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

**HCJ 3571/20**

1. \_\_\_\_\_ **Khasib**
  2. \_\_\_\_\_ **Hareshah,**
  3. \_\_\_\_\_ **‘Amar**
  4. \_\_\_\_\_ **Sabah**
  5. \_\_\_\_\_ **Hussein**
  6. \_\_\_\_\_ **Daud**
  7. **Taysir Fathi Taha ‘Amarneh, Head of Akkabah Village Council**
  8. **HaMoked: Center for the Defence of the Individual**
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**The Petitioners**

- Versus -

1. **Prime Minister of Israel**
2. **Minister of Defense**
3. **IDF Commander in the Judea and Samaria Area**
4. **Ministry of Defense - Separation Fence Administration**

Represented by Counsel from the State Attorney's Office,  
Ministry of Justice, Jerusalem  
Tel: 073-3925305; 02-6467011

**The Respondents**

**Preliminary Response on behalf of the Respondents**

A. **Preface**

1. According to the decision of the Honorable Justice Amit dated June 3, 2020, and the requested extensions, the Respondents hereby respectfully submit their preliminary response to the above-captioned petition.
2. The petition concerns Petitioners' request to order the Respondents to "dismantle the route of the separation fence in the segment of the villages Nazlat 'Isa, Qaffin and Akkabah, from the Nazlat 'Isa agricultural gate in the south to the meeting point between Road No. 161 and the Green Line in the north (hereinafter: the **Segment**), per the markings on the map attached as Annex 1, and, inasmuch as they so wish, to relocate it west of the Israeli-Jordanian 1949 Armistice Line (the **Green Line** or the **Judea and Samaria Border Line**). It is a route of the security fence spanning some 6 Kilometers in the area of the above villages between Nazlat 'Isa gate in the south and Road No. 611 in the north.

In the framework of the petition the Petitioners argue that the current route of the fence "traps" thousands of dunams of farmland belonging to the residents of the three villages in which the Petitioners live on the west side of the fence; and that the "trapping" of these lands, alongside the mechanism whereby entry permits into the seam zone are issued in the recent years (hereinafter also: the **Permit Regime**) disconnected the landowners from their lands, deprived them of their ability to earn a living from said lands, and disproportionately harmed the rights of the landowners. Given the above, the Petitioners argue that leaving the fence in its current location is extremely disproportionate.

The Petitioners explain that the petition is filed only now, approximately 15 years after the fence was built, due to the exacerbation of the harm allegedly caused over the years by the mechanism whereby entry permits into the seam zone are issued for agricultural purposes, in a manner which according to them, violates the state's undertaking to maintain the fabric of life in the seam zone.

In the framework of the petition the Petitioners have also proposed an alternative route for the fence running near the Judea and Samaria Border Line, on the basis of a security opinion provided by Colonel (reserves) Shaul Arieli, which was attached to the petition (hereinafter also: **Petitioners' Opinion**).

3. It should already be noted at the outset that in 2002 a petition was filed against the route of the fence in the above-referenced segment, in HCJ 7783/02, 7784/02 **Sharim v. IDF Commander in the West Bank**. In view of said petition, the issue was re-examined by the military commander and it was ultimately decided to change the route such that the fence would run west of the villages Baq'a a-Sharqiyah and Nazlat 'Isa leaving them outside of the seam zone. In its judgment dated November 17, 2002, the honorable court deleted the petitions while advising the petitioners in that case of their right to submit to the competent authorities' specific challenges focusing on specific segments of the route and gates in the fence relevant to their case.
4. Respondents' position is that the **petition should be summarily dismissed** for a host of reasons:

First, the petition should be dismissed due to the heavy delay in its submission: approximately 18 years after the original orders were issued and the deletion of the petition which was filed against the route of the security fence in the seam zone (HCJ 778/02); approximately 15 years after the fence was built, after the lands on which the fence was built had been seized and after tens of millions of Shekels were invested in its erection; approximately 12 years after the conclusion of the legal correspondence concerning the seam zone near the village of Khirbet Akkabah between Petitioner 7 and the Respondents (as more broadly described below); and approximately 9 years after the principled judgment in connection with the Permit Regime in the seam zone was given (HCJ 9961/03). The above, alongside Respondents' position that no basis has been presented substantiating Respondents' allegation of a concrete aggravation in the harm inflicted on them as a result of the changes which have recently occurred in the Permit Regime, in a manner justifying such a delay, as shall be broadly discussed in detail below.

In addition, the petition should be summarily dismissed due to **the general and all-inclusive arguments** raised therein concerning the alleged harm caused to the Petitioners as a result of the Permit Regime in the seam zone, without a concrete and solid factual basis, and particularly – without explaining how the general arguments concerning the Permit Regime affect the Petitioners themselves and their ability to cultivate the lands which are the subject matter of the petition.

5. Beyond need, the petition should also be dismissed **on its merits**. As specified below, the route of the fence which is the subject matter of the petition was established at the time on the basis of security-operational considerations, to provide effective protection against the infiltration of perpetrators into the state of Israel. While examining the location of the route, all aspects were considered including the operational effectiveness on the one hand, and the rights of the local residents, on the other. Simultaneously, and for the purpose of maintaining the fabric of life in the seam zone, several agricultural gates were installed along the route, and suitable permits were issued to landowners in the seam zone; In addition, crossing arrangements were established in coordination with the Palestinian Coordination Office and the local councils in the seam zone. The position of the state is – now as then – that it is a proportionate arrangement properly balancing the operational-security considerations against the need to maintain the fabric of life of the local residents as aforesaid. Note well: **the need to have the seam barrier still stands** in view of the security situation, and there is no reason to obligate the Respondents to divert the route of the fence, with all ensuing consequences including costs and additional harm to additional lands, on the basis of general allegations of harm which are not supported by any concrete infrastructure. Note well: diverting the seam barrier does not involve only substantial financial costs, but also additional harm to the land.

6. The above in brief and we shall now elaborate.

## **B. The Legal and Factual Basis**

### **B.1 Building the separation barrier – in general and the specific segment in particular**

7. In 2001, following a sharp increase in the scope of the attacks from Judea and Samaria, an administrative work was initiated to build a barrier which would assist the security forces to stop the attacks. In 2002 a decision was made to build the security fence. A

description of the decision to build the barrier was specified in the judgment of the honorable court in HCJ 8532/02 and in HCJ 8172/02 **Ibtisam Muhamad Ibrahim v. Commander of IDF Forces in the West Bank** (given on October 14, 2002) as follows:

The decision to build the separation fence was made on April 14, 2002 by the Security Cabinet for the purpose of 'improving and strengthening the estimates and operational capabilities in the framework of dealing with terror, and for the purpose of thwarting, disrupting and preventing the infiltration of terror activity coming from Judea and Samaria into Israel'. On June 23, 2002 the Government discussed and approved said decision to build a 116 Kilometer long barrier, mainly in the sensitive areas through which numerous infiltrations of perpetrators who sowed destruction and spilled blood were made for the purpose of committing terror attacks. The final route of the barrier was chosen by security and military forces together with professional bodies and was approved by the Security Cabinet on August 14, 2002.

The purpose of the seam zone is to prevent the passage of suicide bombers and other perpetrators into the territory of the state of Israel. According to the approach of the security and military forces in charge of this matter, the seam zone is a major element in the fight against terror coming from the Judea and Samaria area. If and to the extent that the barrier which is erected cannot completely stop the infiltration of perpetrators, its purpose is to delay the infiltration to Israel for a period of time which would enable the forces to arrive to the scene, and to create a geographic security area which would enable the forces to chase the perpetrators before they enter the state.

There is no doubt that the creation of the seam zone harms the Palestinian residents living in the area. For the purpose of building the barrier agricultural lands were and will be seized and substantial harm may be caused to the residents' ability to use the lands in their possession. In addition, their access to the land may also be harmed. This harm is inevitable and is the consequence of the state of combat in the area during the last two years – a situation which resulted in high losses of human life."

8. The authority of the military commander concerning the mere erection of the separation fence and the seizure of land for this purpose was approved in the judgments of the honorable court which has thoroughly examined this issue (HCJ 2056/04 **Beit Sourik Village Council v. The Government of Israel**, IsrSC 58(5) 807 (2004); HCJ 7957/04 **Mara'abe v. The Prime Minister of Israel**, IsrSC 60(2) 447 (2005)). It was held that the military commander was vested with the authority to order that the security fence in the Judea and Samaria area shall be built so long as the consideration underlying the erection of the fence was a military-security consideration (**Beit Sourik**, page 828); **Mara'abe**, page 493; HCJ 11344/03 **Salim v. Commander of IDF Forces in Judea and Samaria** (reported in Nevo, September 9, 2009)). It was further held that said authority of the military commander stemmed from his authority entrenched in international law to protect the military in the area which is under belligerent occupation; to protect the state of Israel; and from his obligation to secure the order and public life towards any person located in an area under belligerent occupation. It was also held that the state of Israel is also obligated – according to Israeli domestic law – to protect its citizens residing in the Judea and Samaria area (see **Mara'abe**, pages 496-497 and also in page 502).

9. The purpose of the security fence in general and in the specific area at hand in particular, is to prevent and limit the entry of perpetrators, weapons and terror infrastructures into the state of Israel. The powers to establish a permit regime for the purpose of crossing the fence, and particularly for the purpose of entering the seam zone, derive directly from said security need and are intended to realize it.
10. The construction of the segment of the security fence which is the subject matter of the petition at hand was completed in 2005 on the basis of the Seizure of Land Decree No. S/17/02 (Judea and Samaria), 5762-2002 (hereinafter: the **S/17/20 Decree**), running from Road No. 611 at the northern edge until the village of Qaffin at the southern edge, to their west; and on the basis of the Seizure Decree No. S/36/03 (Judea and Samaria), 5763-2003 (hereinafter: the **S/36/03 Decree**), spanning from the village of Qaffin at the northern edge until the village of Zeita at the southern edge, to their west; (hereinafter collectively: the **Seizure Decrees**). West of the fence, in very close proximity thereto, lie the Israeli communities of Mitzpe Ilan, kibbutz Metzger, Baq'a al-Gharbiyeh, kibbutz Magal and the city of Harish.
11. Originally, the route of the fence in this area was planned and built east of the villages of Baq'a al-Gharbiyeh and Nazlat 'Isa, on the basis of the Seizure Decrees S/18/02 (Judea and Samaria), 5762-2002 and S/21/02 (Judea and Samaria), 5762-2002 (hereinafter: **Decree S/18/02** and **Decree S/21/02**, respectively), leaving the villages inside the seam zone. However, following the petition which was filed in 2002 with respect to this segment of the fence in H CJ 7783; 7784/02 02 **Sharim v. IDF Commander in the West Bank** and following an additional examination conducted by the military commander it was decided to change the route such that the fence would run west of the villages of Baq'a al-Gharbiyeh and Nazlat 'Isa, extracting them from the seam zone. In its judgment in the above petitions dated November 17, 2002, the honorable court held as follows:

"According to our proposal we were informed by Petitioners' counsel that the petition was deleted.

Petitioners' right to submit to the competent authorities a specific appeal focusing on that segment of the fence and the gates which are in the relevant segments to their case is reserved. At the same time, the Petitioners will not be able to raise again arguments which have already been brought by them in the past before this court and which were discussed by the court and rejected. If their appeal is rejected, the Petitioners have the right to file a petition against said rejection including against the forum making the decision.

We have registered before us the declaration made by the state attorney's office whereby one of the major considerations which shall be taken into account while discussing Petitioners' anticipated appeal is that the construction of the seam zone has already started and that discussing the appeal at this time may considerably encumber the mere execution of the project. We have also registered before us the declaration of Petitioners' counsel whereby they objected to the state's 'adverse change' argument. Subject to the above we decide to dismiss the petition."

Subsequently, Decrees S/18/02 and S/21/02 were cancelled and replaced by Decree S/36/03 and **the segments of the fence which were erected by that time were dismantled and rebuilt** (it should be noted that according to the existing records in Respondents' possession, no specific appeals were submitted in that regard).

A copy of an aerial photo in which the new and old routes of the fence are marked is attached and marked **RS/1**.

12. The seizure decrees for the area on which the fence was erected were extended from time to time by the military commander, and their validity has been recently extended, for the fifth time, until December 31, 2022.

A photocopy of the extended decrees is attached and marked **RS/2**.

13. As was broadly specified in the state's response to previous petitions which had been filed against the route of the fence, the segment of the fence which is the subject matter of the petition at hand is known to have special security sensitivity due to its close proximity to Israeli settlements and to the Sharon area, in which dozens of fatal attacks were committed over the years. Accordingly, for instance, on November 10, 2002, prior to the erection of the fence, an armed perpetrator from the Judea and Samaria area had infiltrated the community of Metzger and killed in cold blood five Israelis, including a mother and her two children, and two additional civilians.

Another threat underlying the erection of the fence is the shooting from the Palestinian villages towards the territory of the state of Israel, and particularly at kibbutz Magal located near the Judea and Samaria Border Line. It should be clarified that in the periodic examination which was conducted with respect to the extension of the validity of the above Seizure Decrees, the military need was examined and was found to be still firm and valid.

14. Due to the fact that the Judea and Samaria Border Line in this area runs through a built-up area within the boundaries of the Palestinian village of Nazlat 'Isa, the security system initially considered several possible alternatives for said segment of the fence – between the villages of Nazlat 'Isa and Baq'a al-Gharbiyeh; between Nazlat 'Isa and Baq'a a-Sharqiyah; and east of Baq'a a-Sharqiyah. For operational reasons concerning the topographic characteristics of the area, and seeking to maintain the regular fabric of life of the residents of the villages of Nazlat 'Isa and Baq'a al-Gharbiyeh – it was decided to set the route of the fence east of the village of Baq'a a-Sharqiyah (by the above Seizure Decrees S/18/02 and S/21/02).
15. In 2003, following another examination of the above segment of the fence, it was decided to dismantle the fence which had been built and to transfer it west of the village of Nazlat 'Isa. Underlying the decision to change the route in this segment was the desire to limit to the maximum extent possible the harm to the fabric of life of the residents of the villages of Baq'a a-Sharqiyah and Nazlat 'Isa, caused as a result of the decision to leave them within the seam zone boundaries. Accordingly, permanently leaving them within the seam zone would have required their identification and examination on a daily basis at gates which would have been erected for that purpose between the seam zone and the territory of the state of Israel and between the seam zone and the Judea and Samaria area,

while crossing the fence. Said decision was adopted although it has harmed to a certain extent the security effectiveness of the fence, stemming from the fact that the new route passes through the congested urban area of Baq'a al-Gharbiyeh, in which a large number of civilians move and live on both sides of the fence in a manner which may put at risk the security forces moving along it and which may thwart the ability to quickly trace infiltrations through the fence.

16. With respect to the route of the fence which was seized by the seizure decree S/17/02 west of the Palestinian villages of Qaffin and Khirbet Akkabah, due to their close proximity to the Israeli communities Metzger and Harish (only about two thousand meters), the military commander decided to leave a large space between them and the route of the fence, to enable as much time as possible for the security forces to arrive from the minute a fence crossing alarm is received to provide an operational response and thwart the infiltration.
17. The specific route of the barrier was established on the basis of security-operational considerations, for the purpose of achieving the above military need in the best way possible. Said considerations include, *inter alia*, the need to have topographic control for observation and fighting purposes; securing enough space for maneuvering and other military action; keeping away from congested built-up areas; securing the forces patrolling the barrier; and establishing a feasible route enabling safe movement to the forces operating along the barrier.

In view of all of the above considerations, the barrier in its entirety could not have been built along the Judea and Samaria Border Line and certain segments thereof had to be built at a certain distance from said line, thus creating the seam zone.

18. Over the years several requests were submitted to the Respondents with respect to the route of the fence, as well as with respect to the Permit Regime:
19. Accordingly, during 2005 several requests were submitted on behalf of the residents of the villages of Qaffin and Nazlat 'Isa with respect to the crossing arrangements through the gates leading to the seam zone. After the requests were considered and in coordination with the heads of the councils in said area, it was decided to open the Qaffin gate all year round rather than only on a seasonal basis, and the opening hours of the gates in the region were extended.

A copy of a request made on behalf of B'Tselem organization dated April 7, 2005 and a request made on behalf of the Association for Civil Rights in Israel dated October 4, 2005 is attached and marked **RS/3**.

20. By the end of 2006, a request was received from the "Jerusalem Center for Human Rights" on behalf of the residents of the village of Akkabah, including Petitioner No. 7 (as indicated by the letter whose power of attorney was attached to the request) demanding to dismantle the segment of the fence close to the community. The request included a host of allegations against both the Permit Regime and the implications of the existing route of the fence. Following the request, the route of the fence was re-examined and it was found that there was no room to move the route according to applicants'

demand. However, after discussions with the applicants and a tour which was conducted with them in the region, it was decided in 2008 to open another agricultural gate near the village of Akkabah, which opened annually (it should be noted that no petition was filed with the honorable court against the decision of the military commander not to change the route of the fence; it should also be noted that the decision to open the additional gate is not mentioned in the petition).

A copy of the request of the village of Akkabah and the response thereto are attached and marked **RS/4**.

A copy of the summary of the tour dated October 2, 2007 and the notices concerning the opening of the gate are attached and marked **RS/5**.

21. On January 8, 2020, approximately 12 years after the decision of the then-military commander, and as aforesaid, approximately 15 years after the construction of that segment of the security fence had been completed, Petitioners' request was received to dismantle the segment of the fence in the area of the villages of Qaffin, Akkabah and Nazlat 'Isa. In the letter the Petitioners raised general arguments concerning the implications that the fence and the Permit Regime had on the fabric of life of the residents of the villages. It should be noted that in said request, the Petitioners did not raise specific requests for these or other changes in the Permit Regime and did not complain of concrete decisions which applied to them, but only argued in general that the access of the residents of the villages to the seam zone was encumbered.
22. On February 26, 2020, a meeting, led by the head of the Fence Administration at the Central Command (referred to by the name Keshet Zevaim, or Rainbow of Colors) was held, which was also attended by the different security bodies responsible for the security fence and the Permit Regime in the relevant area. The purpose of the meeting was to thoroughly examine the difficulties which had been presented and find practical solution to the alleged difficulties. The meeting was attended by the representatives of Petitioners 1-7 and by the representatives of Petitioner 8 (Petitioners 1-7 did not attend the meeting). In the discussions held between the Respondents and Petitioners' representatives during the meeting, the latter refused to discuss the specific difficulties allegedly caused by the Permit Regime in the area which is the subject matter of the petition at hand, reiterated their general arguments concerning the difficulties caused by the Permit Regime in the seam zone and repeated their principled demand to dismantle the segment of the fence. In the framework of this meeting, **it was proposed to Petitioners' representatives to establish a forum which would convene periodically to examine and promote solutions for the encumbrances allegedly imposed on the access to the seam zone. It should be noted that this proposal still stands.**

It should be noted that due to current constraints and the irregular circumstances and working conditions in times of COVID-19, Respondents' relevant bodies were unable to respond to the request on its merits by the filing of the petition.

## **B.2 The Permit Regime in the seam zone – general background**

23. In view of the security risk embedded in the crossing of perpetrators from the seam zone into the territory of the state of Israel, the military commander used the authority vested in him according to segment 318 of the Security Provisions [Consolidated Version]

(Judea and Samaria) (No. 1651) Decree, 5770-2009, and declared the seam zone a closed area that the entry into and exit from were prohibited without a permit. The declaration imposes restrictions on the crossing of the barrier from the east to the west, since from the west side there is no barrier preventing entry into Israel.

24. The premise underlying the declarations of the seam zone as a closed military area was that the ability to freely travel to and from the Judea and Samaria area to the seam zone and therefrom to Israel, without any additional monitoring, carried with it a security risk. The above, since passage without a permit could be used for activity against the security of the state of Israel and its citizens. The honorable court discussed the connection which exists between the security fence and its purpose and the seam zone in its judgment in H CJ 9961/03, 639/04 **HaMoked Center for the Defence of the Individual founded by Dr. Lotte Salzberger v. Government of Israel** (April 5, 2011) (hereinafter: **HaMoked Judgment**), where it was *inter alia* held that:

"13. All of the above clearly indicates that over the years a real connection was created in our judgments between the security fence issue (and the judgments rendered in that regard) and the seam zone issue. This connection clearly stems from said judgments, but it is also mandated by the logic of things and the main purpose of the security fence, which obligates the establishment of a legal framework which would apply to the territories of the seam zone and would enable the military commander to effectively control and supervise the individuals who enter these territories, the passage from which into the territory of Israel is free and open. In the absence of such framework, there is a concern that the objective of the security fence would not be realized.

The petitioners disagree with the above. According to them, the connection created by the state between the route of the fence and the permit regime is not obligatory, and other solutions which may realize the security objective may be raised. However, it seems that this argument made by the petitioners focuses on the level of the possible alternatives for the prevailing government policy in the seam zone, and does not relate to the fact that a material connection which cannot be ignored exists between the zone and the security fence issue. In a certain sense, an implied recognition of the need to find, in practice, some unique arrangement for the complex situation in the seam zone, for security reasons, arises from petitioner's argument.

14. Therefore, we accept the position of the state according to which a close connection exists between the security fence issue and the legal determinations pertaining thereto, and the seam zone issue.

Thereafter, the honorable court examined the legality and reasonableness of the seam zone declaration and the provisions concerning the "Permit Regime" and eventually held that:

"46. In our judgment we have widely discussed the complex security situation which led to the erection of the security fence. This step severely injured the daily lives of many of the Palestinian inhabitants of the Area. **In its judgments, this court ruled many times that such injury was inevitable taking into consideration the clear security need upon which the erection of the security fence was founded** [...] As aforesaid, the permit regime which was applied to the seam zone is a derivative product of the route of the fence. It also severely violates the rights of the Palestinian inhabitants – those who live within and those who live without its boundaries [...] The petitioners

in the petitions before us presented a harsh picture of the complex reality of life with which these inhabitants cope from the commencement of the permit regime. We did not dispute the fact that such hardships existed, and it seems that the state is also very well aware of them. **However, this time again, we could not ignore the essential security objective underlying the decision to close the seam zone**, and therefore we examined, with the legal tools available to us, whether the military commander used his best efforts to minimize the injury inflicted on the inhabitants under the permit regime. **Under the circumstances of the matter, and given the factual infrastructure which was presented to us, we came to the conclusion that, subject to a number of changes which were widely discussed above, the decision to close the seam zone and apply the permit regime thereto satisfied the tests of legality and hence, there was no cause which justified our intervention therewith**. Our above determination is based, as aforesaid, not only on the arrangements themselves, but also on the statements of the state concerning measures continuously taken by it, which are designed to improve the handling processes of the different applications and to ease the accessibility to the seam zone, and by so doing, to minimize the injury inflicted on the daily lives of the Palestinian inhabitants [the emphases were added by the undersigned].

Hence, the honorable court approved the Permit Regime recognizing the need to enable the military commander to maintain effective control and supervision over those entering the seam zone, while maintaining the purpose of the security fence.

25. At this time too, the security need requires the prevention of unmonitored entry of Palestinian residents into the seam zone to protect the security of the Area and the security of the state of Israel and its residents and to protect the lives of the Israeli citizens in the settlements located in the seam zone. Therefore, the decision to issue a permit allowing a person to enter and stay in the seam zone is made on the basis of established criteria, as well on the basis of the concrete factual data concerning that person.
26. The procedures regulating the issue of the certificates and permits in the seam zone are specified in the collection of orders of the civil administration referred to as the "Collection of Seam Zone Standing Orders". The Standing Orders entrench and specify the rules applicable to residency, entry and presence in the seam zone including the criteria for receiving the necessary certificates and permits, the periods of the issued certificates and permits and the like. It should be noted that in 2019 the name of the Standing Orders was changed and they are now referred to as the "Seam Zone Entry Procedures".

### **B.3 The Collection of the Seam Zone Standing Orders – Seam Zone Entry Procedures**

27. In the framework of the seam zone declarations, the head of the civil administration was vested with the authority to establish rules and procedures for the implementation thereof. By virtue of said authorization the rules regulating the issuance of seam zone entry permits were published.
28. In 2004, after **Beit Sourik** judgment was published, a decision was made to establish a special team to re-examine the movement regime in the seam zone. In the framework of the team's conclusions it was recommended to give a permanent seam zone entry permit

valid for two years to persons having a permanent interest in the seam zone including farmers having rights in land. It was also recommended to issue a seasonal farmer permit to workers, at the request of the holder of the permanent permit. The vast majority of the recommendations of the team were adopted by the military commander and incorporated in the Standing Orders.

29. In 2005, after the team's work has been concluded, an amended version of the Standing Orders was published which included arrangements for the issuance of seam zone entry permits and certificates to permanent residents. The Standing Orders provided, according to the recommendations of the team, that a permit valid for two years shall be issued to "a person having a permanent interest in the seam zone" including a "farmer resident of the Judea and Samaria Area whose place of residence is separated from their lands by the fence".

The Standing Orders entrenched and specified the rules pertaining to residency, entry into and presence in the seam zone including the procedures for submitting applications, the criteria for their examination, the duration of the permits, appeal procedures and the like. The Standing Orders were published on COGAT's website in Hebrew and Arabic. They have legislative force and constitute an integral part of the security legislation in the Area.

30. The main principles of the Standing Orders which have already been published in 2005 are still valid to this day. As shall be detailed below, the changes which were made in the Standing Orders since 2005 related mostly to questions of proof of the connection to the seam zone.
31. Accordingly, in the **2009** Standing Orders, the definitions which were established therein were not changed but a procedure was added on "who is a farmer in the seam zone", providing that a farmer permit valid for two years shall be issued to a farmer whose connection to land in the seam zone was proven. In addition it was established that first degree family members will be given agricultural worker permits in the seam zone valid for up to six months, that there were no limited quotas for farmer permits in the seam zone and that the permit could be renewed from time to time without any preclusion. It was also determined that a farmer permit shall not be issued for a plot smaller than 500 square meters, unless the applicant is registered in the *Tabu*. In addition, in this version of the Standing Orders a quota was established for the first time for agricultural worker permits issued to workers at the request of the landowner, providing that said permits would be issued according to the Agriculture Staff Officer's table.

A copy of the relevant chapter of the 2009 Standing Orders and Agriculture Staff Officer's table are attached and marked **RS/6**.

32. In the **2010** amendment, a separate chapter was dedicated in the procedure for the first time to a farmer permit and the definition of a permit was changed to a permit which is issued to "**a resident of the Judea and Samaria Area that agricultural lands in whose ownership are located in the seam zone**" (emphasis appears in the original). The amendment provided that initially a farmer permit valid for six months shall be issued, and after ownership is proven, a permanent farmer permit valid for two years shall be issued. In addition, eligibility criteria were established for the first time and the necessary

documents for proving a "proprietary connection" were specified. In addition, procedures were established for verifying the truthfulness of the application.

33. **In the amendments which were made in 2011 and 2014**, no substantial changes were made in the criteria for the issuance of a farmer permit and most changes related to land lessees and to the cancellation of the distinction between a holder of a farmer permit and a holder of a permanent farmer permit, such that all permits were issued for a period of two years.
34. **In brief until now** – the rule which was in force almost throughout the whole period according to the provisions which were published by virtue of the declarations was that **any resident having a "proprietary connection" as defined in the Standing Orders, to land in the seam zone, is entitled to an entry permit into the seam zone valid for two years, without limitation on the number of entries and regardless of the size of the land.** According to the provisions of the Standing Orders, as of 2014, in the chapter dealing with applications for farmer permits, an orderly procedure for examining the nature of the agricultural need and whether or not the permit applicant does in fact have an agricultural need to cultivate their land did not exist, **although it is as aforesaid, a permit for agricultural needs.** A farmer permit was given to any applicant in the absence of security preclusion, who had only presented to the civil administration proof of "proprietary connection" as defined in the Standing Orders, to the plot, regardless of the size of the plot as aforesaid. As a result of the definitions of the 2014 Standing Orders, applicants who had substantiated proprietary connection to a plot consisting of **a few single meters** received a farmer permit while it was clear that in fact they did not have an agricultural need to cultivate the plot.

Consequently, there was no correlation between the permits which were issued by the civil administration and the needs of the applicants, and the DCOs encountered difficulties in establishing clear criteria for examining the applications and the needs of the population. In this state of affairs, in many cases a large and unreasonable number of permits were requested for the cultivation of minuscule plots consisting of a few single meters, in a manner substantially deviating from the ostensible agricultural needs, **and the door was opened for a wide and uncontrolled entry of Palestinian residents into the seam zone, inconsistent with the security objectives underlying the erection of the fence.** Hence, the need arose to amend the provisions of the Standing Orders as was done in 2017 and specified below.<sup>1</sup> It should be noted

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<sup>1</sup> It should be noted that in the framework of the state's response dated June 9, 2020 to the petition in HCJ 6896/18 **Ta'meh v. Military Commander of the West Bank Area** the state noted with respect to the phenomenon of misuse of entry permits into the seam zone, *inter alia*, as follows: "According to the 2014 Standing Orders, the chapter which regulated applications for farmer permits, did not include an orderly procedure for examining the nature of the agricultural need, and whether the applicant does or does not in fact have an agricultural need to cultivate their land, despite the fact that the permit is granted for agricultural needs. A farmer permit would have been issued to any applicant, in the absence of security preclusion, who presented to the civil administration evidence of proprietary ties to the plot and nothing more than that, regardless of the size of the plot. As a result of the definitions of the 2014 Standing Orders, applicants who proved proprietary ties to a plot consisting of a few single meters have also received a farmer permit, while it was clear that in fact, they had no agricultural need to cultivate the plot. It should be added that a farmer permit enables a daily entry into the seam zone for two years for a regular agricultural cultivation of the plot.

that **between the years 2014 – 2016 the number of entry permits into the seam zone has increased**, due to an increase in the number of permit applications and the extension of the validity of all farmer permits for two years and the cancellation of the distinction between a permanent farmer permit and a new farmer permit in the 2014 Standing Orders.

35. **In 2017**, another amendment was made in the Standing Orders in order to deal with the phenomenon of misuse of seam zone entry permits and to prevent a situation in which applications for farmer permits are received which do not show an agricultural need. Therefore, according to the opinion of the Agriculture Staff Officer a minimal plot size presumption was established with respect of which there is a sustainable agricultural need. It was determined in said opinion that the minimal size of a plot with respect of which a need as aforesaid exists is 330 square meters. Accordingly, several definitions and changes were made in the sub-chapter dealing with farmer permits the main purpose of which was to establish clear criteria for determining the agricultural need and to define a **rebuttable** presumption concerning the minimal size of a plot for agricultural cultivation, **while maintaining the possibility to receive permits for personal needs and for the harvest season.**

To complete the picture, it should be noted that in segment 6 of the third sub-chapter of chapter C, concerning "permit for personal needs in the seam zone" (Standing Orders, page 28), criteria were established for determining the eligibility to receive a permit for personal needs. The criterion established in sub-segment C is the existence of proprietary connection to the plot "with respect of which permit for agricultural or commercial needs may not be obtained." The Standing Orders introduce a specific procedure allowing access to the land in cases in which a farmer permit may not be obtained since there is no actual need to cultivate the land, but a "proprietary connection", as this term is defined in the Standing Orders, to the land was substantiated.

It should be noted, even if beyond need in the case at hand, that contrary to the allegations made in the petition at hand, we are not concerned with the implementation of a policy the purpose of which is to limit the number of permits (and certainly not as a means to deprive Palestinian farmers of their lands in the seam zone as alleged), but rather, its purpose is to improve the correlation between the permit which is issued and the actual needs of the applicant, and to improve the ability of the military commander to monitor and control the entries into the seam zone, while attending to the needs of the local population.

A copy of the 2017 Standing Orders is attached and marked **RS/7**.

36. In 2019, the Standings Orders were amended and their name was changed as aforesaid to "2019 Collection of Seam Zone Entry Procedures and Guidelines" (hereinafter also:

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Consequently, there was no correlation between the permits that were issued by the civil administration and the need of the applicants, and the DCOs encountered difficulties in establishing clear criteria for the examination of the applications. Under these circumstances, in many cases a large and unreasonable number of permits were requested for the cultivation of minuscule plots in a manner significantly veering from the real agricultural needs and the door was widely opened for an uncontrolled entry of Palestinian residents into the seam zone, in a manner inconsistent with the security purposes for which the fence had been erected. Hence the need arose to amend the provisions of the Standing Orders, as was done in 2017" (see segment 31 of the state's response).

the "**2019 Standing Orders**"). In Article A, Chapter C of the 2019 Standing Orders dealing with the different types of farmer permits, the definition of the term "farmer permit" to the seam zone was clarified. According to the amendment, the term "farmer permit" is defined as permit "issued to a Judea and Samaria resident having a proprietary connection to agricultural lands in the seam zone, the purpose of which is to enable the cultivation of the agricultural land according to the agricultural need deriving from the size of the land and type of the crop, while maintaining the connection to these lands. The number of permits and scope of entries shall be established according to the provisions of these procedures". It was further established in the 2019 Standing Orders that farmer permits to landowners whose plots are larger than 330 square meters and permits for "personal needs" allowing access to land for which permit for agricultural or commercial needs cannot be obtained (such as: minuscule plots smaller than 330 square meters), shall be given for a period of three years (as opposed to a farmer permit which until that time was given for a maximum period of two years according to the provisions of the 2017 Standing Orders). At the same time it was determined that a certain number of days shall be allotted to each permit holder during the term of the permit in which entry into the seam zone shall be allowed (hereinafter also: the **punch card permit**) considering the size of the plot and the type of the crops. It should be noted that the above amendment was defined as a 'pilot'.

A copy of the 2019 Standing Orders is attached and marked **RS/8**.

37. To complete the picture, it should be noted that on October 25, 2020 the state notified, in its response to HCJ 6896/18 **Ta'meh v. Military Commander**, that it was decided to cancel the last amendment to the Standing Orders from 2019 concerning the "punch card permit", following the examination of its effectiveness by senior officials and the relevant bodies after the elapse of one year from the date of the amendment which was defined as a 'pilot' as aforesaid; and that the seam zone Standing Orders would be shortly amended according. In addition, in the framework of this amendment the 2019 revision which extended the validity of the permits to three years would be canceled and seam zone entry permits for agricultural purposes shall again be valid for two years; at the same time, permits for personal needs in the seam zone shall again be valid for a maximum period of up to 3 months.

It should be noted that in its above notice dated October 25, 2020, the state provided data with respect to the number of farmer permits and number of permits for personal needs in the years 2013-2020. A copy of said notice is attached and marked **RS/9**.

### **C. Respondents' Position**

#### **C.1 The petition should be summarily dismissed – general and all-inclusive petition**

38. In the petition, the Petitioners raise numerous general arguments against the Permit Regime in the seam zone in general and in the area of the villages of Nazlat 'Isa, Qaffin and Khirbet Akkabah in particular. The petition includes a large number of arguments against the Permit Regime in the region, *inter alia*, on the basis of changes made in the Standing Orders over the years, and general arguments against the implications of the Permit Regime and the changes made in the Standing Orders, the above without sufficient factual infrastructure and **without clarifying how said changes are relevant**

**to the Petitioners, and how they lead to the conclusion that an exceptional remedy should be given obligating the military commander to divert the segment of the fence to another location**, with all ensuing consequences. In addition, it seems that the petition attributes small weight, if any, to the fact that some of the changes in the Standing Orders are pending before the honorable court in separate petitions.

39. Accordingly, for instance, the Petitioners allege in their petition that the agricultural gates in the seam zone are far from their lands and that the route to the lands is "long, hilly, and sometimes impassable" and that the periods of time in which the gates open are inconsistent with the farmers' working hours. These allegations were made by the Petitioners without sufficient factual basis and without any support. In addition, **the petition does not describe any exhaustive attempt made by the Petitioners in which the Respondents were requested to extend the gates' opening hours or to open new gates in the region, and it should be reminded in this context that the Respondents have offered to the Respondents and their representatives to conduct concrete discussions in that regard.** Accordingly, and to demonstrate the generality of the allegations raised in the petition, it should be noted that a tour conducted in the area and aerial photos clearly show that in general there are paths leading from the agricultural gates to the farmlands. It should also be noted that since no changes were made by the Respondents in the territory of the seam zone and no existing roads were blocked, Petitioners' general allegation concerning the difficulties encountered by them when they wish to access their lands through the seam zone does not clarify what has changed in the territory which caused the roads leading to Petitioners' plots to become "impassable" and how did the location of the security fence for over a decade lead to said change.

The same also applies to Petitioners' allegations concerning the ban on crossing with vehicles and farming equipment or the ban on bringing fertilizers into the seam zone, which were alleged in the absence of any applications on behalf of the Petitioners in that regard (in an attempt to exhaust remedies *vis-à-vis* the Respondents before turning to the honorable court and before requesting the exceptional remedy of diverting the security fence years after its erection), and without clarifying how the restrictions alleged by them in that regard have concretely harmed them and their ability to cultivate their lands (for instance, there is no mention of specific applications which had been submitted by the Petitioners in that matter and were rejected).

40. Moreover, the Petitioners are not satisfied with general allegations against the Permit Regime and also argue against general changes which were made in the seam zone Standing Orders – here too without explaining their connection to said changes and without any solid basis for said arguments. To demonstrate the generality and all-inclusive nature characterizing Petitioners' allegations, we shall shortly describe the changes in the Standing Orders and the Permit Regime mentioned by the Petitioners, in support of their demand to relocate the security fence:

- **The minuscule plot requirement** – the Petitioners argue against the change in the Standing Orders requiring as a condition for issuing a farmer permit that a connection shall be proved between the applicant and the plot of land in the seam zone the size of which is not smaller than 330 square meters. Without referring to Petitioners' argument on its merits, it should be noted that the above requirement is being separately examined by the honorable court at this time in the framework of a specific petition in HCJ 6896/18 **Ta'meh v. Military Commander**, and it is

unclear from the petition how this condition is relevant to the Petitioners whose plots are not minuscule.

- **The need to register plots in the *Tabu* as a condition for issuing permits to heirs** – here too, the Petitioners argue against the change in the Standing Orders requiring, according to them, to register lands which are registered in the *Tabu* in the name of the permit applicants as a condition for receiving a permit. Without referring to Petitioners' argument on its merits, this change too is not at all relevant to the Petitioners at hand and to the geographic area which is the subject matter of the petition since **in any event it is an un-regulated area**; and it seems that an attempt is made in the petition to apply this general argument to a case which is not at all relevant to it. It should be noted that this change in the Standing Orders is also being separately examined by the honorable court at this time in several petitions (HCJ 3066/20; HCJ 3067/20; HCJ 3068/20; HCJ 3070/20; HCJ 3071/20; HCJ 5131/20; HCJ 5133/20; HCJ 5329/20; HCJ 5331/20; HCJ 5816/20) (said petitions were joined and a hearing in that matter was held before the honorable court on September 21, 2020; It was subsequently decided that an updating notice should be submitted by the state within 90 days).
  - **Ban on bringing flocks into the seam zone** – this argument also raises a difficulty with respect to the Petitioners since only one of them holds flocks in his possession (Petitioner No. 4), and according to the information in Respondents' possession and as it emerges from the petition, he has never submitted a permit application for grazing purposes.
  - **Punch-card permits** – the Petitioners argue against the amendment of the Standing Orders whereby "punch card permits" are issued to applicants who are entitled to receive a farmer permit in the seam zone. Here too it has not been sufficiently clarified how the above revision of the Standing Orders was relevant to all Petitioners; and in any event, as aforesaid, it has recently been decided to cancel the punch card permits pilot, and notice to that effect was given to the honorable court in HCJ 6896/18.
41. In addition, Petitioners' argument of reduction in agricultural yield is also a general argument which is not supported by extensive data or a professional opinion, but only by Petitioners' affidavits. For instance, no economic output dataset were attached to the petition and no details were provided concerning the data collection methods and manner of calculation which was used to determine the alleged reduction percentage. The report which was attached to the petition was published in February 2014, more than six years prior to the filing of the petition, and hence, prior to the application of a considerable part of the changes which were made in the Permit Regime policy, which according to the Petitioners constitute the reason for the reduction in the agricultural yield. Therefore, even if we assume that there was a reduction in the agricultural yield, no supporting evidence were presented to the effect that said reduction resulted from the location of the seam zone barrier (as opposed to other reasons concerning, for instance, economic profitability, changes in the nature of the arrangement and the like).

42. In addition, the Petitioners make general allegations concerning reduced eligibility for farmer permits in the seam zone without presenting the reasons which led to said reduction and the relevancy of said reduction to the specific Petitioners, who, as specified below, **have received for many years work permits in the seam zone**. In addition, the Petitioners do not specify the scope of permits for additional needs, other than farmer permits, which were issued to the residents of the villages for the purpose of entering the seam zone (see to that effect the state's notice in HCJ 6896/18 dated October 25, 2020).
43. **As specified above, the Petitioners included in their petition different general and all-inclusive arguments, and in the absence of a substantiated factual infrastructure referring specifically to the area which is the subject matter of the petition, all of the above justify the summary dismissal of the petition.**

**C.2 The petition should be summarily dismissed – due to a heavy delay in its submission**

44. Respondents' position is that the petition should also be summarily dismissed due to the heavy delay in its submission.
45. As it emerges from the petition, the exceptional remedy requested by the Petitioners is the dismantling of the security fence in the relevant segment, the above, approximately 18 years after the original decrees had been issued and after the petition filed against the route of the security fence in the seam zone in HCJ 7783/02 was deleted (as aforesaid, the petition was deleted after it was clarified that the petitioners should file a specific petition focusing on the route of the fence and the gates therein); approximately 15 years after the erection of the fence, after the lands on which the fence was erected have already been seized and after tens of millions of shekels were invested in its erection; approximately 12 years after the conclusion of the legal correspondence concerning the seam zone near the village of Khirbet Akkabah as a result of which an additional specific agricultural gate was opened for the village; and approximately 9 years after the principled judgment concerning the Permit Regime in the seam zone was given (**HaMoked Judgment**).
46. **With respect to the heavy objective delay:** as aforesaid the petition was filed approximately 15 years after the erection of the fence and after millions of shekels were invested in its erection in the current route. The dismantling of the fence and its reconstruction as proposed by the Petitioners, which also requires the transfer of infrastructures and technological means installed on the fence, **involves the investment** of tens of millions of shekels. In addition to the above, changing the route of the fence shall lead to **an additional and substantial harm to private lands** of third parties, in addition to the harm which has already been caused as a result of the erection of the fence in its current route, the above, *inter alia*, due to the need to seize an additional geographic area.
47. It should be noted that other than the fact that we are concerned with an objective delay we are also concerned with a nullifying **subjective delay**, since Petitioner No. 8 was involved in a major part of the petitions and the legal proceedings which took place in connection with the route of the fence in the seam zone and Petitioner No. 7 was

personally involved in the legal proceedings concerning the seam zone in the area of the village of Khirbet Akkabah and whose application to the Respondents led to the opening of an additional agricultural gate near the village.

48. The Petitioners wish to overcome this delay hurdle, by using the general argument that the Permit Regime in the seam zone has failed. However, in fact, Petitioners' main arguments and the security opinion attached by them refer to the most basic features of the security fence in the seam zone which have not changed in any considerable manner since the erection of the fence. Accordingly, the Petitioners allege in paragraph 8 of their petition that: "the security features of the Qaffin enclave, seeing as it is far from any Israeli community or presence, along with the drastic change in the security situation since the fence was built, indicate that there is no longer any security imperative that justifies placing a barrier that veers east of the Green Line in this space" and subsequently in paragraph 16 of their petition the Petitioners argue that it emerges from the security opinion which was prepared by Colonel (reserves) Shaul Arieli that the route proposed by the Petitioners is superior to the existing route in terms of security. Without referring to these allegations on their merit, the Petitioners did not point in their petition at any factual infrastructure clarifying why these allegations, which stand at the heart of the petition, alongside the general and unsubstantiated allegations about the "failure of the Permit Regime" are relevant precisely at this time (or alternatively – why they were not relevant before) and why they should not be summarily dismissed for being tainted by a heavy delay.
49. In addition, even with respect to the core of Petitioners' main argument regarding the difficulties allegedly caused by the Permit Regime in the seam zone, the Petitioners did not explain the exacerbation or change which has occurred in Respondent's Permit Regime policy at this point in time justifying precisely now to change the route of the fence and explaining Petitioners' delay and failure to commence legal proceedings with respect to the Permit Regime until now. In this matter the Petitioners are satisfied with general allegations concerning an "accumulation" of changes in the seam zone Standing Orders, the vast majority of which are not at all relevant to the Petitioners or at least, no connection was established between them and the Petitioners in the petition at hand.
50. Moreover, according to the Petitioners (as specified in paragraphs 127-128 of the petition; and in the affidavits which were attached by the Petitioners) the main alleged harm to their ability to cultivate their lands occurred between the years 2002-2010 (it was alleged that in said period there was a drop of some 70% in the agricultural yield). Accordingly, it is not clear why the Petitioners did not raise their allegations before the Respondents since 2010, or at least, since 2014, when, according to the Petitioners "the policy designed to significantly reduce seam zone permit eligibility went into effect, which reduced the workforce, ultimately causing a further contraction in yield in the seam zone" (paragraph 128 of the petition). Moreover, it seems that the vast majority of the data presented by the Petitioners are taken from a study conducted by the UN Office of the Coordination of Humanitarian Affairs dated February 2014 which was attached by the Petitioners to their petition. Here too, it is not clear why the Petitioners have waited more than six and a half years from the publication of the data, until the actual filing date of the petition.

51. In view of all of the above it is clear that there is a heavy delay in all of Petitioners' allegations, mostly reflected in their allegations concerning the need to dismantle the fence and re-construct it in another location, and in the allegations pertaining to the seam zone. In addition, **the Petitioners did not substantiate the argument that precisely now, after such a long period of time, a change has occurred which justifies reconsidering the location of the seam zone barrier, which is still required for security purposes.** Given the aforesaid the petition should be summarily dismissed.

#### **C.4 The Petition should also be dismissed on the merits**

52. Beyond need, the petition should also be dismissed on the merits.
53. As specified above, the route which is the subject matter of the petition at hand was established a long time ago on the basis of security-operational considerations, for the purpose of providing effective protection against the infiltration of perpetrators into the territory of the state of Israel. While determining the route of the fence all aspects were considered including the operational effectiveness on the one hand, and the rights of the local residents, on the other. In addition, topographic-engineering considerations were taken into account.
54. After all aspects had been considered, it was decided at the time that due to security needs the fence should be built in the current route (subject to the changes made therein) creating a seam zone permitting maneuvers and other military action aimed at protecting the Israeli communities near the route. In addition it was found that there were no state-owned lands or non-agricultural lands in the area, such that any change in the route would necessarily lead to additional harm to agricultural crops and privately-owned lands.
55. Simultaneously, to maintain the fabric of life in the seam zone, several agricultural gates were installed along the route and suitable permits were issued to landowners in the seam zone over the years. In addition, crossing arrangements were established in coordination with the Palestinian coordination and local councils in the seam zone. **Respondents' position is that the accumulation of the above arrangements is proportionate and enables maintaining the agriculture in the seam zone in a reasonable manner.** Alongside the above, Respondents' position is that **the remedy requested by the Petitioners and the alternative proposed by them to transfer the segment and place it on the Judea and Samaria Border Line is inconsistent with the existing security and operational needs and violates the balance between said needs and the need to maintain the fabric of life of the residents of the Area, underlying the Permit Regime.**

However, and more importantly: **the inference drawn by the Petitioners from the Permit Regime and the provisions of the Standing Orders** (and Petitioners' allegations against them) **leading them to the exceptional remedy requested by them to divert the segment of the security fence – years after it had been built and placed in said location – is not supported by the foundation presented by them.** Hence, to the extent the Petitioners are bothered by the difficulties arising from the seam zone Permit Regime, they were invited to discuss these issues with Respondents' bodies in order to find concrete and specific solutions to the difficulties raised by them. To the extent there are difficulties the Petitioners can submit concrete and specific applications, as things were done in the past, and the Respondents will be willing to

examine the matter, balancing between the security need served by the security fence in that segment, and the undisputable need to maintain the fabric of life of the residents of the area and the connection to their seam zone lands. To the extent these solutions are unacceptable to the Petitioners they can obviously turn to legal instances on the basis of a concrete foundation, to the extent cause is established.

56. We shall now refer specifically to Petitioners' allegations.

**Petitioners' allegations concerning difficulties in the implementation of the Permit Regime**

57. As aforesaid, the Petitioners raise numerous allegations against the Permit Regime and claim that it fails to meet its purpose to secure regular life in the seam zone and that the purpose of this regime is "to empty the zone of its Palestinian residents and dispossess them of their lands".

58. According to the Respondents, Petitioners' conclusions about the Permit Regime do not emerge from the factual infrastructure presented in the petition, and with all due respect, the Respondents are of the opinion that there are inaccuracies in the factual basis which was presented and in the arrangements making up the Permit Regime as presented. In view of the above, the Respondents wish to discuss the arrangements mentioned in the petition and to set the record straight.

59. First, we wish to clarify that the principled undertakings which were given in the framework of HCJ 996/03 still stand and in any event, Respondents' position is that the arrangements which were established with respect to the seam zone in the relevant segment, do not disproportionately harm the Petitioners, taking into account, while weighing the entirety of considerations, the security need to leave the security fence in its current location. Before discussing the specific issues we wish to remind what was held in HCJ 9961/03. Accordingly, with respect to the Permit Regime itself and the scope of permits issued by the military commander, the Honorable President **D. Beinisch** held, *inter alia*, that:

It seems that the state is also aware of the fact that a significant decline has occurred in the issuance of farmer permits from the commencement of the permit regime. It is argued that this has occurred, due to the concern that the liberal policy which was allegedly applied in the past to the issuance of entry permits into the zone would be abused. Therefore, as specified above, it was decided that in lieu of permanent farmer permits, the family members and the workers would be issued temporary working or farmer permits, according to the specific needs of the farmer."

It was also held by the Honorable President **Beinisch** that:

"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 gives reasonable solution which minimizes the violation of the rights of the farmers, and we assume in our said determination that respondents' make concrete their declarations concerning the importance of giving proper solutions for the needs of the farmers in the Area.** 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 specific 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."

We shall now specifically discuss said arrangements:

60. **The opening hours of the gates** – the opening times of the gates are routinely determined in coordination with the representatives of the Regional Palestinian Coordination and according to the seasonal agricultural needs and the number of people expected to pass through the crossing. Crossing may normally be coordinated by contacting the Palestinian Coordination. The gates are operated by a **special purpose** military police battalion, specializing in operating the gates. In any event, **the Respondents are not familiar with Petitioners' applications to change the opening times of the gates** and hence, no such application has been examined. It should be pointed out that to the extent any such application is submitted, it shall be examined willingly and open-mindedly.
61. **Ban on bringing dual-use materials into the seam zone** – according to the Supervision of Certain Materials (Judea and Samaria) (No. 653) Decree, 5735-1975, possession of dual-use materials is prohibited without a permit by the military commander. Among other things, possession of certain fertilizers is prohibited. Said prohibition applies generally to the Judea and Samaria Area and is not specific to the seam zone. In fact, contrary to Petitioners' allegations, there are no **specific** provisions specifically prohibiting bringing any materials into the seam zone. Either way, any resident can apply for a permit for possession of such materials, and it emerges from an inquiry conducted with the relevant coordination bodies that the entry of tractors for spraying and plowing purposes is coordinated as a matter of routine even for residents who do not routinely hold permits.
62. **Ban on entering with agricultural vehicles** – according to the seam zone entry procedures and guidelines, the holder of a farmer permit can enter the seam zone riding an agricultural vehicle such as a tractor or a plow. In addition, the Head of the DCO can enable crossing by vehicle for other purposes for special reasons which shall be registered. Here too, the Respondents are not aware of any concrete application submitted by the Petitioners for entering the seam zone with a vehicle which was denied (and anyway no such application was presented in the petition).
63. **Entry of farmer's family members** – contrary to Petitioners' allegations, according to the provisions of the Standing Orders, permits can be issued to farmer's family members

in excess of the quota set for the plot. As a matter of routine, hundreds of agricultural worker permits for "farmer's family members" are issued in the seam zone, including to the family members of the Petitioners. Specifically, a substantial part of Petitioners' family members have received a permit of this type. In addition, in the harvest season permits are generously issued including to residents who are not regularly entitled to receive a permit.

64. **Submitting applications to the Palestinian coordination office** – according to the interim agreement and Proclamation No. 7 for the implementation of the interim agreement, as a general rule, the Palestinian side is responsible for the connection between the residents and the bodies of the civil administration. However, according to procedures and guidelines concerning entry into the seam zone, in exceptional cases an application may be submitted directly to the regional DCO. It should also be noted that until recently, given the unique situation which was created as a result of the suspension of the coordination between the Authority and Israel, the DCO acted to receive applications in a concentrated manner to streamline the process and make sure that permits are issued to all those who are entitled to receive them and applications as aforesaid have indeed been received by the DCO.
65. **Petitioners' allegations concerning bureaucratic difficulties** – the Respondents constantly act to improve and streamline the procedures for the examination of entry applications into the seam zone, the above, *inter alia*, by validating the Standing Orders, streamlining the procedures and establishing principled time lines for handling the applications which are reviewed from time to time. Naturally, the procedure is not always flawless and delays occasionally occur. To Respondents' best knowledge and examination, in most cases the processing of the application is concluded within the timeframe established in the procedures. Whenever there are deviations from the timeframe, the processing of the application is prioritized according to the urgency of the matter. In any event, only in a minority of the cases the issuance of permits is delayed for long periods of time, as alleged by Petitioners. At any rate, the Respondents are willing to examine any specific application on this matter.

**Allegations concerning agricultural yield drops in the seam zone**

66. An allegation which runs throughout the petition like a golden thread is that as a result of the erection of the fence and the difficulties imposed on the entry of the Petitioners to the seam zone, some of the Petitioners were forced to stop growing in this area seasonal crops requiring constant cultivation and grow olive trees instead. The Petitioners also argue that as a result of the Permit Regime, olive tree yield in the seam zone dropped dramatically, substantially harming their proceeds. The conclusion which according to the Petitioners justifies the remedy requested by them to divert the seam zone fence is that "If anything has been proven in the 15 years since the fence was built, it is that a regime of permits, gates and roadblocks is incompatible with sustainable agriculture" (paragraph 190 of the petition). Respondents' position is that these allegations are not based on up-to-date data concerning the scope of the crops in the seam zone, and are also contrary to prior reports and requests, as specified below.
67. It should be firstly noted that already in 2004, when the travelling and crossing arrangements in the seam zone were examined, it emerged that the vast majority of the

crops in the seam zone were olive trees. A similar situation was described in a letter of the Association for Civil Rights dated October 4, 2005, which argued that 97% of the agriculture in the lands of the village of Qaffin, including the lands located in the seam zone, was based on olive trees; and also the report of the UN Office of the Coordination of Humanitarian Affairs (hereinafter: the **OCHA Report**) which focuses solely on olive trees in the seam zone without mentioning other crops shows that the vast majority of the agricultural crops in the relevant area are olive trees.

68. In addition, an analysis of aerial photos taken by Respondents' relevant bodies in the course of handling the petition at hand shows that already in 2002, when the fence was built, approximately 93% of the cultivated lands in the relevant segment of the seam zone were used to grow olive trees or were not used for agricultural purposes at all. In addition, **an analysis of aerial photos from 2002 as compared to current aerial photos shows that the scope of crops grown in the seam zone has not substantially changed since the erection of the security fence.**

A copy of aerial photos mapping the scope of cultivated land is attached and marked **RS/10**.

69. It should also be noted that presently seasonal crops or crops requiring constant cultivation are grown in the relevant seam zone segment and in other parts of the seam zone, such as tobacco and there are also several greenhouses for seasonal growing. Accordingly, for instance, several greenhouses used for seasonal growing are located near the Akkabah gate. It should be noted that the above is done in cooperation and coordination with the DCO and that presently the possibility of installing a water pipe to irrigate the crops is being examined.
70. Given the above, even if we assume that there is a decline in the scope of agricultural cultivation as a result of the creation of the seam zone, it was not proven that harm of the scope alleged by the Petitioners was caused and it certainly does not lead to "the severance of the connection between the lands and their owners" and to a "90% loss of income from lands in the seam zone segment compared to the yield before the fence was built". Anyway, considering the fact that over the years the Petitioners held permits, it was not proven – at least in their case – that the erection of the barrier caused an agricultural yield drop.
71. Another allegation raised by the Petitioners in their petition is that fires which broke out in 2005 caused a substantial agricultural yield drop. It was accordingly alleged that as a result of the Permit Regime, the Petitioners were unable to rehabilitate their lands. Although the relevancy of these allegations is unclear some 15 years after the occurrence of said events, we wish to emphasize that in fact, shortly after said fires, several projects were initiated in cooperation with the ICRC in which the Respondents applied a more generous entry policy into the seam zone and entry into the seam was also allowed to persons who did not hold permits at that time, for the purpose of cultivating the land. In addition, additional projects took place for the rehabilitation of the land and tree planting which included, *inter alia*, the opening of the agricultural gates for longer hours and permitting the entry of persons who did not prove proprietary connection to the seam zone. The Respondents are not familiar with allegations from that time concerning the need to have additional permits for the rehabilitation of the land as alleged.

72. It should also be noted that in the last few years a number of fires also broke out in the seam zone. The fires were extinguished with the DCO's assistance which sent to the scene Israeli fire trucks or facilitated the coordination of the arrival of Palestinian fire trucks to the seam zone. After the fires, the regional DCO did not receive any irregular application in that regard or special coordination request to examine the status of the land or its rehabilitation.
73. The Respondents do not dispute the fact that many plots in the seam zone are not cultivated and it emerged from a tour conducted by the Agriculture Staff Officer in the area that many plots required turning, plowing and spraying against shrubbery. However, according to the Respondents, it has not been proven that the above was caused by erection of the seam zone barrier, considering the fact that residents pass through the agricultural gates and use the permits issued to them.
74. To complete the picture, it should be noted that Respondents' bodies are familiar with the phenomenon of cessation of agricultural cultivation alongside substantial use of permits for agricultural needs. However, with due caution, it may indicate that at least some of the permit holders use them unlawfully for the purpose of working in Israel and not for the purpose for which the seam zone entry permit was given. Therefore, even if there are specific cases in which certain difficulties arise as a result of the mere erection of the fence on site, then generally – according to the information in Respondents' possession, and according to the data specified above, there is no preclusion preventing the landowners in general and the Petitioners in particular from cultivating their lands in the framework of the existing Permit Regime and their specific permits.

#### **Petitioners' Specific Factual Background**

75. To complete the picture we shall briefly discuss Petitioners' specific cases emphasizing the current status of their permits. The information provided below is based on Respondents' best knowledge and the data in Respondents' systems.
76. **Petitioner 1**, Mr. Muhammad Sa'id Jamil Khasib (ID No. 968147363) – according to the information found in the computerized system Petitioner 1 is a resident of Qaffin, in the Tulkarm district. He is 62 years old, married and father of eight children. Petitioner 1 has received, as of 2006, dozens of seam zone entry permits. Accordingly, Petitioner 1 has received *inter alia*, seam zone commercial permits, permits for personal needs and agricultural worker permits. In addition, it should be noted that Petitioner 1 has also received many entry permits into Israel, including inter alia an old age permit and permits for humanitarian reasons, which are still valid at this time. It should also be noted that **Petitioner 1 has an agricultural entry permit into the seam zone valid from December 19, 2018 until October 4, 2023.** The farmer permit held by Petitioner 1 allows him to travel to the seam zone through the Qaffin gate and the Baq'a a-Sharqiyah gate. In addition, Petitioner 1's spouse held over the years dozens of different and diverse entry permits into the seam zone and even to Israel, and **even on the date on which this response is penned she holds an agricultural worker entry permit into the seam zone given to "farmer's first degree family members" valid from October 27, 2019 through October 25, 2021.** Over the years Petitioner 1's eight children have also

received many entry permits into the seam zone. Accordingly, for instance, Petitioner 1's six daughters received dozens of entry permits into the seam zone between the years 2006-2012 (and since then no additional applications in their matter have been received). Petitioner 1's two additional sons have also received dozens of entry permits into the seam zone and to Israel, including agricultural worker entry permits into the seam zone given to "farmer's first degree family members" (it should be noted that the seam zone entry permit of one of Petitioner 1's sons expired on February 27, 2020 and since then an application for its renewal has not been submitted, while the seam zone entry permit of his second son, expired on October 1, 2020, and since then an application for its renewal has not been submitted).

77. **Petitioner 2**, Jihad Khaled Mahmoud Hareshah (ID No. 978852531) - according to the information found in the computerized system Petitioner 2 is a resident of Qaffin, in the Tulkarm district. He is 68 years old, married to two women and has no children. Petitioner 2 received as of 2003 dozens of entry permits into the seam zone, including, *inter alia*, commercial permits in the seam zone, permits for personal needs and agricultural worker permits. In addition, it should be noted that Petitioner 2 has also received many entry permits into Israel, including *inter alia* an old age permit which is still valid at this time. To complete the picture, it should be noted that Petitioner 2's employment permit application dated September 19, 2017 was rejected due to the existence of an active permit; in addition, a farmer permit application dated August 12, 2018, an employment worker application dated November 12, 2018 and an application for a farmer permit from January 2019 were denied for failure to meet the criteria. **Petitioner 2 holds an agricultural entry permit into the seam zone valid until April 1, 2021.** The farmer permit held by Petitioner 2 allows him to travel to the seam zone through the Qaffin gate. Similarly, over the years Petitioner 2's wives also held dozens of different and diverse entry permits into the seam zone and into Israel; and **currently, one of Petitioner 2's wives still holds an entry permit into the seam zone issued to a "farmer's first degree family members" valid until April 1, 2021.** Petitioner 2's additional wife received many entry permits into the seam zone for commercial or employment purposes between the years 2003-2014, and since then has continuously received old age entry permits into Israel. To complete the picture it should be noted that the application of Petitioner 2's wife (Fahima) for an agricultural worker permit dated September 19, 2017 was denied due to the existence of an active permit.
78. **Petitioner 3**, Mr. Ibrahim Suleiman Khalil 'Amar (ID No. 965185747) - according to the information found in the computerized system Petitioner 3 is a resident of Qaffin, in the Tulkarm district. He is 62 years old, married and father of seven children. Petitioner 3 has received, as of 2009, dozens of seam zone entry permits. Accordingly, Petitioner 3 has received *inter alia*, seam zone commercial permits, permits for personal needs and a farmer permit. Petitioner 3 has also received many entry permits into Israel, including *inter alia* permits for medical needs and old age permits. **Petitioner 3 holds an agricultural entry permit into the seam zone valid until October 28, 2023.** The farmer permit held by Petitioner 3 allows him to travel to the seam zone through the Qaffin and Akkabah gates (it should be noted that at this time, prior to the cancellation of the "punch card" mechanism and the amendment of the Standing Orders as aforesaid, up to approximately 120 entries can be made with this permit). To complete the picture it should be noted that Petitioner 3's applications from February 6, 2017 and February 23,

2017 were denied for failure to meet the criteria (application without documents – lack of surveyor's map); his applications from June 18, 2017 for a farmer permit and employment permit were denied for failure to meet the criteria (lack of documents); and an application submitted by him on September 13, 2017 was denied for failure to meet the criteria (old documents were attached to the application). It should also be noted that Petitioner 3's farmer permit was forfeited in 2014 and was returned to him at the DCO on February 5, 2014 (it should be noted that there are no records in Respondents' system documenting the circumstances of said short forfeiture). Petitioner 3's spouse submitted only one application for an agricultural worker permit in the seam zone during the years 2004-2005, which was approved. As of 2015 Petitioner 3's spouse receives old age entry permits into Israel. Petitioner 3's four sons received many entry permits into the seam zone and even into the state of Israel for different purposes. These four sons hold entry permits into the seam zone issued to a "farmer's first degree family members" (**three of these permits are valid until September 30, 2020 while the fourth permit is valid until October 28, 2023**). According to the data in Respondents' possession, it should be noted that four public servant certificates were issued with respect to Petitioner 3's son Muaman 'Amar at the request of Israel Police for the suspicion of unlawful stay in Israel between the years 2011-2014. It should also be noted that during 2010 it was decided to forfeit the permit of Petitioner 3's son, Muhammad 'Amar, after he had expressly admitted in an inquiry conducted on behalf of the Head of the DCO that he was unlawfully working in construction in Baq'a al-Gharbiyeh. In addition, the latter was apprehended as an illegal alien by the Police in March 2011.

According to the information found in the computerized systems Petitioner 3's three daughters did not submit entry applications into the seam zone.

To complete the picture, it should be further added that Petitioner 3 and his son Khalil Ibrahim Saliman 'Amar (ID No. 965185747) have recently filed together with Petitioner 8 a petition to amend the permits issued to them, to enable them to travel through the Akkabah gate in addition to the Qaffin gate; to replace Petitioner 3's son permit with a farmer permit; and to amend the name of Petitioner's 3 father as it appears on the permit (administrative petition 30834-10-20). The petition was deleted after the permits were issued to them as requested.

79. **Petitioner 4**, Mr. Samir 'Izat Sa'id Sabah (ID No. 949227169) - according to the information found in the computerized system Petitioner 4 is a resident of Qaffin, in the Tulkarm district. He is 55 years old, married and father of six children. Petitioner 4 has received, as of 2007, dozens of seam zone entry permits. Accordingly, Petitioner 4 has received *inter alia*, seam zone commercial permits, agricultural worker permits in the seam zone, permits for personal needs and a farmer permit. **Petitioner 4 holds an agricultural entry permit into the seam zone valid until September 15, 2021**, allowing Petitioner 4 to travel to the seam zone through the Qaffin gate. To complete the picture it should be noted that several permit applications submitted by Petitioner 4 were denied for lack of documents and illegible documents; in 2019 an application for an agricultural worker permit submitted by Petitioner 4 was denied in the absence of connection to the land; at the same time, his application for a farmer permit was approved. It should also be noted that there are no records of applications submitted by Petitioner 4 to enter with the flock or for grazing permits. **Petitioner 4 is the father of six children. Two of his sons hold agricultural worker permits issued to a "farmer's**

**first degree family members" (valid until April 26, 2021 and September 15, 2021).** According to the information found in the computerized systems, Petitioner 4's spouse and four additional children have not submitted entry applications into the seam zone.

80. **Petitioner 5**, Mr. Subhi 'Izat Muhammad Hussein (ID No. 956413066) - according to the information found in the computerized system Petitioner 5 is a resident of Nazlat 'Isa, in the Tulkarm district. He is 63 years old, married and father of six children. Petitioner 5 has received, as of 2008, dozens of seam zone entry permits. Accordingly, Petitioner 5 has received *inter alia*, seam zone commercial employment permits, agricultural worker permits in the seam zone, and a farmer permit. Petitioner 5 has also received many entry permits into Israel, including commercial permits and old age permits. **Petitioner 5 holds an agricultural entry permit into the seam zone valid until June 7, 2023**, allowing Petitioner 5 to travel to the seam zone through the Baq'a a-Sharqiyah gate. To complete the picture it should be noted that on November 8, 2011 Petitioner 5's permit was revoked after he had used it to visit family in Israel. On May 16, 2019, his farmer permit was forfeited and revoked due to several violations of the conditions of the permit after he had been warned (it should be noted that there are no records in Respondents' systems of the nature of the violations). It should be added that according to the information in Respondents' possession, three public servant certificates were issued in Petitioner 5's matter over the years for the suspicion of unlawful stay in Israel. It should also be noted that as of today, Petitioner 5 holds an active old age entry permit into Israel. Petitioner 5's spouse held dozens of entry permits into the seam zone and into Israel over the years, and she currently holds an old age entry permit into Israel. Four of Petitioner 5's children have received, over the years, seam zone entry permits.
81. **Petitioner 6**, Mr. Ahmad 'Abd al-Rahim Namer Daud (ID No. 978861383) - according to the information found in the computerized system Petitioner 6 is a resident of Nazlat 'Isa, in the Tulkarm district. He is 59 years old, married and father of four children. Petitioner 6 has received, as of 2004, dozens of seam zone entry permits. Accordingly, Petitioner 6 has received *inter alia*, seam zone commercial employment permits, agricultural worker permits in the seam zone, and a farmer permit. Petitioner 6 has also received many old age entry permits into Israel. **Petitioner 6's agricultural entry permit into the seam zone expired on September 25, 2020, and since then no new applications have been received in his matter.** Petitioner 6's farmer permit enabled him to travel to the seam zone through the Baq'a a-Sharqiyah gate. Similarly, Petitioner 6's spouse has also held over the years several entry permits into the seam zone. The last permit held by her, an agricultural worker permit in the seam zone, was valid from October 6, 2016 until November 30, 2016. It should be noted that since 2016 no additional seam zone entry application has been received with respect to Petitioner 6's spouse. Over the years Petitioner 6's four children have received many entry permits into the seam zone. **One of Petitioner 6's sons still holds a "farmer's first degree family members" seam zone entry permit, which has recently expired on November 16, 2020.** It should be noted that with respect to another son of Petitioner 6 – Billal Daud – a permit issued to him was forfeited twice in 2013 and 2019 due to suspicion that the permit was used for the purpose of entering Israel. In 2019 the permit was returned to him in the framework of the appeals committee, and he currently holds a valid permit.

82. **Petitioner 7**, Mr. Taysir Fathi Taha 'Amarneh (ID No. 928861236) - according to the information found in the computerized system Petitioner 7 is a resident of Qaffin, in the Tulkarm district. He is 57 years old, married and father of eight children. Over the years Petitioner 7 has received, as of 2003, dozens of seam zone entry permits. Accordingly, Petitioner 7 has received *inter alia*, seam zone commercial employment permits, agricultural worker permits in the seam zone, and a farmer permit. In addition, Petitioner 7 has also received many entry permits into Israel including job search and old age permits. **Petitioner 7 holds an agricultural entry permit into the seam zone valid until March 10, 2023**, allowing him to enter the seam zone through Khirbeth Akkabah gate. To complete the picture it should be noted that notice was found in Respondents' computerized system whereby the permit was frozen in 2018 until Petitioner 7's appearance before a DCO inquiry committee. However, according to the system the above permit has not been revoked at any stage. Petitioner 7's spouse has also held dozens of different entry permits into the seam zone and Israel over the years. and **she currently holds a seam zone entry permit which is issued to a "farmer's first degree family members" valid until March 10, 2023**. Petitioner 7's children have received over the years dozens of entry permits into the seam zone and Israel for different purposes. **Three of Petitioner 7's children currently hold entry permits into the seam zone valid until March 10, 2023, March 4, 2023 and March 15, 2021**).
83. **It emerges from all of the above, at least, that the vast majority of the Petitioners (including a substantial part of their family members) currently hold valid entry permits into the seam zone, giving them access to their land.** Indeed, as things emerge from the above description, throughout the years in certain cases permits were not issued to the Petitioners and some of their family members for different reasons, but in general, throughout the years the Petitioners and their family members have received permits, including at this time, and obviously to the extent any of them was of the opinion at the time that their applications had been unreasonably denied, they could have appealed the decisions.

**Petitioners' allegation that there is a less injurious alternative**

84. Far beyond need in the case at hand, we shall briefly refer to Petitioners' proposal, which was supported by the opinion of Colonel (reserves) Shaul Arieli, to divert the route of the fence to the Judea and Samaria Border Line.
85. It should already be clarified that the military commander is of the opinion that there are no grounds to re-examine *de novo* the route of the seam zone barrier at each point in time, after it has been thoroughly examined and stood up to judicial scrutiny in real time (to the extent those arguing that harm was caused thought that there were grounds to do so). Note well: the need to have the seam zone barrier for security reasons still stands, and it seems *prima facie* that the Petitioners do not wish to dispute it in this petition. The erection of the fence along a certain route involved the investment of many resources and outputs, which naturally caused harm to the route of the land as a result of the construction of roads and all other parts of the barrier. In the absence of a substantial change of circumstances and given the continuous security need to have the seam zone barrier there is no room to examine the diversion of the fence to this route or another.

86. Beyond need it should be noted that the position of the security bodies concerning the need to have the security fence, in general, and in the current segment, in particular, is well founded and reasonable, and is based on clear security reasons. It has been frequently held that the evaluation of the effectiveness of the security measures is within the realm of the military commander's expertise and responsibility (see: **Beit Sourik**, pages 842-845; **Mara'abe**, page 509).
87. **Far beyond need**, it emerges from an examination conducted by the military commander that the route proposed by the Petitioners undermines the operational considerations underlying the construction of the security fence in the route chosen, in a manner which may substantially harm the security effectiveness of the fence, and may put at an actual risk the residents of the neighboring Israeli communities. In addition, diverting the barrier as requested is expected to cause extensive damage to privately-owned land, including cultivated lands, in addition to the lands which have already been harmed as a result of the construction of the existing fence. We shall review below the main security reasons underlying the rejection of Petitioners' proposal:

**Warning distance**: diverting the route according to Petitioners' proposal shall substantially reduce the required alert distance which would enable the security forces to identify and catch a perpetrator infiltrating through the fence, before entering the territory of the state of Israel. **The above particularly applies to the city of Harish with its thousands of Israeli residents, a fact requiring a substantial alert distance from the fence.** It also applies to the communities Mitzpeh Ilan and Metzger which are located relatively near the Judea and Samaria Border Line (it should be noted that there is no dispute between the parties that the alternative proposed by Colonel (reserves) Arieli limits the zone in which the military can identify and act against infiltrators, and that the "existing barrier does indeed create a larger area for security response"; the above, alongside the allegation in the opinion on behalf of the Petitioners that notwithstanding the above there is no justification for the existing route of the barrier – see page 6 of the opinion).

**Expanding the route of the fence in an urban environment**: if the route of the security fence is aligned with the Judea and Samaria Border Line, it shall run a few single meters from the houses of Baq'a al-Gharbiyeh (which since the erection of the fence has substantially expanded to the north). This will increase the ability of the infiltrators through the fence to assimilate in the urban area, which shall undermine the substantial security principles on the basis of which the route was chosen as described above.

88. **Proximity to a wooded area**: in several different segments in the above referenced area the Judea and Samaria Border Line runs near wooded areas or areas with high vegetation. Diverting the route to these areas shall harm the effectiveness of the fence since it shall harm observation and spatial defense abilities of the forces moving along it.
89. **The topography in the area** – due to the topography of the area diverting the route of the fence shall lead to topographic inferiority of the fence *vis-a-vis* the hills located to its east. In this situation, the security fence and the forces acting in its surrounding area shall be controlled by observation and fire from these areas (the height differences are substantial and reach in certain cases to approximately 20 meters and more).

90. In addition to all of the above and as mentioned above, diverting the route of the fence shall lead to an additional and substantial damage to privately-owned lands. The above, in addition to the harm already caused as a result of the erection of the fence in its existing route.
91. It should be noted in this regard that the need for having the security fence is examined by the military commander periodically, once every three years (recently the matter was examined on October 3, 2019, and it was determined that security reasons still justified the existence of the security fence). Considering the above, and given the security need justifying the existence of the security fence in its current location, it is impossible to constantly conduct specific examinations of each and every segment of the fence, the above also in view of the fact that the security considerations on the basis of which the route of the fence was chosen – including the route of the fence in the specific area herein discussed – are still valid; and in view of the fact that the matter is examined periodically while the decrees are extended.
92. It should also be pointed out, although it is a secondary consideration in the case at hand, that the dismantling of the fence and its re-construction as proposed by the Petitioners, which also involves the relocation of infrastructures and technological means which were installed on the fence, requires the investment of tens of millions of Shekels, but the above consideration is separate and distinct from the conclusion that in any event the alternative proposed by the Petitioners shall adversely affect the effectiveness of the security fence. Therefore, this alternative is unacceptable to the security bodies and is anyway irrelevant. It should be pointed out that with all due respect to the opinion which was attached by the Petitioners, it is eventually the responsibility of the Respondents to secure the safety and lives of the residents of the communities and cities neighboring the fence; and that in this security-operational matter the Respondents are vested with extensive discretion which may be interfered with only when the decision extremely exceeds reasonableness and proportionality. The general arguments concerning the Permit Regime which are raised in the petition do not demonstrate such deviation, and certainly not in the required magnitude justifying the exceptional remedy which is requested in the petition.

**D. Conclusion**

93. In view of all of the aforesaid, the petition should be summarily dismissed, and alternatively, it should be dismissed on its merit. It is a route which exists for years and the need to have the security fence in the area still stands. Diverting the security fence at this point in time, many years after its construction, involves substantial costs and damage to additional lands in the area, and therefore the petition should be dismissed for laches. Moreover, so long as the security fence is required, there is no justification under the circumstances of the matter to obligate the Respondents to divert the route to an alternative location. All of the above, beyond the security difficulties invoked by the alternative route proposed by the Petitioners.
94. The above is reinforced by the fact that no grounds were established in the petition supporting the general allegation that the harm caused to the Petitioners has grown worse as a result of the Permit Regime during the last few years, given the fact that in general

the Petitioners and their family members have held different permits during the last years and that the vast majority of the changes in the Permit Regime discussed in the petition are not relevant to the Petitioners. In any event, we wish to reiterate and clarify that the Petitioners can always submit specific applications to change the entry arrangements into the seam zone and Respondents' offer to establish a periodic forum to promote solutions for the alleged difficulties encumbering access to the above zone – still stands.

95. Considering all of the above, the honorable court is requested to dismiss the petition and obligate the Petitioners to bear Respondents' costs.
96. The facts specified in paragraphs 77-22, 84-96 are supported by an affidavit on behalf of Colonel Ofer Hindi, Head of the Keshet Zevaim Administration at the Central Command.

The facts specified in paragraphs 25, 38-84 were confirmed by Boaz Natan – Head of Efraim DCO and the affidavit on his behalf shall be provided at a later date.

Today, Tevet 3, 5781  
December 18, 2020

**Yonatan Berman, Advocate**  
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