurry to fix.

In view of all of the above, we demand that Far'un gate 708 opens on the designated days and times: on Sundays, Tuesdays and Thursdays, three times a day in the morning, at midday and in the afternoon.

A copy of HaMoked's letter dated May 3, 2021 is attached and marked **P/18**.

46. On May 6, 2021 HaMoked was informed by the farmers at 09:30 that the gate had not yet been opened. HaMoked representative called Tulkarm DCO's operation room and spoke with a soldier called Yuval. Soldier Yuval told her that the opening hours of the Far'un gate were 06:00 – 06:25; 11:20 – 11:30; and 16:20 – 16:40. Namely, the military has changed the opening hours of the gate without informing the farmers of same. HaMoked representative asked the soldier what were the opening days of the gate and he told her that he did not know because it was not written down.
47. HaMoked informed the farmers of the changes in the opening hours of the gate and they said that they were not informed of these changes by the military. Petitioner 1 informed on May 10, 2021 that the soldiers changed the lock on the gate to a lock of their own and that there were still many delays in the opening of the gate, and that in many cases the soldiers did not open the gate at all.

48. The farmers informed that in the week commencing on May 23, 2021 and ending on May 29, 2021 the soldiers did not open the gate at all. The soldiers stood near the gate in the morning hours and allowed people to pass through the hole near the gate. On May 30, 2021 the farmers informed HaMoked at midday that the soldiers opened the gate in the morning but only at 07:30 – after a delay of 90 minutes. The farmers said that they did not know whether the gate would open by the end of the day to enable them to return to their homes.
49. On the following day, May 31, 2021, a letter was received from the public liaison office at the bureau of the OC Central Commander which stated as follows:

In your letter you have described irregularities and delays in the opening of the above gate and requested that the matter be handled and that the gate would be opened on the designated times.

An examination conducted by us revealed that some single and isolated delays did occur which resulted from recent changes in the force operating the gate.

In view of the above the procedures and guidelines concerning the opening times of the gates were clarified.

Not parenthetically, we were also informed that currently the gate opens on the designated times and days.

A copy of the letter the public liaison office at the bureau of the commander of the central command dated May 31, 2021 is attached and marked **P/19**.

50. On the following day, June 1, 2021 HaMoked was informed by the farmers that the road leading from the Far'un gate to the agricultural lands in the seam zone in that area was blocked by two soil embankments. Consequently, the farmers were prevented from accessing their lands by agricultural vehicles, such as tractors and wagons. Since the road leading to the agricultural lands had been blocked, a parallel road was breached passing through an olive grove near the road, but said road was also blocked by a soil embankment. Therefore, the framers from the area are unable to access their seam zone lands by vehicle, and their agricultural work has been consequently severely harmed.

Photos of the soil embankments which were installed on the road leading from the Far'un gate to the agricultural lands are attached and marked **P/20**.

51. HaMoked wrote to the OC Central Commander on that day, June 1, 2021, about the blockage of the road and about the response dated May 31, 2021, as follows:

... This morning HaMoked was informed by the farmers that the road leading from Far'un gate 708 to the agricultural lands in the seam zone in that area was blocked by two soil embankments...

With respect to the deficiencies in the opening of the gate itself, yesterday (May 31, 2021) we received your letter which states as follows:

In your letter you have described irregularities and delays in the opening of the above gate and requested that the matter would be handled and that the gate would be opened on the designated times.

An examination conducted by us revealed that some single and isolated delays did occur which resulted from recent changes in the force operating the gate.

In view of the above the procedures and guidelines concerning the opening times of the gates were clarified.

Not parenthetically, we were also informed that currently the gate opens on the designated times and days.

However, according to the complaints received by our organization regularly over the last few months, these are not single and isolated incidents, and the problem was not solved but remained very serious and was exacerbated even further.

For illustration purposes, on March 30, 2021 one of the farmers reported that the soldiers opened the gate in the morning around 08:00, instead of at 06:45... at midday the soldiers opened the gate at 14:38 instead of at 13:20.

On April 4, 2021 the soldiers did not show up to open the gate at 16:00...

On April 8, 2021 the soldiers opened the gate only at 17:30 instead of at 16:00.

On April 11, 2021 the gate was not opened at 06:45. HaMoked was informed that the gate was not opened until 07:30 and the farmers who were waiting for it to open gave up and returned to their homes.

The farmers noted that the soldiers arrived late to open the gate habitually and regularly...

The farmers informed that in the month of April, on most days the soldiers did not open the gate at all in the afternoon.

On April 29, 2021 one of the farmers arrived to the gate in the morning and waited for it to open until 08:10 – in a delay of almost 90 minutes...

The farmers informed that in May the soldiers were almost always late or did not show up at all to open the gate. Often the gate was not opened at all at midday or in the afternoon.

HaMoked was informed last week that the soldiers did not open the gate at all...

On May 31, 2021 the soldiers opened the gate but only at 07:30...

**Hence, we are not concerned with an isolated incident or with sporadic delays, as stated in your letter. On the contrary, it is a regular phenomenon, which characterizes the routine conduct of the soldiers in that location for many months. In addition, the problem of the delays and failure to open the gate was not solved, as stated in your letter, but continues to exist at this time with great severity.**

The blockage of the road leading from Far'un gate 708 to the lands by two soil embankments and the deficiencies in the opening of the gate itself, severely harm the farmers' work, their accessibility to their lands and their daily routine. The numerous difficulties imposed by you on the farmers wishing to access their seam zone lands are inconsistent with your undertakings to the Supreme Court, particularly concerning the accessibility of the farmers to lands located in the seam zone and the undertaking to facilitate their passage through the separation fence (see, for instance, H CJ 9961/03 **HaMoked Center for the Defence of the Individual founded by Dr. Lotte Salzberger v. Government of Israel**, paragraph 28 (reported in Nevo, April 5, 2011)).

Therefore, we request that you **urgently** handle the two problems which were raised in this letter:

- a. The blockage of the road leading from Far'un gate 708 to agricultural lands in the seam zone by two soil embankments;
- b. The failure to open Far'un gate 708 at the designated opening hours.

It is hereby clarified that we intend to apply to the court with respect to this matter shortly if the two soil embankments are not removed and if the delays in the opening of the gate do not cease (the two fist emphases were added).

A copy of HaMoked's letter dated June 1, 2021 is attached and marked **P/21**.

52. Petitioner 2 informed that on June 3, 2021 the soldiers did not open the gate at all.
53. On June 6, 2021 the farmers tried to pass through the gate to access their lands in the presence of soldiers. A few people (not among the farmers holding seam zone entry permits) tried to pass through a hole near the gate to enter Israel. The soldiers did not let anyone approach the place and started pushing people away from the gate by gas and flash grenades and chased them to the village. The farmers yelled to the soldiers that they had seam zone entry permits, but to no avail. One of the officers arrived to the village around 07:00 and Petitioner 2 told him that the soldiers did not let them enter the seam zone. The officer opened the gate and let the farmers pass through, but only after 07:00, after a delay of more than an hour.
54. On June 8, 2021 a pre-HCJ notice was sent by HaMoked to the Head of the HCJ Department at the State Attorney's Office concerning the blockage of the road leading from Far'un gate to the agricultural lands in the seam zone, and concerning the regular delays in the opening of the Far'un gate. The notice specified in detail the deficiencies in

the opening of the gate which were brought to HaMoked's attention from March 30, 2021 until June 6, 2021, and it was explained again that it was not an isolated problem as was argued in the letter received from the office of the OC Central Commander dated May 31, 2021, but rather a regular phenomenon and that the problem was not solved as argued there, but remained very severe and was exacerbated even further.

A copy of the pre-HCJ notice dated June 8, 2021 is attached and marked **P/22**.

55. On June 13, 2021 Petitioner 2 informed that the soil embankments were removed by the military on June 10, 2021, and that a new road block was installed elsewhere. In addition he informed that two military jeeps were near the Far'un gate and that the soldiers did not let people pass through the gate.
56. Later that day, June 13, 2021, the answer of the intern of Advocate Aner Helman to the pre-HCJ notice was sent to HaMoked (the letter was dated June 8, 2021), which stated as follows:

Handling requests prior to the filing of petitions (pre-HCJ procedure) was developed by the HCJ department for the purpose of providing solutions to irregular and extraordinary cases of a humanitarian nature requiring an urgent solution. Therefore, and without expressing an opinion on the merits of the allegations raised in your above referenced letter, your above application is not suitable for a pre-HCJ procedure.

It should also be noted that according to your letter, all incidents described therein other than those from June 3, 2021 and June 6, 2021 had occurred prior to the answer which was given by the office of the OC Central Commander. To the extent additional claims exist with respect to this matter please refer them to the relevant bodies at the central command.

This concludes the handling of your above application by the HCJ department.

A copy of the response of the HCJ Department at the State Attorney's Office to the Pre-HCJ notice is attached and marked **P/22**.

57. However, as aforesaid, the response received from the office of the OC Central Commander stated that the delays in the opening of the gate were "single and isolated" and that "currently the gate opens on the designated times and days". It is therefore unclear what the problem is with the fact that the Pre-HCJ procedure specified numerous delays in the opening of the gate which had occurred before the response of the office of the OC Central Commander was received, and two additional delays which occurred in the week which followed its receipt – on two of the three days on which the gate should have opened. The petitioners did not complain in the Pre-HCJ procedure that their letters were nor answered, but rather that the problems in the opening of the gate were not solved, contrary to Respondent's allegations.

58. On the following day, June 14, 2021, around 05:30, one of the residents called Petitioner 2 and informed him that he was near the gate and that the DCO officer was there and was saying that the opening hours of the gate had been changed. Petitioner 2 immediately left his home and went to the gate. The officer informed the people who were there at that time, orally, that the opening hours of the gate had been changed, and that as of June 15, 2021, the opening hours of the gate would be: 05:30, 10:00, 13:00 and 16:00 (still only on three days of the week). Several farmers who were not there at that time arrived to the gate later, on the opening hours of which they had been previously advised, but the soldiers did not arrive to open the gate, although the officer said that the change in the opening hours of the gate would only enter into force on the following day. The farmers waited near the gate until 07:00, an hour after the gate should have been opened, and then gave up.
59. On June 15, 2021 a letter was received from the public liaison office at the office of the OC Central Commander, which stated as follows:

With respect to your request to handle "the blockage of the road leading from Far'un gate 708 to agricultural lands in the seam zone by two soil embankments" it should be noted that said barriers were installed in view of recent violent disturbances in the area and considering incidents which included the breaking of the gate. It should be noted that the barriers as installed did not prevent the farmers from accessing their lands by vehicle since an alternative route may be used to access the agricultural lands, which only extends the arrival time by a few single minutes. Nevertheless, this is to inform you that following an assessment which was conducted after the breach in the gate had been repaired, the barriers have currently been removed and the farmers can once again access their seam zone lands using the regular road.

**With respect to your request concerning the delays, reference is made to the response letter which was sent to you on May 31, 2021** (emphasis was added, T.M.).

A copy of the letter which was received from the public liaison office at the office of the commander of the central command is attached and marked **P/24**.

60. As aforesaid, HaMoked's letter dated June 1, 2021, to which the above letter allegedly refers, explained that the content of the letter received from the office of the OC Central Commander dated May 31, 2021 **was not true** and that the problem of the delays and failure to open the gate was not solved. The fact that the state responds to this complaint by referring the Petitioners to **the letter dated May 31, 2021** attests to the fact that it has completely disregarded the content of the letters sent to it on June 1, 2021 and June 8, 2021, and neglected to handle the matter.
61. On the day on which Respondent's said letter was sent, June 15, 2021, the soldiers did not open the gate on either one of its opening hours.
62. On June 22, 2021 HaMoked was informed by Petitioner 1, Petitioner 2 and Petitioner 3, each one separately, that the military no longer opens the Far'un gate at all.

63. Since then it was informed that the soldiers occasionally arrive to open the gate, but not on all opening hours of the gate, and always in great delay.

### **The Legal Argument**

64. The Petitioners shall argue below that the failure to open the Far'un gate by the soldiers and the great delays in the opening of the gate when it does open are in clear contrast with the judgments of this Honorable Court and the state's undertakings before it, and disproportionately harm the fundamental rights of the local residents who are entitled to enter the seam zone.

### **The Legal Background**

65. This petition concerns Respondent's actions within the occupied territory. Within the occupied territory the Respondent is empowered to act for the purpose of protecting the legitimate security interests of the occupying power, and for the purpose of protecting the rights of the residents of the occupied territory:

Israel holds the territories of the area under belligerent occupation. In the framework of the military governance the military commander acts in the area by virtue of powers deriving from the rules of international law and from principles of Israeli public law... The belligerent occupation in the area is governed by the major norms of international customary law entrenched in the Hague Convention respecting the Laws and Customs of War on Land, 1907 [25], and the humanitarian principles of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949 (hereinafter: the Geneva Convention) are actually applied by the state and by the military commander (Iskan [1], *Ibid*, pages 793-794). **The Hague convention empowers the commander of the area to act in two major areas: the first – to secure the legitimate security interest of the occupying power, and the other – to secure the needs and rights of the local population in the area occupied by belligerent occupation.** The first is a military need, the other is a civil-humanitarian need. The first focuses on protecting the security of the military forces as well as on maintaining the order, security and rule of law in the area; the other – concerns the responsibility for maintaining the safety and well-being of the inhabitants. In securing their well-being as aforesaid the commander of the area is not only obligated to secure the order and safety of the inhabitants but also to protect their rights, and particularly, their constitutional human rights. "The concern for human rights lies at the heart of the humanitarian considerations which the commander must consider" (HCJ 10356/02 **Haas v. Commander of IDF Forces in the West Bank** (hereinafter: Haas [4]), page 456). In carrying out his duty the commander of the area must, therefore, secure the legitimate security interests on the one hand, and protect the interests of the civilian population on the other. A proper balance should be maintained between these two responsibility areas (Y. Dinstein, "Legislative Authority in the Occupied Territories" [23] page 509). In protecting the constitutional rights of the inhabitants of the area the military commander is also subject to the principles of Israeli public law, including the fundamental principles of human rights (HCJ 7862/04 **Abu Daher v. Commander of IDF Forces in Judea and**

**Samaria**, IsrSC 59 (5) 368, 375-376 (2005), hereinafter: **Abu Daher**, all emphases in the petition were added unless otherwise noted, T.M.).

66. The state of Israel decided to erect a large part of the separation fence within the West Bank and to close to the Palestinians the parts of the West Bank located between the separation fence and Israel's border – the seam zone. Hence, the fundamental rights of the protected residents were and continue to be harmed, and particularly the rights of the owners of lands which were trapped in the seam zone. Against this backdrop it was held by the courts that the Respondent is obligated to limit, to the maximum extent possible, the harm caused by the separation fence to the land owners:

Having completed the examination of the proportionality of each order separately, we should lift our gaze and examine the proportionality of the entire route of the separation fence being the subject matter of all orders. The length of the separation fence being the subject matter of the orders at hand is about forty kilometers. It harms the lives of 35,000 local inhabitants. Four thousand 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 thirty thousand dunams of their lands. The vast majority of the lands are cultivated, and they include tens of thousands of olive trees, fruit trees and different agricultural crops. The permit regime which the military commander wishes to establish and which was applied to many plots of land cannot substantially prevent or reduce the severe harm caused to the local farmers. Access to the lands depends on the possibility to pass through gates with a great distance between them and which are not always open. Security checks shall be conducted at the gates, which may prevent the passage of vehicles and which shall naturally create long lines and many waiting hours. All of the above do not enable the farmers to cultivate their lands. **There are inevitably areas where the separation fence shall separate the local inhabitants from their lands. In these areas, passage must be secured reducing to the maximum extent possible the harm caused to the farmers (HCJ 2056/04 Beit Sourik Village Council et al. v. Government of Israel, paragraph 82 (reported in Nevo, June 30, 2004)).**

and:

The conclusion that it is impossible to establish an alternative geographic route for the fence which would be less harmful does not satisfy, in and of itself, the second proportionality test. **While examining the proportionality of the harm caused by the fence, the geographic route, the permit regime and the passages to the lands located west to the fence are intertwined.** Petitioners' groves and grazing lands were disconnected by the separation fence. In this state of affairs, **the Respondents must establish reasonable crossing arrangements and access regime to Petitioners' lands, in a manner limiting to the maximum extent possible the harm caused to them (HCJ 4825/04 Alian v. The Prime Minister, paragraph 16 (reported in Nevo, March 16, 2006)).**

and:

The arrangements which were established concerning the issuance of permits to those who have a permanent and occasional interest, as such were specified, also satisfy, according to us, the second proportionality sub-test. As indicated by us above, we agree that the injury inflicted on this group is severe. Individuals who cultivated their lands in the seam zone, conducted their businesses over 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. The residents of the zone itself are also injured from the regime which was applied thereto, since, against their will, the reality of their lives becomes difficult and complex, as social and business isolation is imposed on them in their place of residence. **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. We shall refer to the arrangements which concern the different interest groups (the permit regime judgment, paragraph 33).

**Respondent's undertakings in the framework of the permit regime petitions and their effect on the decision in said petitions**

67. The permit regime judgment discussed in length the crossing arrangements through the separation fence gates. The judgment stated as follows:

With respect to the entry arrangements into the seam zone, **the state specified in its response the various gates which were located along the route of the fence at the entrance to the seam zone, and the measures taken by it, which were intended, as argued, to enable, to the maximum extent possible, the easy entry of the inhabitants to the seam zone areas.** Accordingly, the state noted in its response, that in the seam zone which was declared along phases A and B, there were 53 gates, out of which 37 gates were agricultural gates used for the passage of Palestinians to their lands or homes. The state pointed at four types of gates which existed in the seam zone: a fabric of life gate – which is open daily on a continuous basis between 12 to 24 hours a day; a day gate – which opens twice or three times a day, for variable durations of between half-an-hour to two hours, depending on the scope of those who wish to pass through and the agricultural needs; a seasonal gate – which opens in the agricultural seasons with an emphasis on the relevant olive growing periods, and in the other seasons the gate opens subject to coordination in advance; and an operational gate – which serves the operational forces. **The state reiterates time and again in its responses that ongoing acts are taken by it to improve the movement and traffic arrangements which were established, including the various types of crossings which form a part thereof. Thus, the state emphasized that extensive effort, financial and other, is invested by it in the construction of high standard crossings, in the improvement of the quality of the services rendered therein** and in the installation of advanced security devices which enabled a better security check along the shortening of the waiting periods in the crossing. Similarly, **it was noted that significant amounts of money were invested in the improvement of the agricultural gates, that their opening hours were extended and that**

**various arrangements were established for their opening when required. It was noted that various possibilities existed for the opening of the agricultural gates beyond their regular opening hours, including, inter alia, by calling the humanitarian center located at the civil administration headquarters in Beit-El. In addition, it was so argued, 22 Arabic speaking officers and noncommissioned officers were assigned to the main pedestrian crossings whose role was to ensure reasonable fabric of life in the crossings and to assist to find solutions for problems which arose therein.** In its updating notice, the state elaborated on additional changes which took place in this area, including the upgrade and civilianization of the Reihan crossing – near eastern Barta'a in which most of the seam zone inhabitants lived. It was argued that this step has significantly improved the security check procedures and the passage through said crossing, through which about 2,500 Palestinians pass on a daily basis, and that examinations which were conducted indicated that the average passage time per person amounted to about ten minutes in the average during busy hours and to five minute in less busy hours. A security check and passage of four vehicles takes about 15-20 minutes in the average (paragraph 28).

68. As aforesaid, the Honorable Court accepted the military's statements concerning its efforts to reduce the harm inflicted on the local farmers as a result of the separation fence and the closure of the seam zone, which statements served as the basis underlying the decision of the honorable court whereby the permit regime does not disproportionately harm the Palestinian population. However, it was also held in the judgment that situations may possibly occur in which the harm inflicted on the Palestinians would not be proportionate, and that such situations may be reviewed in the framework of petitions referring to specific areas:

Under the circumstances at hand, prima facie, it indeed seems that the respondents acknowledge the residents' right to continue to farm their lands and seek to enable those who have a connection to lands in the seam zone to continue to farm them, by enabling family members and other workers to assist them with their work. In addition, special crossings exist the purpose of which is to regulate the entry into the zone – some of which are adapted to agricultural activity according to the seasonal needs. It seems to us that this arrangement provides a reasonable solution which minimizes the violation of the rights of the farmers, and we assume in our said determination that respondents' declarations concerning the importance of giving proper solutions for the needs of the framers in the Area are filled by them with real substance. However, and as specified above, we cannot deny the possibility that in specific cases severe injury is caused to the human right to livelihood and land 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. As stated above, these cases may be reviewed within the framework of individual petitions, in which the court will be able to examine the gamut of relevant arrangements which 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).

69. It was also held in said judgment that the proportionality of the harm inflicted by the permit regime depends not only on the formal arrangements established by the Respondent, but also on their actual implementation, and that the presentation of specific cases demonstrating the harm caused to the residents is important for this purpose:

However, the examination of the arrangements alone is not sufficient. As noted by the state, **the proportionality of the injury inflicted on the rights of the inhabitants should be examined not only against the backdrop of the written arrangements and procedures which were established, but also against the backdrop of the reality in which such arrangements are implemented in practice**, commencing from the processing procedure of the applications and ending with the current movement and traffic regime. These practical aspects enable the court to establish its position on the proportionality of the injury from a wide perspective, and hence, their importance... the petitions as filed, do not enable a specific examination of the current situation on the scene due to the fact that the court was not presented with a specific case which pointed at a flaw in the system established by the state for the implementation of the unique regime which was applied to the seam zone, against which all other considerations which obligated the respondents to act in this manner or another may be examined (and compare: Mara'abe, page 534). **Therefore, under the above circumstances we are unable to examine whether there is a gap between the state's statements and the situation on the ground** (paragraphs 38-39).

70. In the case at hand there is a huge gap between the manner in which Respondent's conduct was presented in his responses to the permit regime petitions and the current reality. As specified above, the soldiers arrive to open the gate only once in a while. On numerous occasions the soldiers do not open the gate at all, and when they do open the gate they do it after great delay, as a matter of routine. Respondent's above conduct severely harms the local farmers.
71. The arguments presented by the military in the framework of the permit regime petitions are anyway warped, since it is the military which has established the fence preventing the residents from accessing their lands and all other limitations arising from the permit regime, without which there would be no need for any "assistance", "improvement" or "extension". We are not concerned with a service which is rendered to the protected residents, but rather with a harm which is inflicted on them, and the only question is whether the proportionality thereof exceeds that which is required, or not. There is no doubt that the military's arguments in that regard cannot stand today, as clearly arises from the facts of this petition and from many other petitions attesting to the drastic deterioration which has recently occurred in connection with the entry into the seam zone (see, for instance, HCJ 2517/21 **Raddad v. Military Commander for the West Bank Area** and HCJ 6896/18 **Ta'meh v. Military Commander for the West Bank Area**).
72. It should be reminded that the seam zone entry permits are not issued easily. Seam zone entry applications for agricultural needs are approved by the Respondent only in a minority of cases, after an arduous and distressing procedure often requiring a series of appeals and court proceedings. During said period, or during a large part thereof, the land owners are prevented from accessing their lands.
73. However, even when a person succeeds to complete the process and obtain the permit to which they are entitled and which they need, they are forced to deal, on a daily basis, with difficulties in accessing their lands – the failure to open the gate, or at least the opening

of the gate in great delay, in a manner disturbing their daily routine and causing physical discomfort and mental distress, without any justification.

### **Violation of the right to property, freedom of occupation and freedom of movement**

74. 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 human beings, as well as in the international conventions relevant to the occupied territories:

The right to property is one of the fundamental human rights. This right was recognized as a fundamental right which should be protected by the judgments of this court (see for instance: HCJ 390/79 **Dweikat v. Government of Israel**, IsrSC 34(1), 14-15; HCJFH 4466/94 **Nuseibeh v. Minister of Finance**, IsrSC 49(4) 68, 83-85) and was even expressly and constitutionally entrenched in section 3 of the Basic Law: Human Dignity and Liberty. This right is also recognized by international law and with respect to territories held under belligerent occupation it is entrenched, inter alia, in the Hague Convention and in the Fourth Geneva Convention (HCJ 1890/03 **Bethlehem Municipality v. State of Israel and Ministry of Defence**, paragraph 20 of the judgment of the Honorable Justice (as then titled) Beinisch (February 3, 2005; hereinafter: **Bethlehem Municipality Judgment**)).

75. 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)).

76. The right to freedom of movement was also recognized by Israeli case law as a fundamental right. It was so held in paragraph 15 of the judgment of the Honorable Justice Beinisch in **Bethlehem**:

Freedom of movement is one of the most fundamental human rights. We have already noted that freedom of movement was recognized by our jurisprudence as an independent fundamental right as well as a right deriving from the right to liberty, and according to some scholars this right also derives from human dignity (see paragraph 15 of the judgment and the references mentioned there). Freedom of movement is also recognized as a fundamental right in international law and this right is entrenched in a host of international covenants.

77. 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.

78. Blocking farmers' access to seam zone lands by the separation fence has severely harmed their fundamental rights, as was described in case law. Similarly, the imposition of difficulties on the farmers wishing to access their lands and cultivate them according to the permits which were issued to them, harms the same rights.
79. According to the permit regime judgment, the Honorable Court's holding that the harm caused by the closure of the seam zone to Palestinians satisfies the proportionality tests, depends on the manner by which the crossing arrangements of the separation fence are actually implemented. Accordingly, the application of crossing arrangements which unnecessarily encumber the farmers beyond that which is required, harms their fundamental rights to property, freedom of occupation and freedom of movement and undermines the Honorable Court's holding that the closure of the seam zone and the subordination of Palestinians' entry thereto to the permit regime, can stand.

### **Conclusion**

80. The construction of the separation fence within the West Bank has severely harmed the local farmers. The closure of the seam zone to Palestinians was approved by the Honorable Court under the assumption that the Respondent does everything he can to mitigate the harm inflicted by it on the local residents and that the arrangements which were established by him shall be permissively implemented.
81. However, currently the crossing arrangements for the separation fence at the Far'un gate area are applied in a very offensive manner. For more than six months the military does not open the gate regularly, and when it does open the gate, it does it after great delay. It is a clear case in which unjustified and unnecessary harm is inflicted on the landowners and the agricultural workers, contrary to the judgment of the Honorable Court.
82. In view of all of the above, the Honorable Court is requested to issue an *order nisi* as requested in the petition. In addition, the Honorable Court is requested to obligate the Respondent to pay Petitioners' costs and attorneys' fees.
83. This petition is supported by affidavits which were signed in a visual conference and which were forwarded to HaMoked by facsimile following telephone coordination. The Honorable Court is requested to accept these affidavits and the powers of attorney which were also provided by facsimile, considering the objective difficulties in arranging a meeting between the Petitioners and their attorneys.

July 12, 2021.

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Tehila Meir, Advocate  
Petitioners' counsel