the Supreme Court **HCJ 9961/03**
Sitting as the High Court of Justice **HCJ 639/04**

The Association for Civil Rights in Israel
Represented by Att. Avner Pinchuk et al.
75 Nahalat Binyamin St., Tel Aviv
Tel: 03-5608185, Fax: 03-5608165 **The Petitioner in HCJ 639/04**

v.

Commander of IDF Forces in the Judea and Samaria Area et al.
Represented by the State Attorney's Office
Ministry of Justice, Jerusalem
Tel: 02-6466472, Fax: 6467011 **The Respondents in HCJ 639/04**

HaMoked: Center for the Defence of the Individual
Represented by Att. Avigdor Feldman and/or Michael Sfard
10 Huberman St., Tel Aviv
Tel: 03-6852220, Fax: 03-6869775 **The Petitioners in HCJ 9961/03**

v.

1-5. Government of Israel
All represented by the State Attorney's Office
Ministry of Justice, Jerusalem
Tel: 02-6466472, Fax: 6467011

6. Fence for Life, Public Movement for the Security Fence
Represented by Att. Gilad Rogel and/or Ilan Zion
7 Aba Hillel St. Ramat Gan
Tel: 03-5757240, Fax: 03-5757241

7. Shurat HaDin, Israel Law Center
Represented by Att. Nitzana Darshan Leitner

28 Emek Ayalon St., Modiin
Tel: 03-5608185, Fax: 03-7361520

The Respondents in HCJ 9961/03

Response on behalf of the State

1. The state hereby respectfully submits a response on its behalf to these petitions.

2. The two petitions concern the request of the petitioners to revoke the provisions regulating the presence of Palestinian residents in the area which lies between the security fence and the territory of the State of Israel, through Phases A and B of the security fence, which was declared by the commander of the IDF forces in the Area as a closed military zone (hereinafter: **the seam zone**), as well as the provisions regulating the entry of Palestinian residents to the area of the seam zone.

3. The state shall argue that the petitions must be rejected. All as detailed hereinafter.

The Main Relevant Facts

The declaration of the seam zone and the relevant provisions applicable thereto

4. On October 2, 2003, upon completion of Phase A of the security fence (the segment between Salem and Elqana), and in light of the special security circumstances in effect in the Area since September 2000 and the need to take necessary measures to prevent terrorist attacks and the exit of attackers from the Judea and Samaria Area into the State of Israel, the IDF commander in the Area declared the seam zone along Phase A of the security fence a "closed zone".

   It shall be noted that the original declaration did not include the area along Phase B of the security fence, namely, the segment between Salem and Tirat Zvi, the construction of which was completed some time thereafter.

   Additionally, the segments of the fence in northern and southern Jerusalem, which were also built as part of Phase A of the security fence, were also not included in the declaration.

   In the declaration, the IDF commander in the Area delegated the head of the civil administration powers to set forth various provisions regarding the entry of Palestinian residents into the zone declared closed and their presence therein.

   We shall note that the declaration was designed to prevent terrorist organizations from sending attackers who would cross the fence from the direction of the Palestinian communities in the zone and be able to reach Israeli population centers within a very short period of time in order to carry out murderous terrorist attacks.

   A photocopy of the October 2, 2003 declaration of the seam zone as a closed zone is attached and marked **R/1**.

5. Pursuant to the aforesaid declaration regarding the seam zone, a number of orders were issued by the head of the civil administration which regulate the entry of Palestinian residents into the seam

zone, which is, as stated, a closed zone, as well as their presence therein (hereinafter: **the permit regime**).

And these are the orders:

a. General Permit to Enter and Remain in the Seam Zone, dated October 2, 2003.
b. Orders regarding Permits to Enter and Remain in the Seam Zone, dated October 7, 2003.
c. Orders regarding Permanent Resident in the Seam Zone Permits, dated October 7, 2003.
d. Orders regarding Crossings in the Seam Zone, dated October 7, 2003.

Photocopies of the four orders are attached and marked **R/2-R/5**.

6. On May 27, 2004, the IDF commander in the Area signed the Declaration in the Matter of Closing Territory No. S/2/03 (The Seam Zone) (Judea and Samaria) (Amendment No. 1), 5764-2004. The essence of the aforesaid amendment is to bring "Israeli" (as defined in the original declaration) under the terms of those to whom the declaration applies (the original declaration stipulated that it did not apply to Israelis).

Additionally, on the same day, the IDF commander in the Area also signed the General Permit to Enter and Remain in the Seam Zone (Judea and Samaria) (Amendment No. 1) 5764-2003; this as, in light of the amendment to the declaration, a general permit to enter the seam zone for Israelis was required.

A photocopy of the Declaration in the Matter of Closing Territory No. S/2/03 (The Seam Zone) (Judea and Samaria) (Amendment No. 1), 5764-2004 is attached and marked **R/6**.
A photocopy of the general permit for Israelis dated May 27, 2004 is attached and marked **R/7**.

7. On June 3, 2004, then head of the civil administration at the time, Brigadier General Ilan Paz, signed the Orders regarding Crossings in the Seam Zone (Judea and Samaria) (Amendment No. 1) 5764-2004. These orders replaced the Orders regarding Permanent Resident in the Seam Zone Permits (Judea and Samaria Area) 5764-2004 (Exhibit **R/4** supra).

A photocopy of the Orders regarding Crossings in the Seam Zone (Judea and Samaria) (Amendment No. 1) 5764-2004 is attached and marked **R/8**.
A photocopy of the Orders regarding Permanent Resident in the Seam Zone Certificate (Amendment No. 1) (Judea and Samaria Area) 5764-2004 is attached and marked **R/9**.

8. At the end of June 2004, the judgment in HCJ 2056/04 **Beit Surik Village Council v. Government of Israel** *Piskey Din*, 58(5) 807 (hereinafter: **the Beit Surik case**) was handed down. In it, the Hon. President Barak noted the difficulties created by the "permit regime" as far as the "fabric of life" of the Palestinian residents is concerned, as follows:

> This state of affairs injures the farmers severely, as access to their lands (early in the morning, in the afternoon, and in the evening), will be subject to restrictions inherent to a system of licensing. Such a system will result in long lines for the passage of the farmers themselves; it will make the passage of vehicles (which themselves require licensing and examination) difficult, and will distance the farmer from his lands.

9. Following the judgment in the **Beit Surik** case, existing procedures and guidelines regarding the regime of movement in the seam zone were re-examined and the civil administration's standing orders regarding the seam zone as well as the declaration and the orders issued pursuant thereto were amended, as detailed below.

First, an amendment was made to the declaration regarding the seam zone which matched the names and numbers of the agricultural gates and crossings in the seam zone to the "report lines" used by security forces, among others, in order to create a unified "shared language".

In addition, a number of amendments were made to the orders issued pursuant to the declaration, which generally included:

a. **Extension of the validity of permits and certificates in the seam zone**:

   1. Extension of the maximum validity of "permanent seam zone resident certificates" and permits for farmers whose ties to lands in the seam zone had already been proven to two years. We shall remark that in the past these residents were issued short-term permits.

   2. Issuance of permanent, renewable permits to farmers whose ties to lands in the zone have yet to be proven, valid for six months. It shall be noted that in the past no permits were issued for these residents.

   3. Extension of the maximum validity of permits to "holders of permanent interest" in the seam zone (such as business owners, business purchasers, merchants, international organization employees, Palestinian Authority employees, infrastructure workers, education workers and medical crews) to one year. It shall be noted that in the past these residents were issued one-day permits or permits for several days only.

b. **Form uniformity**: It was decided to unify the forms required for applications for permits to enter the seam zone for the various purposes, in order to prevent bureaucratic complexities. It shall be noted that the orders previously required separate forms be filled for each application.

c. **Provision of written information to the resident**: A written "refusal form" has been added, which is given to residents whose application for a permit to enter the seam zone or a permanent seam zone resident certificates was denied.

d. **Arrangements for the entry of vehicles**: The arrangement regarding a resident's entry into the seam zone with a vehicle was amended such that the vehicle number appears on the resident certificate or permit, whichever is relevant. In the past, a separate permit for entering with a vehicle was required.

10. On December 13, 2005, the IDF commander in the Area signed the Declaration in the Matter of Closing Territory No. S/2/03 (The Seam Zone) (Judea and Samaria) (Amendment No. 2), 5766-2005.

A photocopy of the Declaration in the Matter of Closing Territory No. S/2/03 (The Seam Zone) (Judea and Samaria) (Amendment No. 2), 5766-2005 is attached and marked **R/10**.

11. On December 13, 2005, the head of the civil administration signed the Orders regarding Permits to Enter and Remain in the Seam Zone (Amendment No. 1) (Judea and Samaria), 5766-2005. The orders enshrine the substantive changes which had occurred regarding the duration of permits

issued to residents of the Judea and Samaria Area who wish to enter the seam zone. The head of the civil administration also signed the Orders regarding Crossings in the Seam Zone (Amendment No. 2) (Judea and Samaria), 5766-2005. These orders enshrine the arrangement regarding entry of residents of the seam zone with vehicles.

A photocopy of the Orders regarding Permits to Enter and Remain in the Seam Zone (Amendment No. 1) (Judea and Samaria), 5766-2005 is attached and marked **R/11**.
A photocopy of the Orders regarding Crossings in the Seam Zone (Amendment No. 2) (Judea and Samaria), 5766-2005 is attached and marked **R/12**.

12. On December 27, 2005 the IDF commander in the Area signed the Declaration in the Matter of Closing Territory No. S/2/03 (The Seam Zone) (Judea and Samaria) (Extension), 5766-2005.

In the framework of this declaration, the validity of the original declaration of the seam zone as a closed zone, which was to expire on December 31, 2005 was extended for a further three years, namely, up to December 31, 2008. It was applied also to Phase B of the seam zone, from the Salem area, east toward Tirat Zvi.

A photocopy of the eclaration in the Matter of Closing Territory No. S/2/03 (The Seam Zone) (Judea and Samaria) (Extension), 5766-2005 is attached and marked **R/13**.

13. It shall be noted that at the present time, the declaration of the seam zone as a closed zone has not yet been applied to other segments of the security fence – Phases C1 and D and the "Jerusalem envelope".

On this issue, staff work which is to be brought for the authorization of the political echelon is now underway. The intention is to apply the declaration to the additional segments located between the security fence and the territory of the State of Israel and subject to the declaration not being made before the end of the current olive harvest which is to end in December 2006.

Data regarding the scope of Palestinian lands and residents in the seam zone

14. The area of the seam zone in the northern Judea and Samaria Area (along Phases A and B of the security fence) is some 82,463 dunam, of which 53,905 dunam are private lands and the rest are state lands.

15. 42 Palestinian villages have lands inside the seam zone, when only some 7,000 Palestinians live in the seam zone permanently, most of whom in the village of Barta'a in the Alfei Menasheh area (some 1,200) and in Khirbet Jubara (some 300).

A total of 4,835 permanent seam zone resident certificates were issued to permanent residents over the age of 16.

16. Some 11,000 Palestinian farmers have ties to farmlands in the seam zone.

17. It shall be noted that the number of Palestinian residents living inside the seam zone is due to decrease significantly in the future, **following**, the implementation of the correction to the route of the fence in the Khirbet Jubara area (which would "remove" some 300 residents from the zone), and the correction of the route in the Alfei Menasheh area (which would "remove" three of the five clusters of houses in which 800 residents live. 400 residents will remain in this area). Additionally, the route correction planned in the Zufin area will "remove" from the seam zone another single house which is located near Jayyus.

18. As well, a correction to the route of the fence in the area of Barta'a is under consideration. If implemented, this correction would remove thousands of Palestinian residents from living in the seam zone. If the correction is implemented, only a few hundred Palestinian residents would then be living in the seam zone in small and scattered population clusters.

19. Moreover, the three planned corrections to the route of the fence, as stated in sec. 17 above, will also "remove" much farmland outside the seam zone. Their presence in the seam zone at this time requires issuance of entry permits to the seam zone to Palestinian farmers even if they are not permanent residents of the seam zone.

    A photocopy of a table prepared by the civil administration regarding the scope of lands in the seam zone of each and every village in Phases A and B of the security fence is attached and marked **R/14**.

20. We shall remark that the construction of the route of the fence in Phases A and B was completed three years ago, however, several HCJ petitions are pending regarding several segments of this long since completed route.

21. The two petitions at hand refer only to the seam zone to which the permit regime has already been applied. However, for the sake of order, since as mentioned, the security establishment is set to apply the declaration in the near future to the seam zone also regarding additional phases of the security fence route, we will review below the expected significance of the declaration of the seam zone in the areas between the route of the fence and the Judea and Samaria Area boundary.

22. **Phase C1 (from Elqana to the Ofer Camp, not including the Bir Naballah area)**

    Five petitions are still pending before the court regarding the route of the fence in this segment: four of these relate to the route in the Modiin Ilit cluster area and one refers to the route near Beit Horon.

    Most of the route of the fence in Phase C1 is in the last stages of construction or has long since been completed.

    A single house will be included in Phase C1 of the seam zone – the Nijam Faqia house near Har Adar. The route of the fence, which leaves the house in the seam zone as well as arrangements to access it have recently been approved in a judgment of this honorable court in HCJ 426/05 **Biddu Village Council v. Government of Israel** (not yet published – rendered September 2006 – hereinafter: **the second Beit Surik case**).

    We shall add that the village of Beit Iksa which is located east of the village of Beit Surik was supposed to be inside the seam zone. However, on April 30, 2006, following reexamination, the Government of Israel decided to change the route of the separation fence in the area and "remove" the village from the seam zone. A seizure order for the purpose of building the security fence in that area is to be distributed in the near future.

23. **Regarding the route in the "Jerusalem envelope"** there are a total of 15 petitions pending before this honorable court. Most of the route in this area is either in the last stages of construction or has been completed. Other proceedings in the matter of the route are taking place in the objections committee under the Land Seizure at Times of Emergency Law 5709-1949.

    A few hundred Palestinian residents, mostly in the neighborhood of Al-Halaileh near Givon

Ha'Hadasha, in the neighborhood of Dahiat al-Barid in the area of the Zeitim crossing, the a-Sheikh neighborhood and in An Nabi Samuel, are destined to live in the seam zone in the Jerusalem envelope area. It shall be noted that the legality of leaving the village of An Nabi Samuel beyond the fence has already been approved in the judgment in the **second Beit Surik case** (HCJ 426/05 above).

24. **Gush Etzion** – some 19,000 Palestinian residents live in Gush Etzion. **The seam zone permit regime will not be applied in this area**. Through the entire northern part of the Gush and in a large part of its western side, a security fence between the Gush and the State of Israel will be built. Crossing points will be erected at the entrances from the Gush into Israel which would prevent entry of unlicensed Palestinians into Israel.

    We shall note that Israeli citizens living in the Gush Etzion area will also be injured by the special arrangement which shall apply in the Gush as they too will be required to pass through crossings en route from the Gush into Israel.

    7 petitions are pending regarding the route in this area, which have been heard by an extended bench of 7 justices and are now awaiting judgment.

25. **Phases D1 and D2 (the south-western part of Gush Etzion and the segment from the village of Jab'a south to the settlement of Metzadot Yehuda)** – not many Palestinian residents live in the seam zone in these areas. One petition regarding the route of the fence in this area is pending. It refers to the route in the area of Eshkolot and was submitted by an Israeli quarry which seeks to remain beyond the fence.

26. **Phase D3 (from Metzadot Yehuda to Har Holed)** – Only a few Palestinians live in this segment in the seam zone. Two petitions regarding the route of the fence in this area are currently pending.

27. **The Maaleh Edomim Area** – 1,100 Palestinian Bedouins live in this area, the large majority of whom are designated for permanent settlement on lands which would be earmarked for this purpose outside the area bound by the security fence.

    It shall be noted that the northern part of the route of the fence in the Maaleh Edomim area is still under individual examination and requires judicial approval. Two petitions are pending regarding the route on the southern side of Maaleh Edomim. An order nisi was issued therein.

28. **Phase C3 (also called the "Ariel fingers")** – very few Palestinian residents live in this future part of the seam zone. Completion of detailed planning and judicial sanction are still required regarding large segments of the route of the fence in this area, including connection of segments which have already been approved to the security fence around the Judea and Samaria Area.

    It shall be further noted that at this stage, only those parts of the fence used for local defense in the form of special security areas have been actualized regarding the Israeli communities of Ariel, Emanuel, Maaleh Shomron, Kareni Shomron and Beit Aryeh – Ofarim. We shall note that no petitions regarding these segments are currently pending before the HCJ after all the petitions submitted have been rejected by the honorable court.

    In the aforesaid segments which are used for local protection of the communities, no Palestinian residents live on the "internal" side of the fence, however, in the Karnei Shomron Area there is a single house the owner of which recently notified that he was going to occupy.

29. Upon completion of the planned route of the fence, including the route in the "Ariel fingers" area and Maaleh Edomim, and excluding the Gush Etzion area regarding which there is no intention of declaring a closed zone or applying the permit regime – the total area of the seam zone is expected to span some 325,000 dunam (some 5.9% of the total area of Judea and Samaria).

Figures regarding the number of permits to enter the seam zone and permanent seam zone resident certificates

30. As noted, as at November 5, 2006, 4,835 permanent seam zone resident certificates have been issued (these are issued to all permanent residents of the zone who are over 16 years of age).

31. Additionally, as at November 5, 2006, 10,037 permanent entry permits, valid for two years, were issued to farmers in the seam zone. Additionally, 214 temporary entry permits, valid for six months, were issued to farmers whose claims regarding ties to lands in the seam zone have not yet been resolved.

    Additionally, as at November 5, 2006, some 3,881 employment permits for the seam zone have been issued, most to laborers and relatives of farmers in the seam zone who help them during the olive harvest which is currently underway.

    Additionally, additional permits for purposes of education, health, personal needs and medical and infrastructure crews have been issued.

32. A total of some 19,609 permits and certificates for the seam zone have been issued as at November 5, 2006.

    It is not superfluous to note that this represents a great increase in the number of permits as compared to previous months which stems from the olive harvest.

33. Below are figures regarding applications for permits to enter the seam zone in the last three months. As indicated by the figures, unlike the impression the petitioner in HCJ 639/04 is trying to create, relatively few applications are denied on security grounds and the majority of refusals arise out of lack of proof of ties to the agricultural lands of the permit applicants.

34. **August – September 2006**

    The Jenin District: 960 applications were submitted, of which 745 were approved and 215 were denied. Only 16 applications were denied for security reasons (some 1.6%).

    The Tulkarem District: 993 applications were submitted, of which 460 were approved and 533 were denied. Only 18 applications were denied for security reasons (some 1.8%).

    The Qalqiliya District: 560 applications were submitted, of which 241 were approved and 319 were denied. No applications were denied for security reasons.

    October 2006 (the olive harvest)

    The Jenin District: 1,450 applications were submitted, of which 1,219 were approved and 231 were denied. Only 31 applications were denied for security reasons (some 2.1%).

    The Tulkarem District: 2,592 applications were submitted, of which 1,803 were approved and

789 were denied. Only 96 applications were denied for security reasons (some 3.7%).

The Qalqiliya District: 496 applications were submitted, of which 213 were approved and 283 were denied. Only 50 applications were denied for security reasons (some 10%).

35. We shall add that Palestinian farmers who prove ties to farmlands in the seam zone receive a two year permit to enter the seam zone. As for their relatives and employees who do not have direct ties to the land, indeed, they are also issued with permits for employment in the seam zone, the period of validity of which is left to the discretion of the DCO in the district. In certain cases, such as Falamiya and Jayyus where there is intensive agriculture, most of the permits for immediate relatives are also issued for two years.

36. As an aside, despite the topic's being outside the scope of these petitions, we shall add that staff work is currently being carried out by the security establishment in order to enshrine in the legislation of the area procedures which regulate the issue of seizure, revocation or non-renewal of a permit to enter and remain in the seam zone issued to a Palestinian resident due to violation of one or more of the terms of the permit or its use for the purpose of committing an offence under the law and security legislation in the Area or the law in the State of Israel.

    It shall be further noted that a procedure regulating this issue is included in the internal procedures of the civil administration which has been in effect since May 2005, however, its provisions have not been implemented by the civil administration.

The gates and crossings in the fence in the area of the seam zone and their mode of operation

37. The issue of agricultural gates is not directly addressed in these petitions and in any case there is no room to discuss one specific gate or another in these general petitions. However, it is of relevance to our matter.

38. Currently, there are 53 gates in the security fence in the declared seam zone (in the area of Phases A and B of the fence), 37 of which are agricultural gates used for the passage of Palestinians to their lands or their homes in accordance with the scope of the plots and the types of crops in the area.

39. There are four main types of gates in the seam zone:

    A. **Fabric of life gate:** A gate that is open every day, continously between 12 and 24 hours a day, as relevant.

    B. **A day gate**: A gate that is opened two or three times a day for various intervals of half an hour to two hours in accordance to the number of workers and agricultural needs.

    C. **Seasonal gate**: A gate that is opened during agricultural seasons, with emphasis on seasons relevant to olive growing. At other times of the year, the gate is opened via advance coordination with the District Coordination Office and the regional brigade.

    D. **Operational gate**: A gate used by operating forces.

40. It shall be noted that the seasonal gates are sometimes operated in a different and more beneficial manner than their initial definition, this for the purpose of the needs of the local population. In this framework, there are currently gates defined as seasonal which are opened in practice once or twice a week, when some are even opened twice a day, this on the basis of periodic situation

analysis and a balancing between the needs of the population and the capabilities of the security establishment.

An aid prepared by the civil administration which marks, *inter alia*, the location of the gates specified in the amendment to the declaration regarding the seam zone per their division according to type (agricultural day gate, agricultural seasonal gate, "fabric of life" gate, single home gate, crossing, "back to back" crossing, operational gate) is attached and marked **R/15**. A table collating the 37 agricultural gates according to type and the various districts (the number of permit holders for every gate in the table is a "rough" calculation only) is attached and marked **R/16**.

41. We shall further add that movement into the seam zone is made possible throughout the year (with the exception of the Day of Atonement and Independence Day), **this, also when a "general closure" is imposed on the Judea and Samaria Area** and that operation of the agricultural gates is carried out consistently and institutionally, with the exception of cases where there is a security alert directed at an area where a specific gate is located.

42. Furthermore, some 90% of the agricultural gates are located at distances **no farther than 2.5 km from the center of a village which uses the specific gate** (and they are of course located at a shorter distance from the houses at the edge of the village), such that the routine operation of the gates provides, in the opinion of the respondents, a reasonable and fitting response for the "fabric of life" and the routine agricultural work in the area.

43. It shall be emphasized that the central command and the civil administration, via the "Other Way" administration and the IDF construction center, are taking action to constantly improve the quality of service at the crossings, the agricultural gates and movement into the seam zone, as described below:

    a. **Crossings**: Over 30 million NIS were invested in building high standard gates while installing sophisticated screening measures which allow for better security identification on one hand and a significant reduction of wait times.

    b. **Agricultural gates**: Over 20 million NIS were invested in building agricultural gates. Sheds were installed in most gates for those waiting. Access routes to the gates were built or improved in many of the gates, and sophisticated screening structures were installed in more than 10 gates. These allow for better screening with a shorter wait in a covered, air conditioned structure.

    c. **Quality of service in the crossings**: Some 2.5 million NIS were allocated for the "building quality of service" program at the crossings, which includes, *inter alia*, installing various logistical means such as benches, waiting sheds, air conditioners, chemical toilets, water fountains, ash trays, garbage cans, signs and more.

44. Beyond the aforementioned, a decision has been made to post 22 Arabic speaking officers and NCOs serving in the civil administration in the major pedestrian crossings and in the commercial crossings whose role would be to ensure the existence of a reasonable fabric of life in these crossings, as well as providing solutions for civilian or administrative issues which arise at the crossings. This is an investment of about 4 million NIS per annum.

45. We shall further add that there are shuttles for students living in the seam zone and studying in schools in the Judea and Samaria Area outside the seam zone, at a cost of 500,000 NIS per annum.

46. The sum total of investments for improvement of the fabric of life in the seam zone area is around 60 million NIS, without taking into consideration expenses for DCO representative offices adjacent to the barrier and the "fabric of life" routes.

47. **Beyond the legislative amendments to the permit regime which were described above, it was also decided to make changes to the movement regime in the seam zone**. These changes were implemented through improving access roads to and from the agricultural gates, as well as, extending the opening hours of the gates. This while opening some of the gates throughout the daylight hours.

48. Furthermore: lately, a directive was issued according to which, in every gate which is near farmlands to which a Palestinian has proven ties and which is not open throughout the year, in addition to this gate, the permit granted to said person shall specify an additional gate or crossing which is open throughout the year, subject to passage through the additional gate not necessitating the resident enter into the territory of Israel. This directive has not yet been implemented due to technical difficulties, but is expected to be implemented within about 4 weeks.

49. Beyond the aforesaid, there are several other options for opening gates beyond regular opening hours.

    a. **First**, the keys to the gates are kept by soldiers who routinely patrol the area. If necessary, as in various humanitarian cases, a specific gate can be opened outside of defined hours.

    b. **Second**, in order to provide an immediate response for problems arising on the ground, the respondents operate a humanitarian hotline located in the civil administration headquarters in Beit El. This hotline has a multi-line telephone number which was publicized among residents of the area and is posted on signs near the gates. Therefore, in humanitarian cases, when Palestinian residents need a gate to be opened outside regular hours, they can call the center and ask that a certain gate be opened. The center immediately transfers the request the competent security officials who are instructed to provide assistance in solving the problem.

50. It shall be emphasized that the schedule for opening the various crossings and gates was not established by the IDF arbitrarily, but was rather established after striking a balance between security needs and the needs of the local population in each and every area, with coordination, as far as possible, with the residents of the specific villages.

    In the context of this balance, the various needs of the residents of the specific area were taken into account, such as studying in schools, the work of farmers etc. which are pitted against complex security considerations relating to the security impediments created by having dozens of ermanent posts along the fence for the security of the military forces which open the gates and with due consideration to logistical and manpower limitations.

51. Generally, it shall be noted that the IDF forces operate according to an "operations clock" which was established out of operational considerations. In short, it shall be noted that at "first light", IDF soldiers begin actions to open the route along the security fence and ensure no penetration of terrorists or placement of roadside bombs occurred during the night. Only after completion of this necessary activity can the fence gates be opened. There is a platoon responsible for opening a number of gates in every district of the fence and in fact, the patrol unit travels from one gate to the next to carry out its opening. Therefore, due to this necessary operational course of action it is possible to begin opening gates only around 6:30 – 7:00 AM.

Regarding the closing times of agricultural gates, it shall be noted that owing to considerations relating to the personal safety of the soldiers who carry out the patrols, it is necessary to terminate the process of closing the gates about an hour before sunset, as it is not possible to perform screenings of Palestinian residents safely during the night and it is impossible to ensure that an unknown person approaching the gate during the night is not a terrorist who is putting the unit at risk.

Experience also teaches that for the most part there are regular hours during which residents leave for work or school and return home from these activities, although, clearly there are often people who wish to pass during other hours, in urgent situations or for convenience.

52. There is no dispute that harm is caused to Palestinian residents as a result of the fact that not all the gates are opened throughout the day. Therefore – when an urgent humanitarian or medical need arises – effort is made to open the relevant gate outside of regular opening hours.

I any case, and as detailed below, the state is of the opinion that the injury caused to Palestinian residents is proportional under the circumstances of the matter and that this injury is necessary for imperative security reasons.

53. Moreover, officials in the civil administrative conduct computerized monitoring and control of adherence to opening hours and of the reasons for deviations where these occur. Periodic reports are distributed for the information of the relevant officials in order to improve the services provided.

We shall note, in this context, that as aforementioned, each patrol is responsible for a number of gates and opens and closes them in sequence, one after the other. If follows that any delay at a certain gate, for example as a result of concerns regarding explosives or an indication of some security problem along the barrier, may cause a delay in the opening of the next gate.

54. Currently, to the respondents' knowledge, there are **very few** irregularities in the opening times of the various gates and crossings in the fence. In most cases where deviations in opening times have been recorded, these were a result of security activity in the district, such as handling an explosive device placed in the area and other similar cases.

55. In any case, complaints regarding the manner in which one gate or another is operated cannot be examined in the context of a general petition and inasmuch as the petitioners have complaints on such matters, indeed, following due exhaustion of remedies vis-à-vis the respondents, as was done in the **Faiz Salim** case, they may bring a matter such as this before the honorable court for review, in the context of a concrete and focused petition.

The Legal Argumentation

56. The respondents shall claim that the petitions must be rejected – both *in limine* and on their merits – as detailed below.

Rejection of the petitions for being general petitions

57. In opening, the respondents will argue that the petitions at bar are general petitions which must be rejected *in limine* as a result thereof.

58. The permit regime originated in the military commander's decision to declare the seam zone a closed zone for security reasons. The permit regime itself is an outcome of the military commander's decision, owing to his duty to refrain from causing disproportionate injury to the local residents, to allow permanent residents of the closed zone to dwell within it, as well as to allow entry into this area by persons who have substantive ties to it and the prevention of whose entry to the closed zone would disproportionately harm themselves or the permanent residents of the closed zone.

59. The legal premise is that according to the rules of customary international law, the military has the power to order closure of areas within the occupied territory, for security reasons. The honorable court has recently reiterated this in the judgment of Hon. Justice Beinisch (as was her title then) in HCJ 9593/04 **Head of Yanun Village Council v. IDF Commander in the Judea and Samaria Area**, *Takdin Elyon* 2006(2) 4362 (2006) (hereinafter : **the Yanun case**), as follows:

> 12. The territories of Judea and Samaria are held by the State of Israel under belligerent occupation and there is no dispute that the military commander who is responsible for the territories on behalf of the state of Israel is competent to make an order to close the whole of the territories or any part thereof, and thereby to prevent anyone entering or leaving the closed area. This power of the military commander is derived from the rules of belligerent occupation under public international law; the military commander has the duty of ensuring the safety and security of the residents of the territories and he is responsible for public order in the territories (see art. 23(g) and art. 52 of the Regulations concerning the Laws and Customs of War on Land, which are annexed to the Fourth Hague Convention of 1907 (hereafter: 'the Hague Regulations'); art. 53 of the Convention relative to the Protection of Civilian Persons in Times of War, 1949 (hereafter: 'the Fourth Geneva Convention'); HCJ 302/72 **Hilo v. Government of Israel** [1], at pp. 178-179). This power of the military commander is also enshrined in security legislation in section 90 of the Security Measures Order (see, for example, **Hilo v. Government of Israel** [1], at pp. 174, 179; HCJ 6339/05 **Matar v. IDF Commander in Gaza Strip** [2], at pp. 851-852)...

60. Note, power is distinct from the exercise of power. This power of the military commander to order the closure of areas in the occupied territories is subject to the reason for the closure constituting one of the reasons which enable, as aforesaid, the closing of the zone and to the decision meeting the three subtests of the proportionality test as established in case law (we refer to remarks made in the judgment in the **Yanun case** above).

61. Below, in the section seeking rejection of the petition on its merits, we shall address the security reasons for the declaration of the seam zone as a closed zone and the theoretic legality of the permit regime which is designed to reduce the injury stemming from this declaration.

62. As established by the honorable court in the **Beit Surik case** and in HCJ 7957/04 Mara'abe v. Prime Minister of Israel, *Takdin Elyon* 2005(3) 3333 (hereinafter: **the Alfei Menasheh case**), and in a long list of judgments that followed, regarding the security fence, **and, as aforementioned, the closure of the seam zone and establishment of the permit regime are inseparable parts of the security fence project**, the test of proportionality must be undertaken with respect to three variables – security necessity, the concrete injury to local residents and safeguarding the interests and fundamental rights of the Israeli residents.

63. Additionally, as determined in the **Alfei Menasheh case**, the balance among the three aforesaid variables must be examined vis-à-vis each and every segment separately and that on this issue, it is not possible to examine the fence as a single unit which spans hundreds of kilometers.

64. However, the two petitions at hand refer to the permit regime in general, without detailing the concrete injury caused to local residents from each and every segment along the route of the fence, and, it follows, without indicating that the injury caused by the permit regime to local residents in a specific segment is disproportionate.

These petitions are afflicted by the same flaw of generality which also afflicted the advisory opinion of the International Court of Justice in the Hague on the route of the fence, which the honorable court addressed in its judgment in the **Alfei Menasheh case**, where it was stated, *inter alia*, as follows:

> 70. We would especially like to point out an important difference in the scope of examination. Before the ICJ, the entire route of the fence was up for examination. The factual basis which was laid before the ICJ (the Secretary-General's report and written statement, the reports of the *special rapporteurs*) did not analyze the different segments of the fence in a detailed fashion, except for a few examples, such as the fence around Qalqiliya. The material submitted to the ICJ contains no specific mention of the injury to local population at each segment of the route. We have already seen that this material contains no discussion of the security and military considerations behind the selection of the route, or of the process of rejecting various alternatives to it. These circumstances cast an unbearable task upon the ICJ. Thus, for example, expansive parts of the fence (approximately 153 km of the 763 km of the entire fence, which are approximately 20%) are adjacent to the Green Line (that is, less than 500 m away). An additional 135 km – which are 17.7% of the route – are within a distance of between 500 m and 2000 m from the Green Line. Between these parts of the route and the Green Line (the "seamline area") there are no Palestinian communities, nor is there agricultural land. Nor are there Israeli communities in this area. The only reason for establishing the route beyond the Green Line is a professional reason related to topography, the ability to control the immediate surroundings, and other similar military reasons. Upon which rules of international law can it be said that such a route violates international law? Other parts of the fence are close to the Green Line. They separate Palestinian farmers and their lands, but the cultivated lands are most minimal. Gates were built into the fence, which allow passage, when necessary, to the cultivated lands. Can it be determined that this arrangement contradicts international law *prima facie*, without examining, in a detailed fashion, the injury to the farmers on the one hand, and the military necessity on the other? Should the monetary compensation offered in each case, and the option of allocation of alternate land (as ruled in **the Beit Surik Case** (*Id.*, at p 860)) not be considered? There are, of course, other segments of the fence, whose location lands a severe blow upon the local residents. Each of these requires an exacting examination of the essence of the injury, of the various suggestions for reducing it, and of the security and military considerations. None of this was done by the ICJ, and it could not have been done with the factual basis before the ICJ.

65. It follows, that these petitions are general petitions, as it is, according to the respondents, impossible to point to lack of proportionality in the injury to local residents along the entire length of the route of the fence due to the existence of the permit regime in the seam zone, without examining the security necessity in each and every segment, the injury to local residents

therein and the measures taken to reduce the latter, as well as the injury to Israeli residents should the permit regime in that area were to be cancelled.

66. A summary of the case law regarding the rejection *in limine* of a petition due to "generality" was presented in the guiding judgment of Hon. Justice Zamir in HCJ 1901/94 **Landau v. City of Jerusalem**, *Piskey Din* 48(4) 403 (1994) as follows:

> "… It is case law that this court does not respond to a petitioner who seeks general relief. The difference between general relief and focused relief is not sharp and cannot be accurately defined. One may say, without being exhaustive or accurate, that general relief generally refers to the appropriate policy in a type of cases or the required conduct in a type of cases whose number is unknown and details unclear, as distinct from focused relief which refers to a specific case whose facts are known and clear…
> **One could have added and amassed more and more questions, which, of themselves, teach of the problematic nature of granting general relief such as that sought in this petition. This is a reason, in itself, for the court's reservations regarding general relief.**
> Another reason for the court's reservations regarding general relief relates to the respondents: with a general relief it is difficult to ensure, and sometimes impossible to ensure that all respondents will be worthy before the court. Yet, this too, is a preliminary argument of itself, whose time has now come." [emphasis added, A.H. and G.S].

In addition, remarks made in HCJ 9242/00 **Physicians for Human Rights v. Defense Minister**, *Takdin Elyon* 2001(1) 1755 (2001) are also relevant for our matter. In that case the petition sought to prohibit the IDF from erecting and maintaining physical roadblocks in the Judea and Samaria Area, despite the existence of belligerent incidents in these areas. The argument raised in the petition was that these roadblocks prevented regular supply of food, medicine and medical services to the population. This petition was rejected with the court finding, *inter alia*, as follows:

> "… The petitioner… insists on its request for general relief, namely, a general order prohibiting the erection and maintenance of physical roadblocks in the Judea and Samaria Area. We have found no legal cause to issue such an order.
> **Moreover, the court, as determined more than once in different contexts, does not normally grant general relief, for reasons it has explained… So here too, the court does not see fit to grant the petitioner the sought relief which is a general relief without a factual basis as acceptable and required in proceedings before this court."** [emphasis added – A.H. and G.S.].

67. Therefore, the petitioners are of opinion that the petitions must be rejected solely for their being general as, it is impossible to determine, without addressing every specific individual case, that closure of the seam zone and the application of the permit regime thereto is generally disproportionate, and it is certainly impossible to say that it is generally illegal.

Rejection of the petitions on their merits

68. Beyond necessity, the respondents shall argue that the petitions must also be rejected on their merits, as detailed below.

The premise – closure of the area and the permit regime are an inherent part of determining the route of the fence

69. Before we address the petitioners' general arguments, which largely relate to alleged violations of the rules of international humanitarian law and international human rights law, it is appropriate to note that the honorable court did not address the legality of the permit regime in the context of the petitions examining the route of the security fence. However, the honorable court did state its opinion that in the context of examining the proportionality of the route of the fence in a certain segment, one would have to consider the need for obtaining permits to enter the seam zone, the implementation of the regime in practice and the positioning and opening hours of the agricultural gates.

The honorable court explicitly addressed this in an extended panel of nine justices in its judgment in HCJ 4825/04 **Alian v. Prime Minister**, *Takdin Elyon* 2006(1) 3736 (2006) (hereinafter: the **Budrus and Shuqba case**) as follows:

> 16. The conclusion according to which it is impossible to establish a less injurious alternative geographic route for the fence does not of itself terminate the examination of proportionality in the second sense. **The geographic route and the permit and crossing regime to lands remaining west of the fence are bound with each other in the examination of the proportionality of the injury caused thereby**. Orchards and grazing pastures belonging to the petitioners were cut off by the separation fence. In this state of affairs, the respondents must see to it that reasonable crossing arrangements and an accessibility regime to the petitioners' lands are established in a manner which diminishes, as much as possible, injury to them…
>
> 17. Is the severity of the injury to the residents of the communities of Budrus and Shuqba stemming from the erection of the separation fence in the route established by the military commander proportional to the security benefit arising from erecting the fence in that same route? This is the third sub-condition of proportionality. Our answer to this question is affirmative. The erection of the fence stems from a vital security need. Its purpose – to protect the lives of citizens of Israel from terrorist attacks. Its expected benefit, is, therefore, quite significant. On the other hand, the injury to the petitioners is not so grave and severe so as to be disproportionate. One is not to make light of the injury the separation fence causes to the residents of the petitioning communities. As described, the erection of the fence in the area of Budrus involves damage to dozens of trees, seizure of a strip of land which spans some 45 dunam and the severance of a strip of land of similar size which remains west of the fence. The building of the fence in the Shuqba area necessitated the relocation of some 130 olive trees, seizure of a strip of land spanning 121 dunam and leaving an additional 510 dunam of the village's lands west of the fence. **However, one cannot say that this a severe injury which is disproportionate**… Damage to property is much smaller and due payment is provided for the damage. **The permit regime allows access to the lands which remain west of the fence**. The route of the fence in the area of the villages also does not cut off the residents of the villages from essential services and does not leave Palestinian residents in the seam zone, nor does it create "a veritable chokehold, which will severely stifle daily life" (compare: the Beit Surik case, 855; the Alfei Menasheh case, secs. 102-110). In the circumstances of the matter, one cannot say that the route of the fence in the area of the petitioning villages does not meet the third subtest of proportionality. [Emphases added – A.H. and G.S.]

See recently also the judgment regarding the route of the fence in the Az Zawiya area east of Rosh Ha'Ayin (HCJ 6027/04 **Head of Az Zawiya Village Council v. Defense Minister**, *Takdin Elyon* 2006(3) 2665 (2006), as follows:

> 21. The conclusion according to which it is impossible to establish a less injurious alternative geographic route for the fence does not of itself terminate the examination of proportionality in the second sense. The geographic route and the permit and crossing regime to lands remaining west thereof are bound with each other in the examination of the proportionality of the injury caused by the fence (see the Shuqba case, sec. 16). Lands belonging to the petitioners were cut off by the separation fence. In this state of affairs, the respondents must see to it that reasonable crossing arrangements and an accessibility regime to the petitioners' lands are established in a manner which diminishes, as much as possible, from the perspective of security considerations, the injury caused to them. It has been stated that an agricultural gate would be installed south of Elqana, and will be opened at times to be established in coordination with the residents. The petitioners are not seeking the installation of additional crossings or a change in opening hours. Their petition does not address the crossing arrangements or the permit regime at all. In this state of affairs, in view of the fact that it is not directed against the gate policy and the crossing arrangements through the security fence, we do not express any position on this matter, and it does nothing to detract from the conclusion that the route of the fence does not violate the second subtest of proportionality. This finding is based [on] the presumption that the petitioners will have reasonable access to their lands through reasonable crossing arrangements in the fence. Inasmuch as this presumption does not withstand the test of reality, they are free to turn to the court once again."

70. Moreover, from the fact that the honorable court has acknowledged, time and again, the military commander's competency to build the fence even inside the Judea and Samaria Area – when it is required for security reasons – it follows that, in the absence of an additional fence on the Judea and Samaria Area borderline, the closing of the area between the fence and the territory of Israel, in places where the fence runs inside the Judea and Samaria Area, and at the same time, the existence of a permit regime which is meant to alleviate the results of the area's closure, and this, in order to prevent the entrance of terrorists to Israel and to Israeli communities located in the Judea and Samaria Area, near the territory of the State of Israel.

71. According to the petitioner in HCJ 639/04, it would have been possible to settle for a security screening at the entry points into the seam zone and there is no need to require entry permits to the zone from the Palestinian residents.

72. This argument must be rejected. A physical security search is insufficient to prevent the entry of a terrorist to the seam zone and from there on to Israeli territory, with the weapon or explosive device transferred to his possession inside the seam zone or in Israel, for instance, by throwing it over the fence or smuggling it in other ways.

Performing only a physical search at the time of entry into the seam zone, therefore, does not, of itself, provide any guarantee of thwarting the intention of terrorists and persons barred for security reasons who seek to enter the seam zone and team with various weapons or assist terrorists, in various ways, after they have entered the zone in order to perpetrate a terrorist attack in Israel or in Israeli communities in the seam zone.

Obviously, the petitioners' request may lead to a situation whereby a terrorist could enter the seam zone, without any means by which to carry out an attack, through one of the agricultural gates and receive an explosive belt, a gun, an explosive device, an axe, or any other means of attack thrown to him over the fence or smuggled into Israel.

73. The declaration of the seam zone as a closed zone, entry into which requires obtaining a permit (with the exception of its permanent residents), places limitations on crossing the fence from east to west and on remaining in the "seam zone", since there is no barrier preventing entry into Israel from the seam zone.

If it were not for these limitations, any terrorist would be able to cross the barrier from the direction of the Palestinian communities and reach, in a very short time, crowded Israeli population centers and perpetrate murderous attacks therein.

74. Indeed, the barrier leads to the imposition of restrictions on the free movement of Palestinians in the zone, which is part of the Area. This is not a light result – no one disputes this fact – and the security establishment is doing its best in order to minimize these restrictions and respond to the needs of the population. However, one must remember that closing areas for security needs is a legal and acceptable measure in a territory which is under belligerent occupation, as is the imposition of restrictions on movement, particularly in the midst of an armed conflict with terrorists who take action from within the civilian population and who intend to cause the death of innocent Israeli civilians.

On this issue, we shall also recall, as found in the **Yanun case**, impeding the freedom of movement of a person in a public territory in an area under belligerent occupation is not tantamount to impeding his freedom of movement in his private territory. Therefore, closing the seam zone and simultaneously establishing the permit regime which allows all those with individual ties to lands in the seam zone to obtain a permit to enter the zone or live therein, as relevant, properly balances, in the opinion of the respondents, the pressing security need which underlies taking these measures and the injury to the rights of the Area's residents.

75. The petitioners' position is, as aforesaid, that the conditioning of entry to the agricultural lands west of the fence on obtaining a permit must be revoked and the presentation of an identity card and performance of a physical search should suffice in light of the difficulties to obtain permits.

However, contrary to the petitioners' claims, if no permit is required, then, theoretically, any resident of the Judea and Samaria Area could arrive at any gate, and even if he has no interest or real individual ties to the seam zone, present an identity card and if he is not carrying a weapon or an explosive belt on his person, cross the fence, and from there the road to perpetrating a terrorist attack in Israel is short.

It must be noted that and identity card provides no indication as to the presence or absence of a security preclusion regarding a certain individual from entering the seam zone, from which it is possible to travel to Israel.

However, obtaining a permit to enter the seam zone constitutes evidence that the person has been screened individually recently and that there was no security impediment, at the time the permit was requested, to allow his entry into the seam zone.

76. Indeed, providing permits for extended periods of time also entails a danger that a security preclusion may arise after the permit was granted, however, the durations of permits and seam zone resident certificates were determined in an attempt to balance between the need for frequent security checks and the injury caused to the residents by providing the permits and certificates for short periods of time.

We shall remark that periodic new security screenings guarantee that each case is examined

individually ad hoc, in accordance with security circumstances at the time. Beyond this, in view of these renewed examinations, it may be that those who had been denied entry in the past would be allowed entry at a later date in accordance with the circumstances at that time.

77. The preceding indicates that even if the closure of the seam zone and the simultaneous establishment of the permit regime burdens the residents of the area, it does not mean that they must be revoked, as the security rationale which lies at their foundation is firm and valid and cancellation of the declaration and the permit regime which is part and parcel thereof may seriously harm security; the appropriate solution is the constant improvement of the arrangements in order to simplify matters for the residents, as much as possible.

78. The petitions before us are, in effect, tantamount to an attempt to change the route of the fence itself – both in places where the route of the security fence has already been approved by the honorable court and in places where the route has not yet been approved – this by using the "back door" of challenging the permit regime.

79. To conclude this section, the respondents shall argue that the very declaration of the seam zone as a closed zone and the establishment of the permit regime therein – like the route of the fence itself – meets all three subtests of proportionality:

a. **There is a rational** and direct **connection** between the closure of the seam zone and establishment of the permit regime and the security need.

   Restricting entry into to seam zone only to those who have substantive, individual ties to this area and conditioning such entry also on obtaining a permit (which is subject to performing an individual security screen) significantly diminishes the possibility of terrorists to cross the security fence and then enter Israel or communities near the Judea and Samaria Area borderline in order to perpetrate terrorist attacks. It shall be noted that the security fence project, including the seam zone, which is an inseparable part thereof, have already proven their great efficiency in minimizing the scope of terrorism west of the fence. This matter is now judicial notice by this court, after relating thereto has already been presented to the honorable court, *inter alia*, in the context of the **Alfei Menashe and Budrus and Shuqba cases**.

b. **There is no other alternative** which would achieve, nor even approximate, the imperative security objective attained by closing the seam zone and establishing the permit regime. As stated, the alternative suggested by the petitioner in HCJ 639/04, namely, a body search alone upon entry into the seam zone, does not at all provide an appropriate solution for the security need.

c. **In the subject matter of the petition, proportionality in the narrow sense is also satisfied**, namely, the great benefit of closing the zone with the simultaneous establishment of the permit regime which allows persons having substantive ties thereto to enter and live in the zone, is also proportional relative to the difficulties caused to the local residents.

   We shall further note that the fence project, including the closure of the zone and the establishment of the permit regime, diminishes the need to carry out combat operations inside the Judea and Samaria Area, of which operation "Defensive Shield" is a prime example. The seam zone barrier project, including its various components – fence, seam zone, permit regime – therefore, minimizes the harsh incidental injuries to the local population caused by offensive action which would be needed in order to thwart terrorism if the efficiency of the seam zone were to be compromised. This substantive datum must also be taken under

consideration when one examines whether the test of proportionality in the narrow sense is met in the case at bar.

80. In any case, as the general arguments regarding the proportionality of the route of the entire fence were rejected in the **Alfei Menasheh case**, so there is room to reject the claims raised regarding the entire permit regime, and anyone who maintains that the injury caused to him directly is disproportionate may petition on this matter and the concrete circumstances of his case will be examined by the honorable court.

Reference to the Arguments in the Petitions

Arguments regarding discrimination and collective punishment

81. The petitioner in HCJ 9961/03 raises severe allegations lacking any factual or legal basis, that the permit regime constitutes "legal discrimination which is unprecedented in Israel" and even compares it to the apartheid laws instituted in South Africa. In this context, the petitioners claim that a Palestinian living in the seam zone "for generations" requires a permit in order to continue to live therein, whereas those with lesser ties to the zone (such as Jews eligible under the Law of Return) are permitted entry even without need for an individual permit. The petitioner also claims in its petition that "every newborn baby…" is required to hold a permit to enter and remain in the seam zone and from this draws the conclusion that the regime is not directed against terrorism but rather against the entire Palestinian people and constitutes collective punishment. Additionally, according to the petitioner in HCJ 9961/03, the permit regime violates the prohibition set forth in the Fourth Geneva Convention of 1949 on discrimination between "civilians" ("protected persons"), when, according to the claim, if the Israelis living in the Territories do not come under this definition, then indeed, *a fortiori*, they are entitled to less protection than Palestinians, not more.

82. **First**, it is important to note that contrary to the claims of the petitioner in HCJ 9961/03, the permanent residents of the seam zone are not required to obtain any "permit" in order to continue to live in their homes; the residents receive, as stated, a seam zone resident certificate which is similar to certificates given to residents in many communities in Israel.

Second, contrary to what is implied by the quote above, permanent local residents of the seam zone up to the age of 16 are not required to even hold a seam zone resident certificate.

83. On the merits, the state shall claim that **the matter at hand does not involve discrimination at all, but rather a classic legitimate distinction based on security reasons which have already been recognized as such by the honorable court**.

The petitioner in HCJ 9961/03 almost entirely ignored the severe security risk emanating from uncontrolled passage of terrorists from the Judea and Samaria Area to the State of Israel. Our matter concerns crossing the fence into a territory which is adjacent to the territory of the State of Israel from which entry into Israel is simple and convenient in the absence of an additional physical barrier. Rather than confront this substantive and serious security reasoning, which lies at the foundation of building the entire security fence, as well as the foundation for declaring the seam zone a closed zone (the implications of which the permit regime is designed to alleviate), the petitioner prefers to make wild accusations against the state such as "apartheid", "collective punishment" etc., which are, as aforesaid, devoid of any factual or legal basis and were not accepted in the context of petitions filed against the very building of the security fence.

As for the security aspect, which is, as stated, the reason which lies at the foundation of building the fence and declaring the seam zone a closed zone (a declaration which brought the need to have a "permit regime"), we shall recall that terrorist attacks have taken place and continue to take place both in the seam zone area and deep inside the State of Israel. These terrorist attacks have been and are directed at innocent citizens and residents, men, women, children and the elderly.

On this issue, see, for example, the remarks of Hon. President Barak in the Alfei Menasheh case as follows:

> 1. 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 tank farm at Pi Glilot (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.
>
> 2. Israel took a series of steps to defend the lives of her residents. Military operations were carried out against terrorist organizations. These operations were intended to defeat the Palestinian terrorist infrastructure and prevent reoccurrence of terrorist acts (see HCJ 3239/02 **Marab v. The Commander of IDF Forces in the Judea and Samaria Area**, 57(2) *Piskey Din* 349, hereinafter – Marab; HCJ 3278/02 **Center for Defense of the Individual v. The Commander of IDF Forces in the West Bank Area**, 57(1) *Piskey Din* 385. These steps did not provide a sufficient answer to the immediate need to halt the severe terrorist attacks. Innocent people continued to pay with life and limb. I discussed this in the Beit Surik Case:
>
> > "These terrorist acts committed by the Palestinian side have led Israel to take security steps of various levels of severity. Thus, the government, for example, decided upon various military operations, such as operation "Defensive Shield" (March 2002) and operation "Determined Path" (June 2002). The objective of these military actions was to defeat the Palestinian terrorist infrastructure and to prevent reoccurrence of terror attacks . . .

> These combat operations – which are not regular police operations, rather bear all the characteristics of armed conflict – did not provide a sufficient answer to the immediate need to stop the severe acts of terrorism. The Committee of Ministers on National Security considered a series of steps intended to prevent additional acts of terrorism and to deter potential terrorists from committing such acts . . . Despite all these measures, the terror did not come to an end. The attacks did not cease. Innocent people paid with both life and limb. This is the background behind the decision to construct the separation fence (Id., at p. 815).

Against this background, the idea of erecting a separation fence in the Judea and Samaria area, which would make it difficult for terrorists to strike at Israelis and ease the security forces' struggle against the terrorists, was formulated.

84. Therefore, security needs compel, at the present time, preventing uncontrolled entry of Palestinians into the seam zone and this in order to maintain the security of the area and the security of the State of Israel and its residents as well as in order to safeguard the lives of Israelis in communities located in the seam zone. This threat is directed at all Israeli residents whoever they may be and at the State of Israel itself.

The respondents shall argue that the same security reason found legal by the honorable court regarding the very building of the fence also lies at the foundation of declaring the area between the fence and the State of Israel a closed zone and the permit regime which was designed to mitigate the injury caused to local residents as a result of this declaration, as much as possible, balanced against the security need and the interests of the Israeli residents.

85. Indeed, there is no dispute that the rules of customary international law prohibit collective punishment. However, and as stated above, the case at hand does not involve any sort of punishment, but rather actions taken pursuant to the power and duty of the military commander to protect all residents of the Judea and Samaria Area, as well as the State of Israel and its residents.

Just as the fence itself is not a collective punishment measure of any sort and arguments on this issue have already been raised by the petitioners in the **Beit Surik case** and not accepted, so is the declaration of the seam zone as a closed zone and the permit regime which accompanies the declaration, are compelled by the security necessity, when injury to the Palestinian residents is incidental only and is clearly not the purpose which lies at the foundation of taking these measures.

86. The petitioners wish the automatically extrapolate from the fact that the restriction is sweeping that these are collective punishment sanctions, but this is not the case.

One can learn of the distinction between security-preventative elements and punitive elements from, *inter alia*, HCJ 1113/90 **Shwa v. IDF Commander in the Gaza Strip**, *Piskey Din* 44(4) 590, where the petition was directed against a curfew imposed on the Gaza Strip nightly. The petitioners there claimed, *inter alia*, that imposing the prolonged curfew was designed to serve as a sanction and the authority vested in the respondent was not designed to achieve this purpose. The honorable court ruled in its judgment in that petition that were it a sanction, it would have been prohibited.

However, the court rejected the arguments of the petitioners in HCJ 1113/90 on their merits in stating:

"However, it does not appear to us that it is possible to apply this principle to the case at bar. Here, the respondent declares before us, and we have no reason to doubt the sincerity of his declaration, that **issuing and implementing the said curfew orders is required at the moment in order to secure the security of the area and maintain public order therein. We are, therefore, requested to intervene in a military-operative consideration of the authority charged with the security of the area, and considering all the relevant circumstances, we do not have sufficient grounds to do so…**" [Emphasis added, A.H., G.S.]

87. As stated, the petitioners claim that the military commander may not impinge a person's rights, unless such an individual personally poses a risk to the security of the area. However, this argument is entirely unrelated to the matter at hand.

As known, security officials are forced to face many threats emanating from the Judea and Samaria Area and directed toward the citizens of the State of Israel, whoever they may be, without receiving a complete list of names of those "dangerous" elements. In light of this, the honorable court has approved in a long list of judgments rendered in different contexts, security measures implemented by the military commander which inherently include incidental injury to the residents of the Area even if some of the injured parties do not pose a security risk.

This matter clearly rises, for example, in cases of land seizures for the purpose of building the security fence, as in other cases of land seizures for military needs and in cases where there is a security need to declare a certain area closed for security reasons.

See on this matter, for example, HCJ 2847/03 **Alawneh v. IDF Commander in Judea and Samaria**, *Takdin Elyon* 2003(2) 3829 (2003) on the issue of "encirclement" of villages in the Nablus area; as well as HCJ 854/03 **Sultan v. IDF Commander in the Judea and Samaria Area**, *Takdin Elyon* 2003(2) 3483 (2003) on the issue of imposing a prolonged curfew on Area H2 in Hebron; see and discern also **the Yanun case**.

88. There are clearly many more examples of cases where it could be argued that actions on which the military commander decided for security reasons injure individuals who are not involved in terrorism. It is clear that the majority of the Palestinian population is not involved in terrorism. However, it is also clear that there are actions whose purpose is clearly security related which, if implemented, may inherently injure all residents of the area.

89. Therefore, in the matter of these petitions, this is not prohibited collective punishment but rather classic "preventative" measures, which are necessary in the opinion of the military commander in order to prevent future risk. These measures are legal and vital from a security perspective, this despite the injury caused by them also to people who do not personally pose a security risk.

90. It shall be noted that the local residents are also not discriminated against compared to Israelis, who have a general permit to enter and remain in the seam zone. This, since the state and its residents face no danger from the entry of Israelis to the seam zone. This in contrast to the entry of local residents to this area. Since the reason for declaring the seam zone a closed zone and the establishment of the permit regime is based solely on security reasons, which do not apply to Israelis, whatever their gender, national origin or race, indeed the general permit granted to Israelis is general and this reason *per se* also indicates that this is not discrimination on the basis of ethnic or national origin as the petitioner in HCJ 9961/03 claims.

Arguments made in the petitions regarding injury to rights enshrined in international human rights law

91. The petitioners claim that the permit regime injures fundamental rights such as freedom of movement, property rights, the right to a livelihood, education and health, the right to culture and the right to a social and community life.

92. In addition, the petitioner in HCJ 9961/03 also claims that international human rights law applies to the Territories and that the State of Israel is obliged to act in accordance with the six international conventions to which it is a signatory. In this context, it was claimed that Israel is violating the International Convention on the Suppression and Punishment of the Crime of Apartheid, that it injures the right to equality, freedom of movement, the right to property, the right to a livelihood, the right to education, the right to health, the right to culture and the right to a social and community life, in contravention of the International Convention and Civil and Political Rights ant that it acts in contravention of the Convention on the Elimination of all Forms of Racial Discrimination.

93. We shall recall that in the state's response to the advisory opinion of the International Court of Justice in the Hague regarding the fence, the state addressed the issue of the applicability of international human rights law to the Territories at length and noted the theoretical difficulties to which such application may give rise. However, as known, this question was left open by the honorable court in the **Alfei Menasheh case** and the state is of the opinion that there is no need to decide on this issue in the context of the present petitions.

94. As ruled in a long list of petitions regarding the security fence, the military commander is competent and even obliged, to take measures to protect the residents of the Area, including the Israeli residents of the Area. Beyond this, the military commander is competent to take the security measures needed to protect the State of Israel and its residents (see **the Beit Surik case and the Alfei Menasheh case**).

95. Moreover, the arguments raised in the petitions regarding alleged violations of human rights conventions by Israel are similar to the arguments raised regarding alleged violations of international humanitarian law (the Hague Regulations and the Fourth Geneva Convention) which, regardless, constitute *lex specialis* in the circumstances of the matter. It follows, that it is sufficient to address the arguments relating to international humanitarian law, expressed in the petitioners' individual claims which are detailed in the petitions and there is no need to expand on this issue in the context of this response regarding the applicability of international human rights law to the Area or to address them in the context of ruling on these petitions.

Arguments regarding the abandonment of the seam zone by its Palestinian residents

96. We shall argue that there is an expectation of harm to the "fabric of life" of the residents living in the seam zone which would lead to their leaving the seam zone; similarly to the abandonment of homes in the old city of Hebron by their Palestinian inhabitants.

97. However, the seam zone has been a closed zone for the past three years, yet the petitioners presented no data pointing to the fact that any of the residents of the seam zone have indeed left their permanent place of residence following the closure of the area, nor, moreover, did they point to the existence, in practice, of a significant phenomenon of the kind.

    It follows that this is a general, vague, claim which the petitioners never substantiated and which must be rejected for this reason alone.

We shall further add, as an aside, with regard to the experience the petitioners wish to draw from the application of other orders to close areas of the old city of Hebron, that in the old city of Hebron, very severe restrictions were imposed due to the dire security situation in that area. These included a prolonged curfew, closure of shops and restrictions on movement on certain roads. These restrictions bear no resemblance to the restrictions on movement applied in the seam zone with regards to residents of the seam zone.

Arguments regarding extraneous considerations in closing the zone and implementing the permit regime

98. The argument has been made that the permit regime stems from extraneous considerations designed to promote territorial claims and protect the settlements.

On this issue, the state shall respond that this claim has no substance and that it is merely a recycling of arguments already rejected in the petitions regarding the route of the fence (see, for example, **the Beit Surik case** and **the Alfei Menasheh case**).

The respondents maintain that there is no room to revisit a matter which has already been examined and rule upon by the honorable court.

99. Beyond this, the petitioners' arguments on this issue are vague and are not supported by any relevant data. For this reason alone, there is no room to address these unsubstantiated allegations.

The distinction between Gush Etzion and the rest of the areas remaining between the fence and the State of Israel

100. The petitioner in HCJ 639/04 notes that the IDF's willingness to settle for a regime of security screenings at the entrance to Gush Etzion testifies to the fact that the permit regime in the seam zone is not a necessary means for achieving the security purpose along the entire route of the fence.

101. However, as detailed below, the petitioners' claim regarding this issue is apparently based on lack of familiarity with the precise facts.

102. The state has addressed the uniqueness of Gush Etzion and the regime to apply thereto at length in the context of its responses to seven petitions on this issue which are awaiting the judgment of the extended panel reviewing them (HCJ 85/06 and the petitions united therewith). We seek to refer, as necessary, to statements made therein.

103. In brief, we shall state that some 19,000 Palestinian residents live in the Gush Etzion area, whereas, as stated, some 7,000 Palestinians residents live along the hundreds of kilometers of Phases A and B of the security fence, in many population concentrations (with the exception of a large concentration in the village of Barta'a, regarding which a possible change in the route of the fence is being considered). Therefore, implementation of the permit regime in this area was difficult to impossible, both with respect to the residents and the security establishment.

104. Moreover, in order to prevent terrorists and unauthorized persons from entering Israel, a security road which incorporates elements of a fence and other operational means will be built **between Gush Etzion and the State of Israel**, in the western area of Gush Etzion, whereas in the northern side of the Gush, a fence will be built.

Thus, **anyone seeking passage from the Gush Etzion area to the State of Israel – whether Israeli or Palestinian – will have to pass through crossings which have security screenings** and there is a barrier between the area of the Gush and the State of Israel.

In contrast, in Phases A and B of the seam zone, in the absence of such means, a resident who crosses the security fence has a clear road to Israel in the absence of any additional physical barrier. It follows that it is impossible to prevent uncontrolled passage from the seam zone areas to Israel in these areas. This is, of course, a substantial difference between the two.

105. Finally, another basis for the distinction between Gush Etzion and the seam zone, albeit merely a secondary basis, is that the risk of terrorists entering Israel and arriving at population centers shortly thereafter is much larger in central Israel in light of the vicinity of the areas within Phases A and B of the seam zone to the country's major population centers, which have suffered severe terrorist attacks in recent years. In contrast, Gush Etzion is farther away from major population centers inside the State of Israel.

Arguments regarding the difficulties caused by the permit regime to permanent residents in the seam zone

106. The petitioners make arguments regarding the difficulties caused to permanent residents in the seam zone as a result of the permit regime: thus, it has been argued, that the fact that [they receive] a certificate rather than a permit does not changes the substance of the normative arrangement – requiring a Palestinian to carry special documentation in order to be able to live in his home; it was further argued that the vehicular movement of permanent residents was restricted such that the details of the car must appear on the certificate.

107. Inasmuch as these are arguments against a situation whereby a person is required to receive documentation in order to live in the seam zone, it shall be noted that one should not wonder that such a situation has come to be required under the circumstances whereby many Palestinian residents take part to some degree or another in terroristic activity or in assisting such activity, which is directed at harming innocent Israeli citizens.

Therefore, **a security necessity to ensure that the residents who are in the seam zone which is a highly sensitive area in terms of security are residents of this area and not other individuals who may pose a security risk has arisen**.

108. Note, the requirement to carry documentation does not in itself cause any disproportionate injury to the residents of the seam zone and as known, even residents and citizens of the State of Israel are required to carry identity cards.

109. Moreover, prior to the declaration of the seam zone as a closed zone, the permanent residents of the seam zone were identified by their registered address in their identity cards. In practice, this situation created a severe security problem as the authority to issue Palestinians with identity cards is at the hands of the Palestinian Authority, such that a Palestinian can change his address to the seam zone through the Palestinian Authority without any supervision by the Israeli authorities or their prior knowledge. Therefore, identification of residents of the seam zone is carried out according to a mapping of the residents who lived, in practice, in the area before the permit regime was applied. These residents are issued a permanent seam zone resident certificate by the civil administration.

110. The petitioner further notes that the only reason which would allow a person to become a resident of the seam zone is "family unification" such that a protected person living in the Judea and Samaria Area cannot relocate to the seam zone.

There is no dispute that the provisions impose a restriction on relocation by residents of the area into the areas located in the confines of the declaration of a closed zone. The reason for this is a security reason which stems from the fact that this is a highly sensitive area from which it is extremely simple to reach large Israeli population centers and perpetrate terrorist attacks.

Due to the area's proximity to Israeli population centers, there is concern that this area would draw large numbers of Palestinians from the Judea and Samaria Area to the area with no ability to control and monitor that those who enter this area are not individuals who may pose a risk to the security of Israelis.

The above notwithstanding, and contrary to the petitioners' arguments, a resident of the Judea and Samaria Area who wishes to relocate to the seam zone may file an application with the local DCO. The application is considered with attention to his ties to the zone (marital ties, acquisition of property etc.) and his intention to permanently reside therein.

111. It is also superfluous to note that every resident of the area who applies to relocate to the seam zone due to genuine ties to the area and individuals who have not been recognized as permanent residents in the seam zone may also turn to this court should their application be denied, and the respondents' decision in the individual matter will come under judicial review. **It is superfluous to note that the seam zone has been a closed zone for some three years and the fact that not many petitions on this issue have been submitted to the honorable court during this lengthy period of time seemingly indicates that there is no substantive general problem in this regard**.

Arguments regarding refusal to grant permits to enter the seam zone for security reasons

112. According to the petitioners, this restriction is similar to the one which applies with regard to entry into Israel, but in this case it is a restriction of movement within the territory of the Judea and Samaria Area and therefore may not be implemented. The petitioners recall that they submitted an administrative petition demanding to receive information regarding the **police** criteria which determins preclusions to enter Israel (sec. 59 of the amended petition in HCJ 639/04).

113. As noted above, following individual screening, it has been found that in practice only a few applications were refused for security reasons. Moreover, as a rule, the existence of a police preclusion does not constitute grounds to preclude the granting of a permit to a resident of the Judea and Samaria Area, **such that the petition under the Freedom of Information Act mentioned by the petitioners is not relevant to the matter at hand**.

114. Regarding the specific cases mentioned in the petition in HCJ 639/04, the appropriate course of action in these cases is to file an appeal against the refusal with the civil administration and if a negative decision is reached on the appeal, to turn to the population registry section of the office of the legal advisor for the area and seek its intervention prior to submitting a petition to the honorable court.

For example, the petition in HCJ 6990/06 **Hajar v. State of Israel** was filed only recently. The

petition concerns issuance of merchant permits and permanent seam zone resident certificates to residents of the village of Shweika in the Tulkarem district.

115. It shall be noted that since the beginning of 2006 only a few individual petitions relating to the permit regime in the seam zone have been filed. This serves to indicate on the one hand, that the administrative procedure is carried out smoothly, and on the other, the aforementioned data reveals that the number of cases which require filing such a petition is not high, to understate.

116. It follows that contrary to the image the petitioners seek to portray, it appears that there is no real problem in this regard, certainly not a general problem.

A sample copy of the appeals made by the petitioner in HCJ 639/04 dated May 23, 2006, June 4, 2006, June 11, 2006 and July 23, 2006 regarding permits for residents of the village of Deir Al Ghusun and a copy of the response letter by Major Liron Alush, head of the population registry section at the office of the legal advisor for the Judea and Samaria Area are attached and marked **R/17a-e**.

The letter reveals that the arguments were inaccurate, to understate.

117. In any event, it is clear that there is no room to duly ascertain the petitioner's claims regarding the specific cases in the context of the general petitions at hand and residents who believe that the decision made in their matter was unlawful are to be referred to the track described above.

Arguments in the petitions regarding difficulties proving ownership of lands in the seam zone

118. The petitioner in HCJ 639/04 claims that proving ownership of land in the Judea and Samaria Area is not simple, *inter alia* in view of the fact that bequeathing lands without registration is a common practice in the Area. It is further argued that the security establishment had embarked on meticulous examinations prior to granting permits to enter the seam zone and that there is an increase in the number of denied applications. We shall specifically argue that the number of refusals of applications filed by second degree relatives is particularly high due to a shift toward decreasing the circle of land owners' relatives who obtain a permit.

According to arguments made in the amended petition, the likelihood of an application based on ties to land being refused has increased by some 9% a month for second degree relatives and some 10% for paid employees and lessees.

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

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

As a result of the aforesaid concern, which is not at all insignificant, the respondents now wish to ensure that applicants do indeed have substantive ties to farmlands in the seam zone, which would diminish the inherent concern that obtaining the permit was meant for the purpose of unauthorized entry to Israel.

120. As a rule, in the context of granting permits to enter the seam zone, first degree relatives of land owners are given preference over other relatives or employees who are not relatives. However, in practice, permits are granted also to employees who are not relatives on the basis of an individual examination of the agricultural needs.

A copy of a document prepared by the civil administration's staff officer for agriculture in collaboration with Palestinian Authority officials responsible for agricultural which details the criteria for the number of laborers required for farming is attached and marked **R/18**.

121. In addition, it has been argued in HCJ 639/04 that residents do not know what documents a farmer has to present in order to prove that he has "ties" to the land.

This claim is inaccurate since it is clear that for regulated lands the application must include land registry office records and for unregulated lands, other evidence is sufficient, such as records from the property tax office (maalya) etc.

In addition, it is superfluous to note that demands for evidence such as the aforementioned to prove the existence of ties by the applicant to lands in the seam zone are reasonable demands which do not impose an unreasonable burden on the residents.

122. As for the arguments made by the petitioner in HCJ 639/04 regarding the requirement to present original documents, it shall be noted that contrary to what may be implied by the petitioner, permit applicants are not required to leave the original documents at the DCO.

123. As stated, as a rule, pending a decision on claims made by a resident regarding his ties to the seam zone, he is granted a temporary permit for a period of six months which may be periodically extended.

124. The fact that the civil administration has been examining claims regarding ties to farmlands in the seam zone in the past three years has made it well familiar with the seam zone, including familiarity with those farmers who do indeed have cultivated lands in this area.

125. To the matter itself, and this is the main point, the seam zone area has been closed for some three years and the permit regime has applied thereto. If the regime had indeed severely injured individuals with rights to lands in the seam zone since they were unable to prove their ties to their land in the zone, obviously a whole slew of specific petitions would have been brought before the honorable court on this matter.

It is also possible to assume that the fact that not many petitions have been submitted to the honorable court regarding lack of recognition of a certain farmer/petitioner's ties to lands cultivated by him in the seam zone due to unreasonable demands by the respondents itself points to the fact that in practice local residents have succeeded and continue to succeed in proving their ties to lands cultivated by them in the seam zone when such ties actually exist.

It follows that the concerns raised by the petitioner in its original petition that farmers in the seam zone would be harmed as a result of not being able to prove their ties to their lands have been found to be exaggerated.

Arguments regarding the period of validity of the permits issued to residents of the area

126. According to the arguments made by the petitioner in HCJ 639/04, the permits are issued for very limited periods (the olive harvest for example), with the duration of the permits being insufficient to allow for a proper harvest, let alone to allow the residents to reach the lands during the rest of the year.

127. As stated above, according to updated procedures which are enshrined in the legislation of the area, as a rule, persons who have ties to lands in the seam zone receive a permit to enter the seam zone which is valid **for two years**. Additionally, persons whose cases are under review receive a temporary, renewable permit for a period of **six months**, until completion of the examination.

128. The fact that the petitioner in HCJ 639/04 mentions in the petition residents who have permits with shorter durations apparently stems from the fact that pervious permits, with shorter durations, have not yet expired and many of the applicants have not yet received the permits with longer durations. It is superfluous to note that at the time the permits are renewed, the residents would be issued permits for long periods of time as stated above.

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

130. At the same time, we shall note, that in certain cases, short term permits were issued to residents who grow seasonal crops which do not necessitate cultivation through the rest of the year.

131. In addition, in July 2006, the head of the civil administration issued orders according to which residents who only grow seasonal crops in the seam zone shall also be granted two year permits.

Arguments in the petitions regarding difficulties in entering goods and vehicles into the seam zone

132. According to the petitioner in HCJ 639/04, severe limitations are imposed on the entry of agricultural vehicles and materials into the seam zone. It was also argued that trucks are prohibited from entering the seam zone without the proper permits. It was also argued that one of the difficulties standing in the way of those seeking to obtain permits to enter their farmlands with a vehicle is the civil administration's demand that a valid license and insurance certificate be presented for every vehicle, which they do not possess.

133. The arguments of the petitioner in HCJ 639/04 regarding difficulties in entering goods and vehicles into the seam zone were raised by it also in the **Faiz Salim** case and must therefore be ruled upon therein, in the context of a petition regarding a specific segment of the seam zone. The very fact that different types of crops require different intensities of cultivation demands concrete and individual examination of problems of this sort rather than raising general allegations which may not be relevant to the types of crops grown in one part of the seam zone or another.

134. Beyond necessity, it shall be noted that indeed, as a rule, the policy is to allow vehicles to enter the seam zone for agricultural purposes, but such permits are subject to a valid license and insurance. The respondents maintain that these are entirely basic and reasonable requirements which are flawless as a condition for the granting of permits for vehicles to cross the agricultural gates and checkpoints, as they are intended to ensure the safety of drivers, passengers and pedestrians in the seam zone and the existence of valid insurance for the benefit of those injured in road accidents.

We wish to emphasize that the requirement for licensing and insurance is a general requirement for all permits granted by the respondents and is not unique to entry into the

seam zone. Namely, the respondents allow entry of trucks into the seam zone following the authorization process. These are both trucks owned by local residents wishing to reach their lands and merchants' trucks wishing to arrive in the seam zone on a regular basis.

135. In addition, according to arguments made by the petitioner in HCJ 639/04, the arrangement is not satisfactory since merchants do not apply for permits and prefer buying the produce elsewhere. Therefore, the petitioners ask that any accidental merchant who happens to pass by be granted access.

However, this demand cannot be met for obvious security reasons. As noted, entry into the seam zone means possible free access to Israel without any delaying fence, with all the ramifications thereof and more so when what is at issue are vehicles which could very quickly, in minutes, arrive inside Israel.

There is also real concern that such trucks would be used to smuggle terrorists, explosive devices and various weapons into Israel. In this context it shall be noted that a search of every accidental truck without intelligence regarding its owner is inefficient or impossible from a security perspective.

The aforementioned issue has two reasonable solutions in the opinion of the state: **one** is transferring an organized list of permanent merchants for the purpose of obtaining permits to enter the seam zone. When it comes to permanent merchants, such as chicken traders who arrive at Khirbat Jubara, arrangements allowing them to enter the seam zone with their vehicles are tenable. **The second solution** is to take the produce to merchants waiting outside the seam zone. As stated, landowners in the seam zone have the possibility of entering with their vehicles, and therefore there is no impediment to taking produce out of the seam zone. The respondents are aware of the farmers' need to market the produce which they grow in the seam zone. This is why the respondents allowed passage into the seam zone of agricultural vehicles and trucks owned by residents of the villages which have farmlands west of the fence. The produce can be loaded onto these vehicles and transferred to other trucks located on the "Judea and Samaria Area side" of the fence.

136. Beyond the stated, it should be duly noted that in practice, the number of truck owners who sought permits to enter the seam zone is particularly low. According to the respondents' policy, both the land owner and the merchant who own the truck may apply for a permit to enter the seam zone.

137. It shall be clarified that merchants and transporters of agricultural goods are "accidental holders of interest" for the purpose of receiving a permit to the seam zone and any such application will be examined on its merits. Additionally, as stated, cases of persons whose application was refused for security reasons are examined by a committee. The results of this committee's deliberations are brought to their attention and they may, where appropriate, petition the HCJ.

Conclusion

138. The respondents shall argue that the petitions must be rejected.

139. As mentioned, the issue of the closure of the seam zone, the permit regime and the fabric of life in the area of the fence, on both sides, constitute an **inseparable part** of the security fence project.

140. The state shall argue that the general petitions at bar must not be accepted when the honorable court has, in many judgments, examined segments of the route of the fence individually and approved most of them, often after changes were made to them, this also in segments regarding which the state notified that the "seam zone" would be applied.

This attempt, in the context of general petitions, to effectively contest the route of the fence and its security purpose as approved by the honorable court is an attempt that must be rejected.

141. We shall further recall that the State of Israel has not sought the building of the fence for many years and, it follows, did not initiate the application of a permit regime close to the State of Israel. The State of Israel has been forced to do so only after a very long series of cruel terrorist attacks in which hundreds of innocent Israeli civilians have been murdered and thousands of others injured; in order to realize its basic duty to protect the lives of its citizens when other means were ineffective. As known, the security fence project, of which the closure of the seam zone is an inherent part, has proven itself in a very concrete manner and the number of terrorist attacks inside the State of Israel has significantly decreased since the fence became operational.

142. It is clear to the respondents that the building of the fence on the route of the barrier, as examined and sanctioned by the court in many segments, requires the respondents to maintain the proper fabric of life in the area. For this purpose gates were installed in the fence and "fabric of life routes" were built in tandem with building the fence.

143. As detailed above, the permit regime currently provides adequate solutions for movement into and out of the seam zone as well as for the continuum of agricultural movement in the zone. The closure of the seam zone and the simultaneous implementation of the permit regime properly balance between the need to protect the lives of the citizens of Israel, whoever they may be, from the murderous wave of terror which has claimed many victims and the interest of the local residents (compare and discern: **the Yanun case**).

In light of the scope and severity of the security threats and the tremendous ease with which Palestinian terrorists have succeeded in penetrating deep into Israel, this is a necessary balance between the right to life and bodily integrity of the residents of the State of Israel on one hand and the rights of the residents of the Area on the other.

144. It shall be emphasized that the regime of permits and movements in the seam zone, including the agricultural gates, crossings and fabric of life routes built therein, was adapted and re-examined through constant monitoring by the respondents.

145. The respondents make continual efforts and **invest many resources** both in terms of manpower and logistical means in order to continue to improve the permit regime and simplify matters as much as possible for the local population, **this while striking a delicate balance in real time with complex security considerations and constraints**.

146. In future, the respondents intend to issue biometric cards ("smart cards") for the permanent population with ties to the seam zone, cards which will allow a significant improvement in identification processes in the crossings and agricultural gates, to increase use of computers for the purpose of data entry and analysis, and to operate a satellite system in order to speed the screening process.

This operation of the "smart" system is expected to reduce interaction at the crossings and speed screening processes.

147. In addition, staff work is underway in order to promote the building of additional "fabric of life roads" in the seam zone and the possibility of making some of the gates "civilian" is being examined.

148. Beyond the aforesaid, we shall mention that where individual difficulties arise, the respondents take action in order to resolve the situation on a case by case basis. Inasmuch as a certain person has a concrete allegation in his own matter, indeed, following exhaustion of remedies vis-à-vis the respondents, he is free to turn to this honorable court.

149. In conclusion, the honorable court is requested to reject the petitions.

150. The facts detailed in this response are supported by affidavits by Brigadier General Kobi Barak, Head of Staff, Central Command and Colonel Ahwat Ben Hur, Deputy Head of the Civil Administration in the Judea and Samaria Area.

Today 22 Cheshvan 5767
13 November 2006

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

[signed]
Gilad Shirman, Att.
Assistant State Attorney