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At the Supreme Court
Sitting as the High Court of Justice

HCJ /23

In the matter of:

1. **_____ Radwan, ID No. _____**
Palestinian resident of the occupied territories
2. **_____ A-Zakla, ID No. _____**
Palestinian resident of the occupied territories
3. **_____ A-Zakla, ID No. _____**
Palestinian resident of the occupied territories
4. **_____ Gashash, ID No. _____**
Palestinian resident of the occupied territories
5. **_____ Gashash, ID No. _____**
Palestinian resident of the occupied territories
6. **_____ Gashash, ID No. _____**
Palestinian resident of the occupied territories
7. **_____ Zeid, ID No. _____**
Palestinian resident of the occupied territories
8. **_____ Zeid, ID No. _____**
Palestinian resident of the occupied territories
9. **_____ Zeid, ID No. _____**
Palestinian resident of the occupied territories
10. **HaMoked - Center for the Defence of the Individual founded by
Dr. Lotte Salzberger RA No. 580163517**

Represented by counsel, Adv. Tehila Meir (Lic. No. 71836), Daniel Shenhar (Lic. No. 41065) and/or Nadia Daqqa (Lic. No. 66713) and/or Maisa Abu Saleh-Abu Akar (Lic. No. 52763) and/or Nadine Abu Arafé (Lic. No. 89020) and/or Alma Elimelech (Lic. No. 82867)

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The Petitioners

v.

Military Commander of the West Bank Area

Represented by the State Attorney's Office, Ministry of Justice,
29 Salah-a-Din Street, Jerusalem
Tel: 073-3925590; Fax: 02-6467011
email: HCJ-dep@justice.gov.il

Petition for Order *Nisi*

Petition for order *nisi* is hereby filed which is directed at the Respondent ordering him to appear and show cause why he should not enable Palestinians who received entry permits into the seam zone for agricultural purposes to re-enter the seam zone.

Factual Infrastructure

The Permit Regime

1. In 2002, the Government of Israel decided to build the separation fence. The separation fence should have ostensibly created a barrier between the West Bank and the state of Israel, but in fact the separation fence was not built on the Green Line. Instead, approximately 85% of the route of the fence was built within the West Bank. The part of the West Bank which was trapped between the route of the fence and the Green Line is referred to by the state of Israel as the "seam zone", and it constitutes 9.4% of the territories of the West Bank which were occupied in 1967 (including East Jerusalem).
2. Once the sections of the fence had been built within the West Bank, the Respondent declared the areas that remained between the separation fence and the Green Line as closed areas. The entry into these areas and the presence therein are prohibited without a special permit for this purpose. These prohibitions do not apply to residents of the state of Israel and to tourists, who may enter the seam zone as they please.
3. A number of petitions were filed regarding the legality of the erection of the fence in general and the legality of specific parts of its route. In the judgments given in these petitions, the court ruled that the legality of the route of the fence rests on whether it strikes a proper balance between the security considerations underlying it and the protection of the human rights of the protected persons (see, for instance, HCJ 2056/04 **Beit Sourik Village Council v. Government of Israel**, IsrSC, 58(5) 807 (2004); HCJ 7957/04 **Mara'abeh v. Prime Minister of Israel**, IsrSC 60(2) 477 (2005); HCJ 5488/04 **A-Ram Local Council v. Government of Israel**, (reported in Nevo, December 13, 2006); and HCJ 8414/05 **Yasin v. Government of Israel**, IsrSC 62(2) 822 (2007)).
4. In addition, shortly after the first declaration of the seam zone as a closed area, which was signed on October 2, 2003, petitions were filed against the permit regime. These petitions challenged the legality of the closing of the seam zone to Palestinians and requiring them to obtain special permits in order to enter it. The ruling in these petitions was delayed for more than seven years, until judgments were delivered in the petitions against the separation fence, which were pending before the court at the time. As a result, the judgment in **HCJ 9961/03 HaMoked - Center for the Defence of the Individual founded by Dr. Lotte Salzberger v. Government of Israel** (reported in Nevo, April 5, 2011, hereinafter: the **permit regime judgment**) was penned while taking the separation

fence for granted and looked at the harm the permit regime causes Palestinian residents distinctly from the harm caused by the fence itself.

5. The permit regime judgment examined the harm caused by the permit regime given the arrangements the Respondent had put in place for issuance of permits to enter the seam zone to Palestinians, including the "Seam Zone Standing Orders and Procedure for Addressing Misuse of Seam Zone Permits", and given Respondent's contention that these arrangements would be applied permissively. The Honorable Court ruled that the harm caused to Palestinian residents was proportionate, barring several specific issues that were disqualified.
6. It was further clarified in the judgment that the findings on the proportionality of the harm of the permit regime on Palestinians do not preclude the possibility that "in specific cases, severe injury is caused to the rights to property and livelihood of Palestinian residents who cannot adequately farm their lands or who encounter other access difficulties, and the Respondents, on their part do not take adequate measures to minimize said injury," and that, "these cases may be reviewed within the framework of individual petitions, in which the court will be able to examine the overall arrangements that apply to a certain area, and the specific balancing which takes place therein between the rights of the residents and other interests, as was previously done in similar petitions" (paragraph 34 of the judgment).
7. And indeed, after the permit regime judgment was delivered on the assumption that Palestinians with ties to the seam zone would not be denied access to it, more and more cases in which the Respondent denies Palestinians access to their lands and workplaces in the seam zone emerged. The following was recently written about the implementation of the permit regime and its severe consequences:

The barrier has serious consequences for the entire Palestinian population in the West Bank... The hardship caused by the barrier is particularly grave in the area of the West Bank between the barrier and the Green Line, known as the 'Seam Zone'... Data supplied by the military authorities in 2018 show a consistent decline in the number of permits issued. The military authorities claim that this decline is due to the concern that a growing number of Palestinians are using Seam Zone permits to enter Israel illegally, where they may present a security risk. Figures released show, however, that over the years the percentage of security-based permit refusals has not exceeded 6% of all refusals of agriculture-related requests, and was usually under 2%. The overwhelming majority of refusals were based on bureaucratic grounds, primarily 'failure to meet the criteria'... which reached a high of 83% of all refusals in 2018. These restrictions on access impede essential year-round agricultural activities. The detrimental impact is demonstrable in the decrease in olive productivity (that accounts for 25% of the agricultural income of the West Bank), which has diminished in the Seam Zone by 55-65% in comparison with areas that are accessible all year round...

Beyond the harm to livelihood, restrictions on access into the Seam Zone infringe on the right to access and use of private property. Moreover, they jeopardize land-owners' ownership rights, following Israel's practice of declaring as 'government land' unregistered land that has not been cultivated for three consecutive years... It is reported that the hardship suffered within the area has pushed many of its residents to relocate, while people who do not live in the Seam Zone have been abandoning land they own in the area (David Kretzmer & Yael Ronen, *the Occupation of Justice: the Supreme Court of Israel and the Occupied Territories*, 235-237 (second ed. 2021))

8. However, sometimes even those who receive an entry permit into the seam zone cannot access their seam zone lands and cultivate them as required. In the case at hand, after the outbreak of the war on October 7, 2023, the Respondent has decided to sweepingly prevent individuals holding entry permits into the seam zone for agricultural purpose from entering the seam zone. Accordingly, in the vast majority of the cases, the owners of lands located in the seam zone and their family members or laborers assisting them have no ability to access the lands and carry out the necessary agricultural work.
9. In one area within the seam zone and in a negligible part of the cases, a handful of farmers are allowed access to their seam zone lands despite the sweeping preclusion which has been imposed as of the beginning of the war, but even then, these are plots which require particularly extensive work and many laborers are needed to carry out the agricultural work therein, and the handful of farmers who are currently allowed access to the lands can do only a small part of the work.
10. Beyond the severe inherent harm arising from the restrictions imposed on the entry of farmers into the seam zone, unfortunately, these restrictions were imposed precisely at the beginning of the most critical agricultural season of the year – the olive harvest and fruit picking season. Preventing them from entering the seam zone at the height of the harvest and picking season causes the farmers severe damage and if the foregoing restrictions are not lifted in the near future, the vast majority of the farmers are expected to lose the crops of the entire year, and the negligible minority which is still allowed access to the seam zone is expected to suffer severe losses, due to their inability to carry out alone all of the work which is required.

The Parties

11. **Petitioners 1-9** are Palestinians having connection to agricultural lands located in the seam zone. Petitioners 1, 2, 4, 5, 6, 7 and 9 are land owners in the seam zone. Petitioner 3 is the son of Petitioner 2 and Petitioner 8 is the son of Petitioner 7, and both of them cultivate the lands of their parents. Since the war broke out, on October 7, 2023, almost all farmers holding entry permits into the seam zone were not allowed to pass through the agricultural gates and checkpoints in the separation fence, including Petitioners 1, 3 and 6. Only in one area in the seam zone, in the Qalqiliya region – a small minority of the farmers holding entry permits into the seam zone – including Petitioners 5, 8 and 9 – are allowed to continue cultivating their lands, since they grow seasonal crops requiring more urgent tending than usual (currently all crops require urgent tending, since we are

at the height of the olive harvest and fruit picking season). However, even in the handful of cases in which farmers are allowed access to their lands, it is far from satisfying the existing agricultural needs since permits are given only to one or two farmers of the entire family, while these plots require intensive and daily cultivation by many laborers.

12. **Petitioner 10** is a non-profit association working to promote the human rights of Palestinians in the occupied territories. Among other things, it assists Palestinians having connection to the seam zone to realize their right to access the seam zone.
13. **The Respondent** is the military commander of the West Bank on behalf of the state of Israel.

The Main Facts

14. As the current war broke out on October 7, 2023, the Respondent started to prevent seam zone land owners and the agricultural workers assisting them from entering the seam zone for the purpose of cultivating the lands, although they hold individual permits which had been issued to them for this purpose. HaMoked was informed by the farmers represented by it that the Qaffin gate 436 in the separation fence has not been opened since the war broke out; that the holders of seam zone entry permits for agricultural purposes were denied access to the seam zone through the Tura gate 300, the Barta'a checkpoint 356, the Baqa ash-Sharqqiya gate 526 and Zofim checkpoint 1037; that the 'Aqaba gate 408 which was continuously opened since September 27, 2023 for the harvest has been closed since October 8, 2023 as well as the Deir al- Ghusun gate 623 and the 'Attil gate 609; it was also informed that the seasonal gates Magen Dan and 'Anin 214 which should have been opened in this period for the olive harvest remained closed. It seems that we are concerned with a general policy which applies to all the gates and checkpoints in the separation fence, and not only to those specified above.
15. Beyond the inherent harm inherent in preventing farmers from accessing their West Bank lands, currently there is an urgent need to irrigate the agricultural lands on which fruit trees are grown such as citrus fruits, annona, guava and avocado. In addition we are precisely in the picking season of these fruits, and if the farmers do not pick their fruits now they will lose the crops of the entire year. In addition, the olive harvest season has already started and the owners of the olive orchards must harvest their olives at this time, or else their entire crops will be lost. **Namely, these are extremely critical days for the cultivation of the lands and the damage which shall be caused to the farmers as a result of denying them access to their lands at this time will be irreversible.**
16. The head of the Palestinian coordination office in Tulkarm, Mr. Nasser Maflah, advised HaMoked that since the war broke out the entry of farmers from the Tulkarm region to the seam zone has been totally denied, without any exception. Mr. Maflah noted that there are greenhouses in the seam zone lands of 'Attil and Far'un and that by the end of October 2023 the Palestinian coordination office contacted the DCO on behalf of 17 greenhouse owners and requested to enable them and their laborers to enter the seam zone for agricultural purposes. However, the request was denied by the DCO on the grounds that there were shootings at the separation fence. In addition, Mr. Maflah

informed that the seasonal gates which had opened for the olive harvest before the war, closed down when the war broke out and have not been opened since.

17. The Palestinian coordination office in Jenin has also advised that since the war broke out the entry of farmers from said region into the seam zone has been sweepingly denied without any exception.
18. The head of the Palestinian coordination office in Salfit, Mr. Osama Masalah, informed that since the war broke out, the agricultural gates in the seam zone did not open for the olive harvest nor for the cultivation of other crops. When the representative of the Palestinian coordination office in Salfit complained of the above to the DCO at the end of October 2023, the DCO officials suggested to coordinate the entry of farmers into two plots of land only, which are not even located in the seam zone (one of the plots is located in the lands of Deir Istiya and the other in the area of Khallet Hassan). The Palestinian coordination office refused to accept said offer which does not provide any solution to farmers whose lands are located in the seam zone.
19. The head of the Palestinian coordination office in Qalqiliya, Mr. Muhamad Kutkut, informed that when the war broke out the seam zone was closed to farmers holding seam zone entry permits. Subsequently, the Palestinian coordination office prepared lists of seam zone land owners who were growing seasonal crops which needed a particularly urgent tending that could not be postponed, such as guava trees, zaatar and greenhouse vegetables. Farmers growing other crops, such as olive trees and citrus fruits were not included in these lists. Mr. Kutkut informed that until now approximately 250 seam zone entry permits for "personal needs in the seam zone" have been issued, valid for one month only, on the basis of the above lists. The above, while the number of valid permits in this period amounts, according to him, to approximately 20,000. Mr. Kutkut noted that the plots for which these permits were issued are all located in the same area which is accessed through the Zofim checkpoint and checkpoint 109. In addition, the families who have received said permits are in real distress, since each such family received one or two permits at the most, while these are plots which until the outbreak of the war, had been cultivated by many laborers.

An affidavit of HaMoked's representative, Ms. Nihaya Majdoub, concerning the discussions she had with the heads of the Palestinian coordination offices, is attached and marked **P/1**.

20. In any case, the issuance of permits only to farmers from the Qalqiliya region and only to such farmers from Qalqiliya who grow seasonal crops which are considered particularly urgent, leaves the vast majority of the seam zone land owners without any solution for their needs. According to the response affidavit which was filed by the respondents in HCJ 6896/18 **Ta'meh v. Military Commander in the West Bank** on March 25, 2021, "more than 95% of the agricultural areas in the seam zone consist of olive orchards. In the remaining areas a few other crops may be found, such as: wheat, barley, tobacco, avocado, za'atar, cucumbers and tomatoes" (paragraph 87). Namely, even if temporary permits had been given to all the farmers who grow crops which are not olive trees (and the situation is far from that as aforesaid), it would have related to only about 5% of the agricultural lands in the seam zone, according to the information

provided by the Respondent, leaving all the other farmers without any solution. As aforesaid, the lands on which only olive trees are grown also need now urgent tending since we are at the height of the olive harvest season.

The relevant page from the response affidavit in HCJ 6896/18 is attached and marked **P/2**.

21. We shall now specify the circumstances of the individual Petitioners who are adversely affected by Respondent's above policy, to demonstrate the matter.
22. Petitioner 1, born in 1962, is married and is the father of seven children. He lives in Khirbet Al Nabi Elyas in the Qalqiliya region and makes a living as a farmer.

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

23. Petitioner 1 owns a plot of land located in the lands of 'Azzun, in the seam zone. He grows primarily olive trees. Petitioner 1 holds a "seam zone farmer" entry permit into the seam zone valid from September 14, 2023 until September 12, 2025. Checkpoint 109 is written on the permit. Petitioner 1 informed that the olive harvest season should have started on or about October 10, 2023, but precisely on those days farmers started to be denied access to the seam zone. Petitioner 1 explained the importance of harvesting the olives at that time, before the winter, to enable the pickling of the olives and the preparation of olive oil.

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

24. Petitioner 2, born in 1965, is married and is the mother of five children, including Petitioner 3. Petitioner 3, born in 1987, is married and is the father of two children. Petitioners 2 and 3 reside in Tulkarm.

Copies of Petitioners 2 and 3's identification cards are attached and marked **P/5**.

25. Petitioner 2 owns a plot of land located on the lands of Jayyus, in the seam zone. The plot covers an area of 28 dunam and has avocado trees, anona trees and several mango trees. The development and maintenance of the orchard in the plot requires extensive work. Petitioner 3 holds a "seam zone farmer" entry permit into the seam zone valid from August 27, 2023 until August 25, 2025, for the cultivation of his mother's lands. The gate which appears on his permit is Jayyus West, number 935. Petitioner 3 informed that it is extremely important to irrigate the family orchard between two to three times a week. However, since farmers are prevented from crossing the separation fence, Petitioner 3 is denied access to the plot and is unable to irrigate the orchard. Hence the concern that the yield has been severely damaged. In addition, usually at this time of the year, the family picks about one hundred boxes of avocado and sells them for NIS 5,000. Now the family cannot pick the fruits at all, due to the fact that they are denied access to the seam zone, and the family will not be able to derive any profit from its crops.

Pictures of Petitioner 2's plot, taken before the war, are attached and marked **P/6**;

A copy of Petitioner 3's permit is attached and marked **P/7**.

26. Petitioner 4, born in 1957, is a widow and a mother of nine children, including Petitioners 5 and 6. Petitioner 5, born in 1979, is married and a father of five children. Petitioner 6, born in 1994, is married and the father of a toddler. Petitioners 4-6 reside in Qalqiliya.

Copies of Petitioners 4-6's identification cards are attached and marked **P/8**.

27. Petitioners 4-6 are owners of land located on the lands of Jayyus, in the seam zone. Petitioner 4 and her late husband, the father of Petitioners 5 and 6, bought seven dunam of land. The father passed away on January 1, 2021 and Petitioners 4-6 are among his heirs.

Copies of the plot's property tax extract, of the judgment of the magistrate court in Qalqiliya concerning the ownership of the plot and of the inheritance order of Petitioners 5 and 6's father are attached and marked **P/9**.

28. Petitioners 4-6 grow in their plot avocado trees, lemon trees, guava trees and olive trees. The yield is primarily designated for sale. In addition it is also used by the family for home consumption. The family sells the yield in the local market and in addition exports yield to Jordan through the Palestinian Ministry of Agriculture, according to the season. Petitioner 5 informed that the plot of his family is one of the most fertile plots in the Qalqiliya area with a large and high quality yield which is the result of his and his family's hard work. Accordingly, for instance, in the past the family has exported approximately 1,800 boxes of lemons per year.

Pictures of Petitioners 4-6's yield taken last year are attached and marked **P/10**.

29. Petitioners 5 and 6 received seam zone entry permits to access their land. Petitioner 5 was given a "seam zone farmer" permit valid from March 6, 2023 until March 4, 2025 on which the details of his vehicle were ascribed, and Petitioner 6 was given a "farmer's first degree relative" permit valid from February 6, 2023 until February 4, 2025. Zofim checkpoint 1037 was ascribed on both permits.

Copies of Petitioners 5 and 6's permits are attached and marked **P/11**.

30. Until the war broke out, Petitioners 5 and 6 and about 11 additional members of their family used to enter the seam zone and work in the plot several hours a day. However, as aforesaid, when the war broke out, the passage of permit holders into the seam zone for agricultural purposes through the Zofim checkpoint 1037 was denied and was no longer allowed. On a later date Petitioner 5 was issued a permit "for personal needs in the seam zone" valid from October 29, 2023 until November 30, 2023, but all the other family members are still denied access to the plot with their permits. Petitioners 4-6 informed that they are currently at the height of the picking season and that the financial loss suffered by them as a result of the fact that the family members are denied access to the seam zone is constantly increasing. In addition, the plot needs weeding at this time. Petitioner 5 can do alone only a miniscule part of the agricultural work which should be done in the plot and cannot make any meaningful progress alone.

A photocopy from COGAT's "Almanasek" app with the details of Petitioner 5's "personal needs" permit is attached and marked **P/12**.

31. Petitioner 7, born in 1959, is married and a father of five children, including Petitioner 8. Petitioner 8, born in 1985, is married and a father of two children. Petitioners 7 and 8 live in Qalqiliya.

Copies of Petitioners 7 and 8's identification cards are attached and marked **P/13**.

32. Petitioner 7 is one of the owners of three plots of land located in the seam zone. Two of the plots are located on the lands of Qalqiliya and cover an area of 92.247 dunam and 83.256 dunam. The third plot is located on the lands of Jayyus and covers an area of twenty dunam. The lands are divided between the owners and Petitioner 7's part covers an area of 18 dunam. Petitioner 7 grows on his land avocado trees, loquat trees and citrus trees.

Copies of Petitioner 7's land documents are attached and marked **P/14**.

33. Petitioner 8 was granted an "agricultural worker permit" in the seam zone valid from November 29, 2022 until December 31, 2023 to cultivate his father's lands. Zofim checkpoint 1037 is ascribed on the permit. In addition seam zone entry permits were issued for nine agricultural laborers employed by the family.

A copy of Petitioner 8's agricultural worker permit is attached and marked **P/15**.

34. After the war broke out and farmers holding seam zone entry permits were denied access to the seam zone, Petitioner 8 and additional farmers, owners of groves and greenhouses in the seam zone, submitted an urgent application to the Palestinian coordination office to arrange their entry into the seam zone in view of the heavy damages suffered by them. The Palestinian coordination office prepared a list with the details of the above farmers and the type of crops grown by them, as aforesaid. By the end of October 2023, Petitioner 8 was informed by the Palestinian coordination office that his application to coordinate his entry into his grove had been approved and that a permit for "personal needs in the seam zone" was issued to him, valid from October 31, 2023 until November 30, 2023. However, no entry for any of the nine agricultural laborers employed by Petitioners 7 and 8 has been coordinated.

A copy of the "personal needs" permit which was given to Petitioner 8 is attached and marked **P/16**.

35. Petitioner 8 entered the seam zone using the permit which was given to him, but could not believe his eyes when he saw his lands. Much of the fruit which grew on the trees had already fallen and the ground between the trees was covered with weeds which reached a considerable height. Petitioner 8 informed that there was an urgent need to arrange the entry of agricultural laborers to the plot at this time, to pick the remaining fruits, weed the plot and water the lands. Petitioner 8 cannot do all the necessary agricultural work alone.

36. Petitioner 9, born in 1967, is married and is the father of five children. He lives in Qalqiliya.

A copy of Petitioner 9 identification card is attached and marked **P/17**.

37. Petitioner 9 is an owner of a plot of land in the lands of Qalqiliya, in the seam zone. The Petitioner grows in his land avocado trees, guava trees, olive trees and citrus trees. Petitioner 9 makes his living from his agricultural work. He holds a "farmer's first degree relative" entry permit into the seam zone (although the appropriate permit for him is a "seam zone farmer"), valid from September 25, 2023 until September 23, 2025, to access his land. The checkpoint which is written on his permit is Zofim 1037.

A copy of the *Tabu* excerpt of Petitioner 9's plot is attached and marked **P/18**.

A copy of Petitioner 9's permit is attached and marked **P/19**.

38. As aforesaid, we are at the height of the picking season of all the crops grown in Petitioner 9's plot. The plot requires a lot of work on a daily basis, including picking, spraying, weeding and irrigation. Until the war broke out, Petitioner 9, his wife and two of his sons used to arrive to the plot and cultivate it every day, from 05:00 through 14:00 (the four of them were given permits valid for two years, until 2025). However, after the war broke out the farmers holding entry permits into the seam zone were prevented access to the seam zone through the Zofim checkpoint and the family members were unable to access the plot.

39. Towards the end of October 2023, Petitioner 9 was informed by the Palestinian coordination that the military agreed to allow his entry into the seam zone and that an entry permit for "personal needs in the seam zone" was issued to him, valid from October 29, 2023 until November 30, 2023, and indeed, since then Petitioner 9 has been entering the seam zone on a regular basis. However, without the assistance of his wife and children, Petitioner 9 can only perform a small part of the required agricultural work.

A copy of the permit for "personal needs" which was given to Petitioner 9 is attached and marked **P/20**.

40. It should be noted that Petitioner 9 has two brothers who have also received permits for "personal needs in the seam zone" valid for one month, but they do not cultivate the same area that Petitioner 9 cultivates, since the plot is divided between the brothers and each one of them cultivates his designated area of the plot. In any case, Petitioner 9 informed that prior to the war approximately 23 of his family members held entry permits into the seam zone valid for two years for the plot, including his 86 years old mother, while currently only three family members are allowed access to farm the entire plot.

Exhaustion of Remedies

41. HaMoked sent to the Respondent on October 19, 2023 an urgent request to cancel the sweeping restrictions which were imposed on the passage of holders of entry permits into the seam zone through the separation fence due to the war.

A copy of HaMoked's letter dated October 19, 2023 is attached and marked **P/21**.

42. A reminder was sent on October 30, 2023.

A copy of the reminder dated October 30, 2023 is attached and marked **P/22**.

43. Simultaneously, HaMoked wrote to the Head of the Civil Administration on October 29, 2023 on another matter – the fact that the Civil Administration has stopped handling **individual entry applications** into the seam zone. The letter emphasized the urgent need to arrange the entry of the farmers into the seam zone due to the fact that olive harvest and picking season has already begun. In response to this letter, on October 31, 2023 an e-mail message was received from the Civil Administration public liaison officer, which stated as follows:

The public liaison center currently handles all humanitarian applications and particularly applications concerning the seam zone, and not only urgent humanitarian applications according to the development of the changing assessment of the security situation.

With respect to the harvest season – harvest in areas in which coordination is not required will be made possible as in normal days. The division commander in coordination with the DCO to the extent possible and according to the assessment of the security situation will allocate forces in favor of the harvest in certain areas.

A copy of HaMoked's letter dated October 29, 2023 is attached and marked **P/23**.

A copy of the e-mail message of the Civil Administration public liaison officer is attached and marked **P/24**.

44. On November 1, 2023 HaMoked responded as follows:

Following your message... regarding the harvest season – please inform us when the agricultural and seasonal gates in the separation fence will be opened to enable the farmers to access their lands and harvest their crops. Please advise on which days and times each one of the above gates will be opened.

A copy of HaMoked's response dated November 1, 2023 is attached and marked **P/25**.

45. On that day (November 1, 2023) dozens of e-mail messages were received from the Civil Administration public liaison officer in response to HaMoked's individual applications in different cases, which stated as follows:

Following assessment of the security situation, it was decided by the political echelon to limit access to the seam zone only for specific permit and humanitarian purposes. The requested purpose of the permit is not one of the closure's exclusions and therefore is not approved.

According to the assessment of the situation and when the purposes of the permit will be opened, the application should be re-submitted.

A copy of one of the e-mail messages dated November 1, 2023 is attached and marked **P/26**.

46. However, it was not clarified what said "specific permit and humanitarian purposes" are and it is unclear whether the message is relevant to the Petitioners and other persons in their situation or not.
47. On November 2, 2023, HaMoked wrote to the Civil Administration public liaison officer and requested to receive the foregoing decision of the political echelon and any other decision which followed it.

A copy of HaMoked's letter dated November 2, 2023 is attached and marked **P/27**.

48. A reminder was sent on November 9, 2023.

A copy of the reminder dated November 9, 2023 is attached and marked **P/28**.

49. However, to date no response has been received to said letter. HaMoked's letter dated October 19, 2023 and November 1, 2023 have also remained unanswered.
50. To complete the picture it should be noted that on November 2, 2023 a petition was filed with respect to the entry arrangements into the seam zone which were applied upon the commencement of the war on the permanent residents of the seam zone and on the holders of entry permits into the seam zone for commercial purposes – H CJ 7945/23 **Ghanem v. The Military Commander of the West Bank Area**. The petition is pending.

The Legal Argument

51. The Petitioners shall argue that the entry arrangements into the seam zone which were implemented as a result of the war disproportionately violate the basic rights of seam zone land owners to own property, their basic rights for freedom of occupation and their basic rights for freedom of movement. The Petitioners shall also argue that these arrangements amount to *de-facto* collective punishment.

The legal background

52. This Petition concerns Respondent's acts within the occupied territory. Respondent's responsibilities in the occupied territory are twofold: protecting the legitimate security interest of the governing power and protecting the rights of the inhabitants of the occupied territory:

Israel occupies the territories of the area by belligerent occupation. In the framework of the military administration the military commander exercises in the area powers imbibing from the rules of international law combined with the principles of Israeli public law... The belligerent occupation of the area is subordinated to the major principles of international customary law entrenched in The Hague Convention respecting the Laws and Customs of War on Land from 1907 [25], while the humanitarian principles of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949 (hereinafter: the Geneva Convention) are actually applied by the state and by the commander of the area (Iskan [1], *Ibid.*, pages 793-794). **The Hague Convention authorizes the commander of the area to act in two major areas: the first – secure the legitimate security interest of the government occupying the area; and the other – secure the needs and rights of the local population in the area which is under belligerent occupation.** The first is a military need. The other is a civilian-humanitarian one. The first focuses on the safety of the military force as well on the order, security and rule of law in the area; the other – concern the responsibility for the safety and wellbeing of the inhabitants. **While protecting the wellbeing of the inhabitants as aforesaid, it is incumbent on the military commander not only to maintain the order and safety of the inhabitants but also to protect their rights, and particularly the constitutional human rights vested in them.** "The concern for human rights stands at the center of the humanitarian considerations that the military commander should take into account (HCJ 10356/02 **Hass v. Commander of IDF Forces in the West Bank** (hereinafter: Hass [4], page 456). While performing his duties the military commander should secure the necessary security interests, on the one hand, and that the rights of civil population are protected, on the other. Between these two centers of responsibility proper balancing is required (Y. Dinstein "The Legislation Power in the Occupied Territories" [23], page 509). In protecting the constitutional rights of the inhabitants of the area, the military commander is also subordinated to the principles of Israeli public law, including the fundamental principles of human rights (HCJ 7862/04 **Abu Daher v. Commander of IDF Forces in Judea and Samaria**, IsrSC 59 (5) 368, 375-376 (2005), all emphases in the petition were added unless otherwise noted, T.M.).

53. The state of Israel decided to erect a considerable part of the separation fence within the West Bank and to close to Palestinians the parts of the West Bank located between the separation fence and Israel border – the seam zone. Consequently, the basic rights of the protected persons were and are violated, and particularly the rights of those having an individual connection to the seam zone area. In view of the above, the courts held that the Respondent must mitigate, to the maximum extent possible, the harm caused by the fence to the local inhabitants:

Having completed the examination of the proportionality of each order separately, it is appropriate that we lift our gaze and look out over the proportionality of the entire route of the part of the separation fence which is the subject of this petition. The length of the part of the separation fence to which these orders apply is approximately forty kilometers. It causes injury to the lives of 35,000 local inhabitants. 4000 dunam of their lands are taken up by the route of the fence itself, and thousands of olive trees growing along the route itself are uprooted. The fence separates the eight villages in which the local inhabitants live from more than 30,000 dunam of their lands. The great majority of these lands are cultivated, and they include tens of thousands of olive trees, fruit trees and other agricultural crops. The permit regime which the military commander wishes to establish cannot prevent or substantially decrease the extent of the severe injury to the local farmers. Access to the lands depends upon the possibility of crossing the gates, which are very distant from each other and not always open. Security checks, which are likely to prevent the passage of vehicles and which will naturally cause long lines and many hours of waiting, will be performed at the gates. These do not go hand in hand with the farmer's ability to work his land. **There will inevitably be areas where the security fence will have to separate the local inhabitants from their lands. In these areas, the commander should allow passage which will reduce, to the extent possible, the injury to the farmers (HCJ 2056/04 Beit Sourik Village Council et al., v. The Government of Israel, paragraph 82 (reported in Nevo, June 30, 2004)).**

and also:

The conclusion according to which it is impossible to establish an alternative geographic route for the fence which is less injurious does not, in and of itself, terminate the proportionality analysis in its second sense. **In the examination of the harm caused by the fence, the geographic route, the permit regime, and the passage to the lands which remained west of the fence are interrelated.** Petitioners' groves and grazing lands were cut-off by the separation fence. Under these circumstances, **the respondents must see to it that reasonable passage arrangements and access regime to Petitioners' lands are established, in a manner minimizing, to the maximum extent possible, the harm inflicted on them.** (HCJ 4825/04 *Alian v. The Prime Minister*, paragraph 16 (reported in Nevo, March 16, 2006)).

and also:

The arrangements which were established concerning the issuance of permits to those who have a permanent and occasional interest, as such were specified, also satisfy, according to us, the second proportionality sub-test. As indicated by us above, we agree that the harm inflicted on this group is severe. Individuals who have cultivated their lands in the

seam zone, conducted their businesses there and established family and social relations, are forced at this present time, in order to preserve their ways of life, to apply for an entry permit based on several limited reasons. The residents of the zone itself are also adversely affected by the regime which was applied thereto, since, against their will, the reality of their lives becomes difficult and complex, as social and business isolation is imposed on them in their place of residence. **These harms require the establishment of arrangements which preserve, to the maximum extent possible, the fabric of life which preceded the declaration, subject to security needs which require same.** It seems to us, that as a general rule, the arrangements which were established satisfy this requirement. We shall refer to the arrangements which concern the different interest groups (the **Permit Regime Judgment**, paragraph 33).

54. The Permit Regime Judgment elaborated on the crossing arrangements in the gates which are installed in the separation fence. The judgment states as follows:

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

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

55. In addition, the judgment clarified that the proportionality of the harm inflicted by the permit regime depends not only on the formal arrangements established by the Respondent, but also on the their actual implementation:

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

56. The honorable court has recently reiterated the above holding:

The lawfulness and constitutionality of the permit regime depend, *inter alia*, on the acts taken by the state of Israel to maintain, to the maximum extent possible, the fabric of life of the residents of the Area which were affected by the erection of the separation fence, all of the above,

according to the fundamental principles of administrative law, including reasonableness and proportionality, and according to the relevant rules of international law. In this context it should be added and emphasized that as was held in the **Permit Regime** case "the proportionality of the harm to the rights of the inhabitants should be examined not only against the backdrop of the written arrangements and procedures which were established, but also against the backdrop of the reality in which such arrangements are implemented in practice, commencing from the processing procedure of the applications and ending with the current movement and traffic regime" (*Ibid.*, paragraph 38)... (HCJ 6896/18 **Ta'ame v. Military Commander of the West Bank**, paragraph 2 of the judgment of the Honorable President Hayut (reported in Nevo, March 6, 2022)(hereinafter: **Ta'ame**).

57. It should be reminded that the erection of the separation fence and the establishment of the crossing arrangements in the separation fence by Palestinians was not meant, *ab initio*, for peaceful times, but rather came into being to deal with the most severe security situations. The following was stated about the backdrop against which the separation fence was erected:

In September 2000 the second *intifada* broke out. A mighty attack of acts of terrorism landed upon Israel, and upon Israelis in the Judea, Samaria, and Gaza Strip areas (hereinafter – *the area*). Most of the terrorist attacks were directed toward civilians. They struck at men and at women; at elderly and at infant. Entire families lost their loved ones. The attacks were designed to take human life. They were designed to sow fear and panic. They were meant to obstruct the daily life of the citizens of Israel. Terrorism has turned into a strategic threat. Terrorist attacks are committed inside of Israel and in the area. They occur everywhere, including public transportation, shopping centers and markets, coffee houses, and inside of houses and communities. The main targets of the attacks are the downtown areas of Israel's cities. Attacks are also directed at the Israeli communities in the area, and at transportation routes. Terrorist organizations use a variety of means. These include suicide attacks ("guided human bombs"), car bombs, explosive charges, throwing of Molotov cocktails and hand grenades, shooting attacks, mortar fire, and rocket fire. A number of attempts at attacking strategic targets ("mega-terrorism") have failed. Thus, for example, the intent to topple one of the Azrieli towers in Tel Aviv using a car bomb in the parking lot was frustrated (April 2002). Another attempt which failed was the attempt to detonate a truck in the gas fields at Pi Gllilot (May 2003). Since the onset of these terrorist acts, up until mid-July 2005, almost one thousand attacks have been carried out within Israel. In Judea and Samaria, 9000 attacks have been carried out. Thousands of attacks have been carried out in the Gaza Strip. More than one thousand Israelis have lost their lives, approximately 200 of them in the Judea and Samaria area. Many of the injured have become severely handicapped. On the Palestinian side as

well, the armed conflict has caused many deaths and injuries. We are flooded with bereavement and pain (HCJ 7957/04 **Mara'abe v. Prime Minister of Israel**, IsrSC 60(2) 477, 484-485 (2005)).

58. Namely, the arrangement according to which Palestinians having connection to lands located in the seam zone are excluded from the general prohibition on the entry of Palestinians into the seam zone, and are entitled to enter the seam zone through the gates and checkpoints located in the separation fence, if adequate individual permits were given to them, is the arrangement which should apply in periods in which the security situation is very severe. But for the difficult security situation of the second intifada, *ab initio* there would not have been any justification for the erection of the separation fence within the West Bank. Therefore, although we are currently in a very difficult and troubling period, it does not justify the expansion of the prohibition against the entry of Palestinians into the seam zone, applying it also to the small minority of Palestinians having a specific connection to the seam zone by virtue of which they have received seam zone entry permits, following an individual security examination.

Violation of the Rights to Property and Freedom of Occupation

59. The right to property is a fundamental right, entrenched in Section 3 of the Basic Law: Human Dignity and Liberty, protecting the rights of all persons and in international covenants relevant to the occupied territory:

Property rights are also included among the basic human rights. Property rights have been recognized as basic rights worthy of protection in the case law of this court (see, for example, HCJ 390/79 **Dawikat v. Government of Israel**, IsrSC 34(1), 14-15; HCJFH 4466/94 **Nuseibeh v. Minister of Finance**, IsrSC 49(4) 68, 83-85) and have also been given explicit constitutional expression in section 3 of the Basic Law: Human Dignity and Liberty. These rights are also recognized in international law, and in so far as territories held under belligerent occupation are concerned, they are enshrined, *inter alia*, in the Hague Convention and the Fourth Geneva Convention (**HCJ 1890/03 Bethlehem Municipality v. State of Israel, Ministry of Defense**, paragraph 20 to the judgment of the Honorable Justice (as then titled) Beinisch (February 3, 2005; hereinafter: **Bethlehem**)).

60. The Respondent is obligated to protect Palestinians' right to property, including by refraining from harming their property by itself and by protecting them from others wishing to harm their property:

The right to property is also recognized by international law and laws of belligerent occupation applicable to the area... the main anchor in the customary laws of belligerent occupation underlying the right to private property, in Regulation 44 of the Hague Regulations which states as follows:

"Family honour and rights, the lives of persons, and private property, as well as religious convictions and

practice, must be respected. Private property cannot be confiscated.

... on the basis of Regulation 46, this court has repeatedly stated that the military commander in the area is obligated to protect the property of the Palestinian residents – being "protected persons". The obligation embedded in the foregoing protection is twofold: a negative obligation, to refrain from actions harming the property of these residents; and a positive obligation, to take actions ensuring that their property is not harmed by others (HCJ 1308/17 **Silwad Municipality v. The Knesset**, paragraph 40 of the judgment of the honorable president Hayut (reported in Nevo, June 9, 2020)).

61. Violating the right to property of the protected persons is prohibited unless aimed at protecting a person's life and is required for this purpose:

The obligation to protect security may, at times, involve an inevitable violation of the right to private property... securing life and bodily integrity stands at the top of the matters which are at the responsibility of the military of the area... Along with this right stands the right to property of the residents of the area, which is also recognized as a protected basic constitutional right. It is recognized as such under constitutional law in Israel according to Article 3 of the Basic Law: Human Dignity and Liberty. It is also protected under international law. Violating property rights, including the property rights of individuals is prohibited under the laws of war of international law, unless it is necessary for combat purposes... the commander of the area must exercise a particularly meticulous and careful discretion before issuing an order violating the property rights of citizens in an occupied territory. This obligation is imposed on him by virtue of the laws of war of international law, as well as by virtue of the constitutional law which applies in Israel, defining the right to property as a constitutional basic right" (**Abu Daher**, pages 376-378).

62. It was further emphasized by case law that "when the property rights of individuals are concerned, the matter should not be dismissed on the basis of the "relativity" of the right. According to our jurisprudence the property right of the individual is an important legal value protected by both civil and criminal law..." (HCJ 390/79 **Dweikat v. Government of Israel**, IsrSC 34(1), 13-14 (1979)).

63. With respect to Respondent's obligation to protect the right to property in the context of entry permits into the seam zone, it was stated as follows:

Protecting the right to property in the case at hand is particularly important, for several reasons:

First, the erection of the separation fence, for a proper and important purpose in and of itself, was accompanied by a clear undertaking of the

state of Israel to maintain the fabric of life of the residents whose way of life is threatened by the fence. As stated in the beginning, the residents of the Area having lands which are located on the Israeli side of the separation fence were subjected to the permit regime, as a necessary evil. However, it was accompanied by the undertaking, which was entrenched in the judgments of this court, to provide maximal protection to their rights and fabric of life...

Second, the property discussed in the case at hand is a private-family property. In certain cases the right to property is related to the property owner's identity (see: Margaret Jane Radin, *Reinterpreting Property* 35-71 (1993)). In these circumstances, the property does not only have an economic value but is significant for its owner in other respects. A person's property may carry a special emotional, cultural and historical significance (see: **Hof Aza**, pages 798-799). Accordingly, for instance, in the case at hand, access to and cultivation of agricultural land which passed from one generation to another may have not only an economic value, but may also have a symbolic, family and traditional significance strongly connected to the identity of its owner (**Ta'ame**, paragraphs 53-55 of the judgment of the Honorable Justice Barak-Erez).

64. Freedom of occupation has also been recognized as a fundamental right, and the authorities must refrain from violating it while acting outside the boundaries of the state of Israel:

Additional grounds... are found in the fundamental right to freedom of occupation, which was recognized in this Court's case law even before the Basic Law: Freedom of Occupation was enacted... Israeli law may not directly apply in the Area, but this Court applies its basic principles to the military commander of the Area and his subordinates by virtue of their personal powers as members of state authorities acting in the Area on behalf of the State... in the same manner in which it applies the principles of administrative law to them. (HCJ 3940/92 **Jarar v. The Commander of the Judea and Samaria Area**, IsrSC 47(3) 298, 304 -305 (1993)).

65. As aforesaid, since the war broke out the vast majority of the seam zone land owners, their family members and the agricultural laborers assisting them, are completely prevented from accessing the seam zone lands and cultivating them. Only a small minority of the farmers is currently allowed access to the lands and these farmers also suffer great harm since they are unable to carry out alone the entire agricultural work which is required and which is usually carried out by many laborers.
66. Preventing seam zone land owners from accessing their lands and cultivating them, or from getting the assistance of family members or agricultural laborers in cultivating the lands, severely violates their basic rights to property and freedom of occupation. First, merely preventing land owners from accessing their lands violates their right to property, and second, their inability to cultivate the lands, or at least, cultivate them to the required

extent, severely harms the agricultural produce of the land owners. The above applies even more forcefully given the fact that unfortunately, the restrictions on accessing the seam zone were imposed precisely on the olive harvest and fruit picking season, when there is an essential and urgent need to carry out specific agricultural works which are required in this season and the picking of the crops – otherwise the farmers will lose the crops of the entire year. In view of the above, the violation of the farmers' rights to property and freedom of occupation is particularly severe.

67. The Petitioners are not aware of any intention of the state to compensate the Palestinian farmers for the economic damage suffered by them as a result of the fact that their access to the seam zone is prevented and it seems that they will have to absorb all the economic damage inflicted on them as a result of the war. In this state of affairs, the violation of the farmers' rights to property and freedom of occupation is particularly severe.
68. With respect to the proportionality of the violation, as aforesaid, the Palestinian public, as a whole, is anyway prevented from entering the seam zone, on normal days. Respondent's current policy harms the small number of individuals who were excluded from the general prohibition imposed on the entry of Palestinians into the seam zone, due to the severe harm which would have been caused to the land owners had their entry into the seam zone been prevented, and who underwent an individual security check and with respect of whom it was found that they do not pose a risk which justifies preventing their access to the seam zone (see, for instance, chapter A of the entry procedures into the seam zone, section 13.b.3., link to the collection of procedures: <https://HaMoked.org.il/files/2022/1664627.pdf>).

The chapter "general guidelines" of Respondent's procedures is attached marked **P/29**.

69. In addition to the security check which is carried out before the seam zone entry permits are issued, the Respondent can also cancel the seam zone entry permits after their issuance due to the fact that a security preclusion was inserted into the system (see section 7.f. of the chapter "Handling the misuse of seam zone entry permit" of the seam zone entry procedures), and it is done in practice as a matter of routine.

The chapter "Handling the misuse of seam zone entry permit" of Respondent's procedures is attached marked **P/30**.

70. In addition to the foregoing measures which are already used by the Respondent, the military can also perform a stricter security check upon the entry of the permit holders into the seam zone and tighten security measures in the seam zone areas and along the Green Line to ensure that peace and quiet are maintained there after the entry of the permit holders into the seam zone.
71. In addition, according to publications in the Israeli media from October 22, 2023, during this period approximately 9,000 Palestinian agricultural laborers from the West Bank entered Israel, and the government even requested to approve the entry of approximately 8,000 additional Palestinian agricultural laborers (see, for instance, Dafna Liel "Ben Gvir objects to the continued entry of farmers from Judea and Samaria; Dichter warns: agriculture will collapse" N12, October 22, 2023 (mako.co.il). On October 30, 2023, it

was published that Israel had approved the entry of 8,000 Palestinian laborers from the West Bank into Israel, to work in *Chevra Kadisha* (Jewish burial services), hotels and industrial zones, and that Israel is working toward bringing into the country additional Palestinian laborers to work in the construction and agricultural sectors (Suleiman Maswadeh "Due to shortage: Israel approved the entry of 8,000 Palestinian laborers from the West Bank" Kan October 30, 2023 <https://www.kan.org.il/content/kan-news/local/589202>).

72. Hence, the entry of Palestinian farmers into the seam zone in the West Bank should all the more so be allowed for the purpose of cultivating the lands which are located there. It does not stand to reason that many thousands of Palestinians are allowed access to Israel during the war for work purposes, but almost no Palestinian land owners and their laborers are allowed access to the seam zone located in the West Bank for their agricultural work, due to the same war.
73. Hence, the severe limitations imposed on the entry of seam zone land owners and the laborers assisting them into the seam zone disproportionately violate the basic rights of the land owners to property and freedom of occupation. First, less injurious alternative measures are available, and the ongoing preclusion imposed on the vast majority of the farmers preventing them from cultivating their lands in this critical period, is not necessary. Second, these limitations do not comply with the proportionality test in its narrow sense, since they severely, broadly and irreversibly harm innocent protected persons.

Violation of the Right to Freedom of Movement

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

Freedom of movement is one of the most basic human rights and it has been recognized in our law both as an independent basic right and as a right deriving from the right to liberty. In addition, there are some who argue that this is a right that derives from human dignity (See paragraph 15 and the references there). Freedom of movement is also recognized as a basic right by international law and is entrenched in a host of international covenants.

75. In HCJ 9593/04 **Morar v. Commander of IDF Forces in Judea and Samaria**, IsrSC 61(1) 844, 863 (2006), it was held that freedom of movement is particularly weighty when restrictions are imposed on the access of landowners to their lands:

It is important to emphasize that in our case we are not speaking of the movement of Palestinian residents in nonspecific areas throughout Judaea and Samaria but of the access of the residents to land that belongs to them. In such circumstances, where the movement takes place in a private domain, especially great weight should be afforded to the right to freedom of movement and the restrictions imposed on it

should be reduced to a minimum. Obviously, the limitations imposed on freedom of movement in the public domain and the limitations imposed on a person's freedom of movement within the area connected to their own home should not be examined in the same manner, and different rules apply to each set of limitations.

76. Preventing seam zone land owners, their family members and their laborers from accessing lands in the West Bank for the purpose of performing agricultural work which is essential in this period, severely violates their basic right to intrastate travel. This violation is disproportionate as specified above.

Collective Punishment

77. The prohibition against collective punishment is a fundamental principle of our jurisprudence. Collective punishment has already been identified in the bible as an unlawful and immoral act, which stands in conflict with basic principles of justice:

Far be it from you to do such a thing—to kill the righteous with the wicked, treating the righteous and the wicked alike. Far be it from you! Will not the Judge of all the earth do what is just? (Genesis 18, 25).

78. The prohibition against collective punishment is also referred to by international customary law. Article 50 of The Hague Convention states as follows:

No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.

79. Article 33 of the Fourth Geneva Convention states as follows:

No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited...

80. Article 75(2)(d) of the First Protocol of the Geneva Conventions provides that:

(2) The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents...

(d) collective punishments.

81. The ICRC clarifies in its commentary to said Article that:

3055. The concept of collective punishment must be understood in the broadest sense: it covers not only legal sentences but sanctions and harassment of any sort, administrative, by police action or otherwise (Commentary on the Additional Protocols of 8 June 1977 to the Geneva

Conventions of 12 August 1949, p. 874 (Yves Sandoz, Christophe Swinarski, Bruno Zimmermann, Eds. ICRC, Geneva, 1987)).

82. In the case at hand, since the war broke out, following the brutal acts of Gaza Strip Hamas members committed on October 7, 2023, the Respondent prevents, in general, from Palestinian residents of the West Bank holding entry permits into the seam zone for agricultural purposes from entering the seam zone according to their permits. This arrangement severely harms the farmers as described above. Other than a handful of exceptions, this preclusion applies to all holders of permits for agricultural purposes, and does not derive from any connection between them and the events of October 7, 2023. The only connection between the persons who are harmed by Respondent's policy and the acts which led to the outbreak of the war is their Palestinian origin. Namely, the Petitioners and other protected persons in their condition are severely harmed, through no fault of their own, due to wrongful acts committed by others. This state of affairs constitutes *de facto* a collective punishment (even if Respondent's subjective intention is not to punish). For this reason too, Respondent's policy does not conform to the law.

Conclusion

83. The sweeping preclusion preventing seam zone land owners, their family members and laborers from entering the seam zone since the war broke out on October 7, 2023, other than a few exceptions, severely violates the basic rights of the Petitioners and of other protected persons in their condition, to property, freedom of occupation and freedom of movement. In addition, it constitutes *de facto* a collective punishment.
84. In view of the aforesaid, the honorable court is hereby requested to issue an *order nisi* as requested in the Petition. The honorable court is also requested to obligate the Respondent to pay Petitioners' costs and attorneys' fees.
85. This petition is supported by affidavits which were signed before lawyers in the West Bank and were sent to HaMoked by WhatsApp, subject to coordination by phone. The honorable court is requested to accept these affidavits and the powers of attorney which were also sent by WhatsApp, considering the objective difficulties in arranging a meeting between the Petitioners and their legal counsels.

November 12, 2023

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Tehila Meir,
Counsel for the Petitioners