At the Supreme Court **HCJ 2757/15**
Sitting as the High Court of Justice

In the matter of:

1. **_____ Bari, ID No. _____**
Resident of the Palestinian Authority
2. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger - RA**

represented by counsel, Adv. Yadin Elam and/or
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The Petitioners

v.

1. **Military Commander of the West Bank Area**
2. **Head of the Civil Administration**
3. **The Legal Advisor for the West Bank**

The Respondents

Petition for Order Nisi

A petition for an *order nisi* is hereby filed which is directed at the respondents ordering them to appear and show cause why they should not grant petitioner 1 (hereinafter: the **petitioner**) an entry permit into the seam zone which would enable him to farm the lands of his family. According to respondents' procedures the permit is valid for two years.

Request for Urgent Hearing and for the Scheduling of an Expedited Date for the Submission of Respondents' Response

"**However, and as specified above, we cannot deny the possibility that in specific cases severe injury is caused to the proprietary and livelihood rights of Palestinian residents who cannot adequately farm**

> **their lands or who encounter other access difficulties, and the respondents, on their part do not take adequate measures to minimize said injury**."

HCJ 9961/03 **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger v. The Government of Israel** and HCJ 639/04 **The Association for Civil Rights in Israel** v. **The Commander of IDF Forces in Judea and Samaria** (not reported, April 5, 2011**;** hereinafter: the **permit regime petitions**; all emphases in the petition were added).

The petitioner resides in Azzun Atma. The petitioner is one of the owners of dunam of agricultural land located on the other side of the separation fence, in the seam zone. **Ever since the erection of the separation fence the petitioner was granted many entry permits into the seam zone for the purpose of farming his land. The last permit expired in September 2014. However, these were short term work permits, contrary to respondents' procedures which stipulate that the petitioner is entitled to an agricultural permit in the seam zone for a two year period**.

On or about November 25, 2015, the petitioner was informed that his application for an entry permit into the seam zone for the purpose of farming his land was denied due to "Israel Security Agency (ISA) preclusion" which was fed against him. It should be noted that the denial was given orally, contrary to the procedures according to which a denial form should be provided in writing along with a security paraphrase. Following requests which were submitted to the respondents to provide the paraphrase and summon the petitioner to an appellate committee in order to appeal the denial of his application, a paraphrase was provided on January 19, 2015, which stated that petitioner's application was denied "in view of the relations maintained by your family with Hamas", The petitioner, however, was not summoned to appear before the committee as warranted by the procedures and according thereto. Following an additional request, the petitioner was summoned to appear before the appellate committee, which convened on February 9, 2015, during which an expanded and updated paraphrase was provided which stated that "we have in our possession information that you are a Hamas activist having connections to weapons. Your brother Mamdukh is a senior Hamas activist in his village and has been actively involved in Hamas activity over the course of recent years. An approval of the application will put at risk the security of the Area." On March 2, 2015, the petitioner met with an ISA representative, who told the petitioner that on the following week the possibility to remove the preclusion fed against him would be considered. However, on April 14, 2015, the petitioner was advised that the preclusion had not been removed.

It should be emphasized that the petitioner, who totally denies all suspicions raised against him, has never been interrogated nor detained by virtue of such suspicions, and that to the best of his knowledge his brother has never been interrogated, detained or put on trial either and is not a Hamas activist.

Each passing day causes damage to the petitioner and his family as a direct result of his inability to farm the lands. This honorable court held, in many judgments which were rendered in seam zone petitions, that the damage inflicted on the inhabitants as a result of the erection of the separation fence should be minimized to the maximum extent possible. **In view of the above, the honorable court is requested to schedule the petition for a hearing at the earliest date possible and to direct the respondents to submit their response within a very short period of time which will be prescribed**, in view of the extreme urgency of the matter as well as in view of **past experience which shows that in the vast majority of the cases, the scheduling of the petition for an urgent hearing and the grant of an order directing the respondents to submit their response within a prescribed short period of time, renders the need to hear the petition on its merits redundant**.

The Factual Infrastructure

1. This is the **one hundred and twenty two** petition in a series of petitions concerning respondents' unlawful refusal or failure to respond to applications for the issuance of entry permits into the seam zone to the petitioner and others in his condition, farmers whose homes are located on one side of the separation fence and whose lands are located on its other side. **Petition one hundred and twenty one is filed along with this petition**.

2. Out of the one hundred and twenty petitions to which Hamoked: Center for the Defence of the Individual (HaMoked) was a party, twelve petitions, which constitute about ten percent of the petitions, were denied by the honorable court or were deleted at petitioners' consent, after the court reviewed privileged information concerning petitioners' matter, or were deleted at the request of the petitioners after having been provided with a security paraphrase within respondents' response to the petition. It should be noted that two of the petitioners whose petitions were denied, have eventually received permits after additional petitions were filed by them. In another matter a statement was made to the effect that should a new application be submitted it would be positively reviewed, subject to updated security information. An additional petition was deleted by the petitioners, before a court hearing was held, as it was clarified that following a change in the route of the fence, petitioner's land would be located on the east side of the fence. Two additional petitions were deleted after a court hearing, and it was ruled that another hearing would be held for the petitioners. An additional petition was deleted by the petitioners after the parties reached a settlement according to which an additional entrance gate into the seam zone would be added to petitioner's permit instead of letting him enter by car. **In one hundred and three petitions, which constitute about 86 percent of the petitions which were filed, the petitioners received permits**. It is unfortunate that the permits were issued to the petitioners only after the filing of the petitions in their matter, which caused considerable monetary costs and unnecessary waist of expensive judicial time.

3. In the hearings which were held before this honorable court in many petitions which were filed concerning the route of the separation fence, the respondents undertook to allow all residents whose connection to the seam zone was substantiated, to enter the seam zone. This undertaking was also expressed in the "2014 Standing Orders for the Seam Zone" (hereinafter: the "**Standing Orders**") issued by the respondents. As will be explained below, the respondents fail to comply with their undertakings.

4. From the erection of the separation fence a permit regime was applied, according to which a Palestinian resident who wishes to enter the seam zone must have a permit. Permit regime petitions were filed with this honorable court against the permit regime. On April 5, 2011, a judgment was rendered in these two petitions, which denied them "**subject to our comments in paragraph 36 and paragraph 39 concerning the required changes to ease the passage of the permanent residents into the zone; the adoption of an approach which would expand the causes based on which a person may be recognized as a permanent resident and concerning the issuance of permits to an "occasional interest holder" in cases which do not fall within the categories which were set forth in the rules, and concerning the establishment of a clear time schedule for the handling of the different applications submitted to the civil administration**." (Paragraph 47 of the judgment).

5. This petition is filed for the purpose of solving the practical problem of the petitioner and other residents in his condition who cannot farm their lands. The honorable court established its position

concerning the permit regime "… on the basis of our assumption that **the permit regime imposes a very heavy burden on the Palestinian population and severely injures their rights. This assumption obligates the respondents to establish arrangements that would minimize to the maximum extent possible the encumbrance inflicted on the inhabitants,** without undermining the security objective." (paragraph 31 *[sic]* of the judgment). The petitioners will show that the encumbrance which is inflicted on the petitioner is very severe, disproportionate and does not coincide with respondents' statements before this honorable court and the judgment in the permit regime petitions.

6. The petitioners argue that the respondents conduct themselves in a sort of a slippery slope. In order to obtain the approval of this honorable court for the construction of the fence, the respondents undertook that the damage that would be inflicted upon the population which was harmed by the construction of the fence would be minimal. After the honorable court granted its approval and the fence was erected, the respondents breached their undertakings and have gradually reduced the number of permits issued by them. **To date, after the permit regime judgment was rendered, and in complete contradiction thereto, the respondents impose more difficulties and hardships on the Palestinian residents who need entry permits into the seam zone**.

7. It seems that not only the petitioners, but also the honorable court, noticed that the respondents failed to comply with their undertakings.

   Thus, for instance, in a hearing which was held on November 17, 2014, before a panel presided by the Deputy President (as then titled) Naor and the Justices Sohlberg and Mazuz, in HCJ 5077/14 **Rian v. Military Commander of the West Bank Area** (hereinafter: **Rian**), the Honorable Deputy President Naor wondered: "**Isn't it possible to find a solution here? The source of livelihood of this man was severed. Isn't it possible to find a non-extreme interim solution?**" (page 1 of the protocol).

   And on June 6, 2013, in a hearing of the petitions in HCJ 3592/13, HCJ 3594/13 and HCJ 3595/13, the Honorable Justice Joubran stated that "We are speaking of people, sensitive people. They have rights and feelings. They should be respected and the balances should be made. We requested the state to make the balances in such a way that facilitate things to the maximum extent possible" (page 3 of the protocol), and emphasized that "**the rule is to issue and the exception is not to issue**" (*ibid*).

   And in its decision dated July 20, 2011, in a motion to cancel the hearing in HCJ 5205/11, after the respondents notified, one day before the hearing, that a decision was made to issue permits to the petitioners, the Honorable Justice Rubinstein said that "**It is very unfortunate** that what could have been solved without a petition and a waist of administrative and judicial time, and all things involved – is solved at the last minute before the hearing. This comment should be brought to the attention of the relevant personnel, to the extent they care, and I hope they do. The hearing will be postponed as requested and as agreed. An updating notice will be submitted by August 10, 2011, and I am **very hopeful** that a further hearing will not be required. The issue is primarily **practical.**" (the emphases appear in the original);

   During the hearing in HCJ 5078/11 which was held on July 27, 2011, the Honorable Justice Vogelman also expressed his opinion of respondents' conduct and noted that "**in all fence files you tell us (that) there is no problem it is the seam zone, and now we see the reality so stand by your words… I sense here a sort of double representation**" and the Honorable President Beinisch added that "**to enter the zone there should not be a difficulty**"; during the hearing in HCJ 4034/11 which was held on September 7, 2011, the Honorable Justice Vogelman told respondents' representative that "**In each case of this sort we have an uncomfortable feeling. You came in the fence petitions**

and there is a disparity here. You said that appropriate permits would be issued to minimize the harm caused to the fabric of life and the petitions were denied and we see that in practice this is not upheld" (page 2 of the protocol).

And on September 15, 2011, during the hearing in HCJ 2546/11 and HCJ 2548/11, the Honorable Justice (as then titled) Grunis said that "**since probably money will be paid maybe next time this will be handled differently**" (page 1 of the protocol).

Unfortunately, experience shows that nothing causes the respondents to treat differently the petitioner and other residents like him.

The Parties to the Petition and the Factual Background

8. The petitioner is a Palestinian resident. He is married and has a baby daughter. The petitioner resides with his family in Azzun Atma located in the Qalqilia region.

9. Petitioner 2 (hereinafter: **HaMoked**) is a not-for-profit association which acts to promote human rights of Palestinians in the Occupied Palestinian Territories (OPT).

10. Respondent 1 is the military commander of the West Bank area, on behalf of the State of Israel, which holds the West Bank under belligerent occupation for over forty seven years.

11. Respondent 2 (hereinafter: **head of the civil administration**) is the head of the civil administration, a body which was established to administer the civil affairs in the West Bank "**for the benefit and advantage of the population** and for the rendering and provision of public services, in view of the need to maintain good governance and public order" (section 2 of the Order on Establishing the Civil Administration (Judea and Samaria) (No. 947), 5742-1981). The officers of the head of the civil administration are the ones who communicate with the protected population in all matters concerning the issue of entry permits into the seam zone. A public liaison officer acts on behalf of the head of the civil administration. Paragraph 28 of the permit regime judgment provides as follows: "In addition, the state emphasized the existence of a civil administration "public liaison officer" who receives requests on different matters, and whose activities are intended, *inter alia*, to increase the availability for applications and requests of the Palestinian inhabitants, also on seam zone issues."

12. Respondent 3 (hereinafter: the **legal advisor for the West Bank** or the **legal advisor**) is the legal advisor of respondents 1 and 2 and he and his officers attend, on an ongoing basis, the legal aspects of the work of respondents 1 and 2, including the issue of entry permits into the seam zone.

13. The petitioner owns a dunam of agricultural land located on the other side of the separation fence, in the seam zone, which constitutes part of a plot of land consisting of 34 dunams which is located in the lands of Sanniriya, in an area known as Al-mazagmata. The 34 dunam plot of land is registered in the name of Mrs. _____ Hamuda, who passed away in 1992, and whose son, Mr. _____ Bari, the uncle of petitioner's father, is one of her heirs. The heir, Mr. _____ Bari, empowered his nephew, petitioner's father, Mr. _____ Bari, to replace him in the administration and maintenance of his entire assets, including the sale and transfer of ownership therein. Petitioner's mother, Mrs. _____ Bari, purchased the heir's share in the lands – about 5.5 dunams – from her husband, petitioner's father, the empoweree, and sold to her son, the petitioner, one dunam of this land. Olive trees, fig trees and hyssop are grown on the land.

It should be noted that the route of the fence in the Azzun Atma area has recently been moved but petitioner's land, together with the entire 34 dunam plot, remained in the seam zone. The petitioner

even has in his possession a confirmation in writing from the person in charge of abandoned and government property, dated March 25, 2015, according to which "**The Muqa is mostly** [namely, the Al-mazagmata area in which the 34 dunam plot of land is located – the undersigned] **located west to the seam line**".

A copy of the land registration document is attached and marked **P/1**.

A copy of the inheritance order which bequeaths, inter alia, to Mr. _____ Bari the lands, is attached and marked **P/2**.

A copy of the power of attorney which empowers and authorizes petitioner's father to administer the assets of Mr. _____ Bari, is attached and marked **P/3**.

A copy of an irrevocable power of attorney which transfers to petitioner's mother the share of Mr. _____ Bari in the lands is attached and marked **P/4**.

A copy of an irrevocable power of attorney which transfers to the petitioner one dunam of the lands which were purchased by his mother, is attached and marked **P/5**.

A copy of the confirmation of the person in charge of abandoned and government property dated March 25, 2015, is attached and marked **P/6**.

14. From the erection of the separation fence which creates a division between petitioner's home and his land, many entry permits into the seam zone were issued to the petitioner in order to enable him to farm his land. However, the permits which were issued to the petitioner were short term work permits for periods which did not exceed one year, albeit the fact that ever since he became a land owner, in July 2013, the petitioner was entitled, according to respondents' procedure, **to an agricultural permit in the seam zone for a two year period** (see paragraphs 2-4 of the sub-chapter "Permits for Agricultural Purposes in the Seam Zone" in chapter C of the Standing Orders).

A copy of the relevant paragraphs of the Standing Orders for the seam zone is attached and marked **P/7**.

15. The last permit which was issued to the petitioner was valid from September 12, 2013, through September 11, 2014. It should be noted that while permits which were issued to the petitioner in the past included a stipulation according to which they were "valid despite a preclusion", the last permit, which was issued as aforesaid in September 2013, did not include any stipulation concerning the existence of preclusion against the petitioner. Namely, **previous permits were issued to the petitioner despite the fact that a security preclusion was fed against him, after the approval of the precluding agency was obtained, i.e., the ISA, while the last permit was issued after the ISA removed the security preclusion which was fed against him**.

A copy of the last permit which was in petitioner's possession, which does not include any stipulation concerning the existence of preclusion is attached and marked **P/8**.

Copies of the two permits which were granted to the petitioner in the past, which include stipulations concerning the existence of preclusion are attached and marked **P/9**.

16. On November 11, 2014, the petitioner submitted an application for an agricultural permit in the seam zone for a two year period, through the Palestinian coordination office. It should be noted that the application form which was submitted by the petitioner specifically stated that the requested permit

was an agricultural permit in the seam zone, and that all documents attesting to petitioner's ownership of the land were attached to the application.

17. On or about November 25, 2014, the petitioner was advised by representatives of the Palestinian coordination office that his application was denied due to an "ISA preclusion" which was fed against him. It should be emphasized that neither a copy of the application form with the grounds for the denial according to section 15 of chapter A to the Standing Orders for the Seam Zone, nor an open paraphrase concerning the grounds for the denial according to section 16(b)(2) of chapter A to the Standing Orders were provided to the petitioner.

    A copy of the relevant procedures (due to an error of omission in the Standing Orders sections 15 and 16 are marked as 51 and 61, respectively) is attached and marked **P/10**.

18. It should be noted that after the petitioner was advised that his application had been denied, he turned to the Israeli DCO in order to find out the reason for the security preclusion, and requested to meet with an ISA representative. The soldier in the reception window took petitioner's details and asked him to wait. However, after about half an hour, the petitioner was told that the ISA was not interested to meet with him and he was requested to leave the DCO.

19. In view of the above, HaMoked turned on January 5, 2015, to the public liaison officer, Captain Eliran Sasson and requested to immediately receive an open paraphrase in petitioner's matter, and to summon him to the appellate committee for the purpose of appealing against the denial of his permit application. The request noted that according to the procedures the petitioner should be summoned to the appellate committee **within three weeks** from the date on which the request was received. A copy of the letter was transferred to the legal advisor for the West Bank and to the Head of Crossings and Seam Zone Department, who also acts as the chair of the appellate committee.

    A copy of HaMoked's letter dated January 5, 2015, without its attachments, is attached and marked **P/11**.

20. As no reply has been received, HaMoked turned again to the public liaison officer and sent him a reminder letter dated January 12, 2015. A copy of said reminder was also transferred to the legal advisor for the West Bank and to the Head of Crossings and Seam Zone Department.

    A copy of HaMoked's letter dated January 12, 2015 is attached and marked **P/12**.

21. On January 19, 2015, the paraphrase which had been attached to the denial of petitioner's application for an entry permit into the seam zone was provided, which stated that application was denied at the recommendation of security agencies "**in view of your family's relations with Hamas**". However, the petitioner was not summoned for a hearing before the appellate committee as requested and contrary to the procedures, which specifically provide that "as a general rule, in case of security denial a hearing will be held." (Section 15(f) of the sub chapter "Appellate Committee" in chapter A to the Standing Orders; hereinafter: the **appellate committee's procedures**) and that "to the extent a decision is made that a hearing of the committee should be convened, the applicant will be summoned to the hearing within three weeks from the date of the decision to summon him" (Section 5(h) of the appellate committee's procedures).

    A copy of the paraphrase which was received on January 19, 2015, (dated January 15, 2015) is attached and marked **P/13**.

    A copy of the appellate committee's procedures is attached and marked **P/14**.

22. In view of the failure to summon the petitioner to the appellate committee, HaMoked turned for the third time to the public liaison officer on January 21, 2015, and requested to summon the petitioner to the appellate committee. The request clarified that in their letter the respondents had refrained "from referring to our explicit request included in our above referenced letter to convene an appellate committee in the matter of Mr. Bari, according to the procedures which were published in the '2014 Standing Orders for the Seam Zone', according to which an appeal may be submitted to the appellate committee in the event that the applicant's application had been denied for security reasons."

    A copy of HaMoked's letter dated January 21, 2015, is attached and marked **P/15**.

23. On February 5, 2015, the petitioner was summoned to a hearing before the appellate committee which was scheduled for February 9, 2015.

    A copy of the summons dated February 5, 2015, is attached and marked **P/16**.

24. On February 9, 2015, a hearing was held before the appellate committee in the presence of the chairman of the committee, Major Amos Zuaretz, Head of Crossings and Seam Zone Department; representative of the legal advisor, First Lieutenant Avishai Sadeh, advisory officer in the Population Registration division; the person who registered the protocol, Private May Eliasi, Assistant to the Head of Crossings and Seam Zone Department; the petitioner; and counsel to the petitioner on behalf of HaMoked, Advocate Nassrat Dakwar.

    A copy of the protocol of the appellate committee dated February 9, 2015 (received on March 2, 2015) (hereinafter: the **protocol of the appellate committee** or the **protocol**) is attached and marked **P/17**.

25. It should be noted that no representative on behalf of the security agencies has attended the committee. It should be noted that according to section 3 of the appellate committee's procedures which were attached as Exhibit P/14 above, "the committee shall consist of, at least, the chair of the committee and a legal advisor" and it "may consist of additional members at the discretion of the chair of the committee." The additional members, other than the chair of the committee and the legal advisor who may attend the committee, according to section 2 of the procedures are the secretary of the appellate committee – Deputy Head of Crossings and Seam Zone Department, a security advisor – representative of security agencies, and a real estate advisor – representative of the Guardian Staff Officer or the Land Registration Staff Officer. In view of the fact that petitioner's application was denied for security reasons, **the presence of security agencies representative in the appellate committee was obviously required**.

26. In addition, no real estate advisor attended the committee – neither a Guardian Staff Officer nor a Land Registration Staff Officer, despite the fact that during the hearing which was held before the committee the legal advisor wondered whether petitioner's land was still located in the seam zone following the change of the route of the fence in the area and pointed out that "in view of the fact that the application was originally examined on the basis of the old route which existed at that time, even if we decide that there is no security preclusion for your entry into the seam zone, we will have to reconsider the location of the land" (paragraph H of the protocol), and the chair of the committee requested "that in any event the Eyal representation shall examine whether his land is located within the seam zone" (paragraph I of the protocol). And it should be emphasized that the members of the committee **were aware of the fact** that the route of the fence in the area in which the petitioner resides was shifted shortly before the committee was convened (see the words of the representative of the legal advisor in paragraph F of the protocol: "I see that you reside in Azzun Atma and request a permit

for farming purposes. Is the land still located on the east side of the fence, also after the route was relocated?"), and had in their possession a land registration document which was attached to petitioner's permit application, which was also attached to HaMoked's letter dated January 5, 2015 (Exhibit P/11 above). Therefore, the respondents could examine, **before the committee was convened,** whether or not the land remained in the seam zone, as claimed by the petitioner. In addition, **if the respondents were of the opinion that the document which had been provided by the respondent was not sufficient for the purpose of determining the issue of the location of the land, or that the matter raised exceptional questions which should be examined, they should have summoned to the committee a real estate advisor, according to the procedures**. It should be noted that not only that the location of the land had not been examined prior to the date on which the committee was convened and that a real estate advisor did not attend the committee, but instead of conducting an examination concerning the location of the land **after** the hearing which was held before the committee, the appellate committee decided not to examine the issue at all for the moment: "I did not find that a decision in this matter was required, but to the extent that in the future it would be found that there was no security preclusion which prevented petitioner's entry into the seam zone, this issue will have to examined" (paragraph 10 to the decision of the appellate committee, which was received on March 2, 2015; hereinafter: the **decision of the appellate committee** or the **committee's decision**).

It should also be noted that the presence of a real estate advisor was also required in view of **doubts** which were apparently raised by the members of the committee **concerning petitioner's connection to the land**: despite the fact that HaMoked's letters explicitly stated that the petitioner was the owner of the land, despite the fact that all relevant documents attesting to his ownership were attached to HaMoked's letter dated January 5, 2015, as well as to the permit application, despite the fact that the application form explicitly stated that the requested permit was an agricultural permit in the seam zone, and despite the fact that during the hearing no question in that regard was presented to the petitioner, the caption of the committee's decision as well as the body of the decision maintain that petitioner's application was an application for an agricultural work permit, a permit issued to persons who do not own land *in lieu* of an agricultural permit in the seam zone to which the petitioner is entitled.

And it should be emphasized, as will be specified in detail in the legal argument, that the position of the security agencies as to whether or not permit should be granted to a Palestinian resident to enter the seam zone, is determined, *inter alia*, based on the strength of his right. Hence, **it is possible that had the respondents recognized petitioner's ownership of the land, it would have changed the balancing point between the different considerations that the security agencies should consider in a manner that might have affected their objection to petitioner's entry into the seam zone for the purpose of farming his land**.

A copy of the decision of the appellate committee is attached and marked **P/18**.

27. During the hearing which was held by the committee, the petitioner and his counsel were provided **for the first time** an expanded and updated paraphrase which stated as follows: "We have information which indicates that you are a Hamas activist having connections to weapons. Your brother Mamdukh is a senior Hamas activist in his village and has been actively involved in Hamas activity over the course of recent years. An approval of the application will put at risk the security of the Area." **Said allegations were denied altogether by the petitioner, who clarified that he had never been interrogated nor detained in connection with such accusations and pointed out that he had connection whatsoever with any organization**. With respect to the allegations made against petitioner's brother, petitioner's counsel noted that the petitioner was responsible solely for his own actions and that he was certainly not responsible for the actions of his brother. The petitioner and his

counsel were not provided with additional details concerning the suspicions which were raised against him and/or against his brother. In addition, as indicated by the protocol and the committee's decision, other than the presentation of the paraphrase and petitioner's response thereto, **not even one question was presented to the petitioner regarding said suspicions**, neither by the chair of the committee nor by any of the other persons who attended the meeting of the committee. The representative of the legal advisor even clarified that "Naturally, in view of the fact that privileged material is concerned we cannot respond to the claims. We will hear what he has to say, we shall consider it, and thereafter we shall give him our final decision (paragraph C of the protocol). The fact that not even a single question was presented to the petitioner concerning the suspicions which were raised against him and/or against his brother **raises the question of whether the appellate committee had sufficient material to make an educated decision and whether the committee could make a decision which opposed the position of the security agencies according to which petitioner's application should be denied**.

28. In this context it should be reminded that the paraphrase which was provided on January 19, 2015 (Exhibit P/13 above) referred solely to alleged connections of his family to Hamas, **and did not include any allegation against the petitioner**. It should be noted that according to the committee's decision, said paraphrase was attached to the denial of petitioner's application dated January 20, 2015, a **date which is apparently wrong** in view of the fact that the paraphrase had been provided to HaMoked on an earlier date. Therefore, the suspicions raised against the petitioner must have been raised in recent months.

29. And it should be emphasized that with respect to the allegations which were raised against the brother Mamdukh, a history teacher from a village near Sanniriya, to petitioner's best knowledge, his brother has never been interrogated, detained or put on trial, and is not a Hamas activist. As will be elaborated on in the legal argument, **the petitioners are of the opinion that even if there was merit to the suspicions against petitioner's brother, which is not the case to petitioner's best knowledge, they cannot be used a basis for the denial of petitioner's application, who is a separate and distinct individual who should not be punished for the alleged wrongdoings of his brother, and whose connection with such alleged wrongdoings has never been argued**. In similar cases which were handled by HaMoked – some of which involved very severe offences which were allegedly committed by family members, who were tried for long imprisonments, rather than mere suspicions as is the case in our matter – permits were issued to the applicants, even if some were issued for periods shorter than the maximum possible period according to the Standing Orders. It is clear that **a sweeping denial of the application as a result of suspicions against a family member is an extreme measure which is not proportionate**.

30. It should also be emphasized that the respondents should have provided the petitioners with an expanded paraphrase prior to the hearing held by the committee, which they failed to do. It should be noted that on November 3, 2014, following a similar case, in which an updated paraphrase has not been provided prior to the hearing before the committee, the undersigned had a telephone conversation with First Lieutenant Sadeh from the legal advisor's office, in which First Lieutenant Sadeh said that apparently the paraphrase was not transferred as a result of a mistake and that he would direct the relevant agencies to act for the transfer of updated paraphrase prior to hearing before the appellate committee. In a petition which was filed in this matter, HCJ 7937/14 **Al-Sa'adi v. The Military Commander of the West Bank** (not reported, February 3, 2015; hereinafter: **Al-Sa'adi**). It was noted that "**HaMoked: Center for the Defence of the Individual hopes that a similar case, which violates the right to be heard of the applicants to the appellate committee, will not re-occur.**" However, as shown above, respondents' failure to transfer updated paraphrases prior to the hearing before the committee continues, while severely violating the right to be heard of Palestinian residents who are summoned for a hearing before the committee. It should be pointed out that in two

additional hearings which were held on that same day, the residents and their counsels were provided with expanded and/or updated paraphrases for the first time in the hearing before the committee. In view of the above, the undersigned spoke again with First Lieutenant Sadeh on February 15, 2015, who claimed that the updated paraphrases were provided by the ISA in the morning of the hearing and therefore could not be transferred ahead of time, despite the fact that in general he agreed that security paraphrases should be provided prior to the hearing before the committee. The undersigned clarified to First Lieutenant Sadeh that **the respondents should make the necessary arrangements to receive the paraphrases within a reasonable period prior to the hearing in a manner which would enable to transfer them to the residents and their counsels prior to the hearing**.

31. By the end of the hearing before the appellate committee a decision was given by the committee according to which, as stipulated in the committee's protocol: "discussed and sent for decision within one week".

32. On February 17, 2015, the undersigned turned to the public liaison officer and requested to immediately receive the protocols of the hearings which were held before the appellate committee on February 9, 2015, including, *inter alia*, in petitioner's matter, and the final decisions of the chair of the appellate committee. The undersigned noted that "our clients or their counsels were not provided with the protocols of the hearings and/or with summary forms of appellate committees with their decisions, contrary to section 6(d) of sub-chapter "appellate committee" in chapter A of the Standing Orders for the Seam Zone (hereinafter: the **procedure of the appellate committee**), which stipulates that '**after the hearing before the committee**, the applicant will be provided with the protocol of the hearing and an appellate committee summary form (Exhibit 3) consisting of a decision, either a final decision or according to which additional examination is required." (emphasis appears in the original). The undersigned noted further that the final decisions of the chair of the committee which should have been given **within one week from the date of the committee had convened, namely, until February 16, 2015,** according to section 6(e) of the procedures of the appellate committee, have not yet been given. A copy of the letter was sent to the Head of Crossings and Seam Zone Department who also acts as the chair of the appellate committee and to the office of the legal advisor for the West Bank.

A copy of the undersigned's letter dated February 17, 2015, is attached and marked **P/19**.

33. Nevertheless, the final decision of the appellate committee (which was attached as Exhibit P/18 above) was transferred to the undersigned only **three weeks** after the committee hearing before the committee, on March 2, 2015.

34. The decision denies petitioner's appeal "in view of the security data which exists against him" (paragraph 11 of the decision). Among other things, the decision states as follows:

> Appellant's response to the content of the paraphrase in his matter was transferred to security agencies that concluded that it had nothing in it which could change their position according to which petitioner's entry into the seam zone may put at risk the security of the Area.
>
> I examined appellant's application and considered the entire considerations, including the personal circumstances of the appellant and security considerations. I eventually decided that the appeal should be denied in view of the concern to the security of the Area, as indicated by the position of the security agencies. The above agencies have in their possession negative security information which substantiates the risk posed by him to the security

> of the Area. In view of the nature of said information it may not be disclosed to the appellant and his counsel.
>
> Moreover. The security agencies also have negative security information against appellant's brother. Said negative security information reinforces the concern that appellant's entry into the seam zone will put at risk the security of the Area. In this context, we cannot accept appellant's argument that in order to prevent his entry into the seam zone, only information of a personal nature is required. According to the position of security agencies which is backed up [a typographical error in the original was amended by the undersigned] by many court judgments, information against family members of a person may [a typographical error in the original was amended by the undersigned] also establish the dangerousness of said person (paragraphs 7-9 of the decision).

35. In addition, as aforesaid, it was **mistakenly** stated, both in the caption of the committee's decision as well as in the body of the decision (see paragraph 3 of the decision) that petitioner's application was an application for an agricultural work permit, a permit issued to individuals who do not own land, *in lieu* of an agricultural permit in the seam zone to which the petitioner is entitled, and the above despite the fact that HaMoked's letters explicitly stated that the petitioner was the owner of the land, despite the fact that all relevant documents attesting to his ownership were attached to HaMoked's letter dated January 5, 2015, as well as to the permit application, despite the fact that the application form explicitly stated that the requested permit was an agricultural permit in the seam zone, and despite the fact that during the hearing no question in that regard was presented to the petitioner. As aforesaid, the doubts which were apparently raised by the members of the committee could have been easily solved by the presence of a real estate advisor who did not attend the committee albeit the fact that his presence was required and contrary to the procedures.

36. It should be emphasized once again that in September 2013, a stay permit valid until September 2014 had been issued to the petitioner, about five months prior to the hearing before the appellate committee, after the ISA removed the security preclusion which was fed against him, a preclusion the existence of which did not prevent the issue of previous permits after having received the approval of the precluding agency, namely, the ISA.

37. In view of the fact that according to respondents' procedures, the applicant must wait nine whole months from the date on which the appellate committee denied his application for an entry permit into the seam zone, before he can submit a new application, and **in view of the fact that each passing day impinges on petitioner's ability to enter the seam zone and farm his land, the petitioner has no option but to turn to this honorable court and ask for relief**.

38. It should be pointed out that in order to promote his matter, the petitioner tried, before turning to this honorable court, to turn to the security agencies so that they would remove the security preclusion which was fed against him. On March 25, 2015, the petitioner turned to the Israeli DCO and requested to meet with an ISA representative. The petitioner was invited to a meeting which was scheduled for the following day, March 26, 2015, in the presence of an ISA representative called "Captain Ayub" and in the presence of an IDF officer, and lasted for about half an hour. The petitioner asked "Captain Ayub" for the reason of the preclusion which was fed against him and stated that he had never been involved in any security matters whatsoever. "Captain Ayub" asked the petitioner what he studied, what he was doing for a living and posed questions concerning the family of his wife. In addition, questions were posed to about his brother Mamdukh. The petitioner was asked whether his brother was a Hamas activist and answered in the negative. The petitioner also noted that his brother was a

religious person. The petitioner was even asked twice during the meeting whether his brother has ever been incarcerated in Israel and has twice answered in the negative. In conclusion, "Captain Ayub" told the petitioner that he would check the matter and requested the petitioner to check in the following week in the public reception window at the Israeli DCO, whether the preclusion which had been fed against him was removed. According to the direction of "Captain Ayub", the petitioner went to the Israeli DCO on April 14, 2015, but was told that the preclusion was not removed.

39. It should also be pointed out that in order to promote his matter, the petitioner – who was not aware of respondents' procedures according to which he had to wait nine months from the date on which the committee denied his application – submitted another application for an agricultural permit in the seam zone, through the Palestinian coordination, in the beginning of April 2015. However, the submission of said application, which, as aforesaid, the petitioner is not entitled to submit according to the procedures, has no bearing on the need to apply to this honorable court and request relief.

The Legal Argument

40. The petitioners argue that by denying petitioner's entry into the seam zone the respondents severely, unreasonably and disproportionately violate petitioner's right to own property, and his rights for freedom of occupation and freedom of movement. This violation of his rights is made contrary to the law, case law, respondents' explicit statements made before this honorable court and even contrary to the rules and procedures of the respondents themselves.

On the violated rights

41. The petitioners can elaborate on the importance of the rights, bring references from Israeli law, international law and the words of different scholars on the subject, but it seems that this honorable court has already said what the petitioners would have liked to say in a better and clearer manner than the petitioners themselves.

42. HCJ 9593/04 **Rashed Morar v. Commander of IDF Forces in Judea and Samaria** (not reported; rendered on June 26, 2006; hereinafter: **Yanun**), concerned the power of the military commander to issue an order which denies the access of Palestinian residents to their agricultural lands. In paragraph 12 of the judgment, the honorable Justice (as then titled) Beinisch defined the issue in question as follows: "The question before us is whether the military commander exercises his power lawfully with regard to the closure of agricultural areas to Palestinian residents who are the owners or who have possession of those areas."

43. This is also the question with which this petition is concerned with one major difference. **Yanun concerned an impermanent closure of an area. The seam zone petitions concern a closure which is not limited by time.** Therefore, measures which may be deemed proportionate with respect to a temporary restriction which is imposed on protected residents, and which would enable them, in any event, to enter their lands and farm them, may not necessarily be deemed proportionate when a permanent restriction is concerned, such as the restriction in the petition at hand.

44. Paragraph 14 of the **Yanun** judgment provides as follows:

> "The petition before us concerns agricultural areas that are owned by Palestinian inhabitants and which are closed by the order of the military commander. Therefore, **the right to security and the protection of physical integrity is opposed by considerations concerning the protection of the**

rights of the Palestinian inhabitants, and in view of the nature of the case before us, we are mainly concerned with the right to freedom of movement and property rights. In the judgment given in HCJ 1890/03 **Bethlehem Municipality v. State of Israel** (not reported yet), we said that **the freedom of movement is one of the most basic human rights**. We noted that in our legal system the freedom of movement has been recognized both as an independent basic right and also as a right which is derived from the right to liberty, and that there are some authorities which hold that it is a right which is derived from human dignity… The freedom of movement is also recognized as a basic right in international law and this right is enshrined in a host of international conventions... **It is important to emphasize that in our case we are not concerned with the movement of Palestinian residents in nonspecific areas throughout Judaea and Samaria but rather with the access of the residents to lands that belong to them. In such circumstances, where the movement takes place in a private domain, especially great weight should be afforded to the right to the freedom of movement, and the restrictions imposed on it should be reduced to a minimum**. It is clear that restrictions which are imposed on the freedom of movement in a public area should be examined differently from restrictions which are imposed on a person's freedom of movement within the area which is connected to his home and the former cannot be compared to the latter…

As aforesaid, **an additional basic right that should be taken into account in our case is, of course, the proprietary right of the Palestinian farmers in their land. In our legal system, the right to own property is protected as a constitutional human right**… This right is of course also recognized in public international law… Therefore, **the residents in the territories held under belligerent occupation have a protected right to their property.** In our case, there is no dispute that agricultural land and agricultural produce are concerned in which the petitioners have property rights. **Therefore, when the petitioners are denied access to land that is their property and they are denied the possibility of cultivating the agricultural produce that belongs to them, their right to own property and their ability to enjoy it are thereby seriously violated**."

45. In the permit regime judgment, the honorable President Beinisch also emphasized the severe violation of the rights of the protected residents (paragraph 22 of the judgment):

Indeed, it is difficult to disagree that the declaration of the areas of the seam zone as closed areas, as well as the mere erection of the security fence, severely encumber the Palestinian inhabitants, and in particular, inflict a severe injury on innocent inhabitants who happen to be in the seam zone against their will due to the fact that they live or work in the zone, as their businesses or fields and agricultural lands remained locked within the zone. The application of the permit regime, and the need to obtain a permit in order to enter and leave the zone, imposes a clear restriction on the freedom of movement of the inhabitants of the Area within this zone, and restricts the accessibility of the inhabitants – to their homes, lands and businesses located within the seam zone. As will be further specified below, this state of affairs creates a reality which makes it difficult to maintain the routine of family life, social life, commerce and work,

both of the inhabitants who live in the seam zone and of those who are related to them but do not live therein.

On the protected interest

46. Against the violated rights stands the value of the "considerations of protecting the security of the residents of the Area" (paragraph 15 of the **Yanun** judgment). However, it is not sufficient to raise a mere argument according to which the denial of access to one's land is made for security reasons, but the situation should pertain to "cases where the realization of human rights creates **a close certainty of the occurrence of serious and substantial harm to public safety, and when there is a high probability of harm to personal security**, then the other human rights yield to the right to life and physical integrity (paragraph 16, *ibid*.).

On the Separation Fence, the Seam Zone and the Petitions concerning them

47. The infringement of petitioner's freedom of movement results directly from the erection of the separation fence which divides between his home and the lands of his family.

48. A large number of petitions were filed with this honorable court against the erection of the separation fence. This petition does not concern the separation fence itself, but rather the preclusion which was imposed on the petitioner and which prevents him from entering, through a gate in the fence, the seam zone where the land is located.

49. In HCJ 10905/05 **Mayor of Jayyus v. The Prime Minister**, it was held as follows (in paragraph 32 of the judgment):

> Within the duty to protect the rights of the residents of the Area, **the military commander must take into consideration the injury which may be caused to the rights of the protected residents – those whose lands are expropriated for the erection of the fence, those who are separated from their lands by the fence which divides between them, and those whose access to the big cities which are located near their villages, where they are provided with health, education, religion, employment and such other services, is burdened by the fence**… In this context it should be emphasized, that the human rights of the local residents consist of a host of human rights. Thus, for instance, Article 27 of the Fourth Geneva Convention provides… that the protected residents are entitled in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs. The Article further provides that that they shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. All of the above, subject to the required balances *vis-à-vis* competing rights of other persons or public interests. Similarly, Article 46 of the Fourth Hague Convention of 1907 provides… that **the rights of the local residents to life, honor, freedom of religious convictions and practices, family life and private property must be respected. The right to own property and the manner by which private property of the local residents should be treated are also entrenched in and protected by Articles 23(g) and 52 of the Hague Convention and by Article 53 of the Fourth Geneva Convention.**"

50. In all of the petitions which were heard by this honorable court concerning the route of the separation fence, the honorable court accepted the proposed route only after it was convinced that "the proposed route proportionately balances between the security interest, which obligates to protect human lives against terror attacks, and the rights of the Palestinian residents" (paragraph 39, *ibid*). When the honorable court was of the opinion that the proposed route excessively infringed the rights of the Palestinian residents, it rejected the proposed route.

<u>On the permit regime</u>

51. The petitions which concerned the route of the separation fence, did not engage, in general, with the question of whether, after the erection of the fence, the Palestinian residents who wanted to enter the seam zone, would have to obtain a permit for that purpose, what would be the procedure for obtaining the permit, etc.

52. In the permit regime petitions the petitioners requested to revoke the declaration under which the seam zone was declared as a closed military zone and to revoke the orders which were issued thereunder, which obligate Palestinian residents who wish to enter the seam zone to obtain entry permits. In said petitions the requested remedy was not given, but the honorable court emphasized throughout its judgment the recognition of the rights of the Palestinian residents to maintain their way of life. Hence, in paragraph 34 of the judgment:

> Under the circumstances at hand, *prima facie*, it indeed seems that the **respondents acknowledge the residents' right to continue to farm their lands and seek to enable those who have a connection to lands in the seam zone to continue to farm them**, by enabling family members and other workers to assist them with their work."

53. In said paragraph, the honorable court continued to clarify that notwithstanding respondents' statements before it, it was not inevitable that in certain cases severe injury was caused to the rights of the residents and in such cases the court would find it appropriate to intervene and give remedies in individual petitions:

> However, and as specified above, **we cannot deny the possibility that in specific cases severe injury is caused to the human right to livelihood and land of Palestinian residents who cannot adequately farm their lands or who encounter other access difficulties, and the respondents, on their part do not take adequate measures to minimize said injury**. As stated above, these cases may be reviewed within the framework of specific petitions, in which the court will be able to examine the gamut of relevant arrangements which apply to a certain area, and the specific balancing which takes place therein between the rights of the residents and other interests, as was previously done in similar petitions."

54. On November 13, 2006, the respondents in the permit regime petitions submitted their response to the petitions (hereinafter: the **response**). Paragraph 74 of the response petitions explicitly states: "As held in **Yanun,** the infringement of a person's freedom of movement in a public area in a territory held under belligerent occupation cannot be compared with the infringement of his freedom of movement on his private land. Therefore the respondents are of the opinion that the closing of the seam zone area and **the establishment of the permit regime** at the same time, **which regime enables all those having an individual connection to lands in the seam zone to receive an entry permit into the zone or live therein**, as the case may be, appropriately balances between the pressing

security need which underlies the taking of such measures, and the injury inflicted on the rights of the residents of the Area."

55. Had the respondents upheld the statements made by them before this honorable court and permits were issued to any person whose connection to the seam zone was substantiated, this petition, probably, would not have been filed. The honorable court, which held that the permit regime satisfied the proportionality tests, explicitly pointed out that "**Our said determination is based not only on the arrangements themselves, but rather, also on the measures taken by the state to implement the arrangements, *de facto*, and on the crossing regime applied by it**." (Paragraph 40 of the judgment, *ibid*.)

On a security preclusion preventing entry into the seam zone

56. The petitioners wish to emphasize the difference between a security preclusion which prevents a person from entering a place with respect of which he is not vested with the right to enter, and entry into the seam zone.

57. The respondents to the permit regime petitions cited the judgment of this honorable court in the **Yanun** case, and stated, as is remembered that "as held in the **Yanun village case**, the rules which apply to infringement of a person's freedom of movement in a public area in a territory held under belligerent occupation are not the same as those which apply to the infringement of his freedom of movement in his own private land".

58. Should this honorable court decide that there are types of security preclusions which justify the denial of entry permits into the seam zone, what is the nature of the security preclusion which justifies it? The petitioners argue that the preclusion is of the nature which was discussed in the **Yanun** judgment which was referred to by the respondents themselves, namely: when the grant of the permit "**creates a close certainty of the occurrence of serious and substantial harm to public safety".** In any other case the resident must be allowed access to the sources of his livelihood located in the seam zone. It is doubtful whether the allegations raised by the respondents – as is remembered, allegations which were raised against the petitioner only recently, with respect of which he had neither been interrogated nor detained, as well as the allegations which were raised against his brother – create a close certainty of the occurrence of serious and substantial harm to public safety, as stated in the **Yanun** case.

On the right to be heard

59. As aforesaid, on February 9, 2015, a hearing was held before the appellate committee in petitioner's matter. However, the hearing which was held was not a **lawful hearing**.

60. **Firstly**, as aforesaid, the updated and expanded paraphrase which was read to the petitioner during the hearing before the appellate committee was not transferred to the petitioner prior to the hearing before the appellate committee, a fact which prejudiced the ability of the petitioner and his counsel to properly prepare for the hearing which was conducted in petitioner's matter.

61. **Secondly, the appellate committee was not attended by any representative on behalf of the security agencies**. As specified above, according to section 3 of the appellate committee's procedures, which were attached as Exhibit P/14 above, "the committee shall consist, at least of the chair of the committee and a legal advisor" and it "may consist additional members, at the discretion of the chair of the committee." The additional members, other than the chair of the committee and the legal advisor who may attend the committee, according to section 2 of the procedures are the

secretary of the appellate committee – Deputy Head of Crossings and Seam Zone Department, a security advisor – representative of security agencies, and a real estate advisor – representative of the Guardian Staff Officer or the Land Registration Staff Officer. As aforesaid, in view of the fact that the denial of petitioner's application was mainly premised on security reasons, **the presence of security agencies' representative in the appellate committee was obviously required**.

62. **Thirdly**, as specified above, **no real estate advisor attended the appellate committee – despite the fact that during the hearing which was held before the committee the members wondered whether petitioner's land was still located in the seam zone**, after the route of the fence in the area in which the petitioner resides had been moved shortly before the date on which the committee convened.

In addition, a real estate advisor did not attend the committee despite the fact that according to the committee's decision it is evident that the members of the committee had doubts as to whether the petitioner was the owner of the land: despite the fact that HaMoked's letters explicitly stated that the petitioner was the owner of the land, despite the fact that all relevant documents attesting to his ownership were attached to HaMoked's letter dated January 5, 2015, as well as to the permit application, despite the fact that the application form explicitly stated that the requested permit was an agricultural permit in the seam zone, and despite the fact that during the hearing no question in that regard was presented to the petitioner, the caption of the committee's decision as well as the body of the decision maintain that petitioner's application was an application for an agricultural work permit, a permit issued to persons who do not own land *in lieu* of an agricultural permit in the seam zone to which the petitioner is entitled. And it should be emphasized that the position of the security agencies as to whether or not permit should be granted to a Palestinian resident to enter the seam zone, is determined, *inter alia*, based on the strength of his right. Hence, **it is possible that had the respondents recognized petitioner's ownership of the land, it would have changed the balancing point between the different considerations that the security agencies should consider in a manner that might have affected their objection to petitioner's entry into the seam zone for the purpose of farming his land**.

In this context it should be noted that only recently, on March 24, 2015, the appellate committee accepted the appeal of Mr. _____ Manasrah, ID No. _____, a Palestinian resident whose application for commercial work in the seam zone for the purpose of working is a store **owned by his uncle** was denied for security reasons. During the hearing before the committee Mr. Manasrah claimed that in the beginning of 2015, he had opened a new store in the seam zone in his ownership and that he had even rented a property for this purpose. After respondents' examination proved that Mr. Manasrah submitted a new application for a commercial permit in the seam zonefor the purpose of running the store **in his ownership**, and that he was indeed the owner of the store, **the security agencies removed their objection for the issue of the permit**. The decision of the appellate committee stated as follows:

> **In view of this new information [that the petitioner is the owner of the store in the seam zone** – the undersigned], **an updated position [**a typographical error in the original was amended by the undersigned] **was given by the security agencies according to which the no longer objected to petitioner's entry into the seam zone**. Therefore I decided that **[**a typographical error in the original was amended by the undersigned] an entry permit into the seam zone for commercial purposes will be issued to the appellant for a period of one year (paragraphs 7-8 to the decision of the appellate committee).

A copy of the appellate committee in the matter of Mr. Manasrah, given on March 24, 2015 (dated March 11, 2015) is attached and marked **P/20**.

63. Fourthly, as indicated by the protocol and the decision of the appellate committee, the petitioner and his counsel were not provided with any additional details concerning the suspicions that the petitioner was ostensibly "a Hamas activists with connections to weapons" or that his brother was ostensibly "a senior Hamas activist in his village, with up-to-date activity in Hamas in recent years." In addition, other than the presentation of the paraphrase and petitioner's response thereto, **not even a single question was presented to the petitioner regarding said suspicions which were raised against him or his brother**, neither by the chair of the committee nor by any of the other persons who attended the meeting of the committee. As specified above, the representative of the legal advisor even clarified that "Naturally, in view of the fact that privileged material is concerned we cannot respond to the claims. We will hear what he has to say, we shall consider it, and thereafter we shall give him our final decision (paragraph C of the protocol). The fact that not even a single question was presented to the petitioner concerning the suspicions which were raised against him and/or against his brother **raises the question of whether the appellate committee had sufficient material to make an educated decision and whether the committee could make a decision which opposed the position of the security agencies according to which petitioner's application should be denied**. In as much as the committee is unable to make a decision which opposes the position of the security agencies, the inevitable conclusion is that the hearing which was held was not a hearing at all but rather a futile proceeding which was intended to fulfill a mere obligation in an attempt to make a representation as if a hearing was held for the petitioner.

64. In this context it should be noted that on October 2, 2013, a hearing was held before a panel presided by the Honorable Justice Arbel and the Honorable Justices Melcer and Vogelman in HCJ 39/13 **Odeh v. The Military Commander of the West Bank**, a petition which was filed, inter alia, on behalf of HaMoked through the undersigned, in the matter of a Palestinian resident whose application for an entry permit into the seam zone was not responded to. After the petition was filed he had a hearing in the framework of which his application was denied. Over the course of the hearing the Honorable Justice Vogelman noted that a hearing procedure "**requires that the competent authority will be familiar with the security material**" (line 20, page 1 of the protocol of the court hearing dated October 2, 2013). After respondents' counsel, Advocate Yonatan Zion-Moses, explained that the security opinion was transferred to the DCO, the Honorable Justice Vogelman emphasized that "**in view of the fact that we are concerned with territories of the Area the impingement is real and therefore the balances here are more complex and if the deciding body is not familiar with the intelligence material it cannot exercise discretion**" (lines 26-27, *ibid*.). Later on, after respondents' counsel clarified that in fact the individuals who conducted the hearing did not receive the complete security opinion, the Honorable Justice Vogelman made it clear that "**it must be ascertained that the material which is transferred to the competent authority is broad enough to enable it to make an educated decision**" (lines 5-6, page 2 of the protocol).

65. It should be further noted that in a court hearing which was held on November 17, 2014 in the above mentioned **Rian** case, a petition which was also filed by the undersigned in the matter of a Palestinian resident whose application was denied after a hearing before the appellate committee, the Honorable Justice Mazuz said as follows:

> **There is a committee which should deliberate over the security preclusion and no one with authority sits there**, and from the decision we see that the only reason is that someone made a decision regarding security preclusion. Therefore, what is the purpose of the committee if the only motive is security. **We did not see that the committee exercises any discretion whatsoever**." (lines 17-20, page 2 of the protocol).

66. In the case at hand, the fact that the members of the committee satisfied themselves by receiving petitioner's response to the paraphrase and the transfer thereof to security agencies, so that they would re-consider their position, raises the concern that the committee did not have available to it information "broad enough which would enable it to make an educated decision", information which includes "intelligence information", which would enable the committee to "exercise discretion". In fact, said conduct **raises the question of whether the committee is indeed the "competent authority" to make a decision in petitioner's appeal, or whether we are concerned with a futile procedure, while the decision is made, *de facto*, by the security agencies**. And compare the words of the Honorable Justice Mazuz above, in **Rian**. It should also be reminded that in its final decision the appellate committee stated that after the chair of the committee considered "the entire considerations, including the personal circumstances of the appellant and security considerations", "I eventually decided that the appeal should be denied in view of the concern to the security of the Area, as indicated by the position of the security agencies." Could the appellate committee make a decision which opposed the position of the security agencies? Only the respondents know!

67. **And it should be emphasized again that before petitioner's last application for an entry permit into the seam zone was denied, the petitioner had in his possession many entry permits into the seam zone, the last of which was issued in September 2013, after the ISA removed the security preclusion which was fed against him**, a preclusion the existence of which did not prevent the issue of previous permits following the approval of the preventing body, namely, the ISA.

<u>On the unreasonableness and disproportionality of the denial of petitioner's application for a permit based on the suspicions against his brother</u>

68. One of the reasons which were given for the denial of petitioner's application for an entry permit into the seam zone, namely, that his brother is ostensibly a Hamas activist, **is like an admission that the respondents, in fact, punish the petitioner for the ostensible deeds of his brother**. Obviously, a position according to which one's permit application should be denied in view of the fact that his family member is suspected of having committed a security offence of any sort **is unreasonable,** since separate and distinct individuals are concerned. And it should be reminded that the paraphrase which was initially given **did not include any suspicion against the petitioner himself but rather based the entire denial only on the ostensible connections of his family with Hamas**, and that only during the hearing before the committee suspicions were also raised against the petitioner himself, in connection with which he has never been interrogated or detained, as specified above.

69. It should be clarified that in similar cases handled by HaMoked, in some of which family members of the permit applicants were imprisoned for long incarceration periods for having committed very severe offences, entry permits into the seam zone were issued to the permit applicants, sometimes after an initial objection of the security agencies, which was retracted later on.

70. Accordingly, for instance, in the case of a Palestinian resident called Mr. _____ Shakir, ID No. _____, his permit application was denied in April 2014, for security reasons, in view of the fact that his son was incarcerated for order disturbances and stone throwing, and the security agencies did not change their position even after they were requested by the then commander of the Qalqilia representation to reconsider their objection. Only after HaMoked, through the undersigned, notified of its intention to file a petition against the denial, Mr. Shakir was summoned to the appellate committee, where he was informed that the objection had been removed and he was issued with an entry permit into the seam zone for a two year period, the full period for the type of permit to which Mr. Shakir was entitled according to the Standing Orders.

71. In another case, which even arrived to this honorable court, HCJ 8088/12 **Yasin v. Military Commander of the West Bank** (not reported, February 19, 2014), following a petition which was filed on behalf of HaMoked by the undersigned, the respondents agreed to issue to the petitioner an entry permit into the seam zone despite the fact that his son was sentenced to 32 years in prison for the offences of placing a bomb, abduction attempt, conspiracy to intentionally cause death and additional indictments in the framework of his membership in the Islamic Jihad organization. It should be noted that initially a short term permit was issued to the petitioner valid for two months. Thereafter the respondents advised that permits for six month periods would be issued to the petitioner. Later on, following petitioners' insistence, a two year entry permit into the seam zone was issued to the petitioner (here also, it was the full period for the type of permit to which the petitioner was entitled according to the Standing Orders).

72. In another case which was heard by this honorable court, HCJ 2361/13 **Mukadi v. Military Commander of the West Bank** (not reported, October 17, 2013), the security agencies agreed to issue to the petitioner an entry permit into the seam zone for a period of six months, **despite the fact that his brother was serving a life sentence in prison for murder, and it was even alleged that the petitioner knew of the murder after it was committed**. In this case the security agencies refused to issue to the petitioner a permit for a period of two years, the full period according to the Standing Orders for a permit of the type to which the petitioner was entitled, a permanent farmer in the seam zone, and this honorable court accepted respondents' position **but emphasized that <u>its position could have been different had petitioner's entry into the seam zone been denied altogether</u>**. As stated by the Honorable Justice Rubinstein (page 2 of the protocol): "If the petitioner cried that he was prohibited from entering and farming the land all of the above was very relevant and it was incumbent on us to intervene."

73. In a recent case which also arrived to this honorable court, the above mentioned **Al-Sa'adi** case, the security agencies agreed to issue to the petitioner an entry permit into the seam zone for a period of six months, ***albeit* their allegations that his brother had connections with Hamas and despite the fact that the brother was arrested and an indicted** before a military court for the possession of fireworks and bullets compatible with weapons without a permit. It should be noted that in addition to the suspicions against the brother, allegations were also raised in this case against the petitioner himself, according to which he was caught after he had crossed the fence from Kafin towards Israel. The security agencies refused to issue to the petitioner a one year permit, the full period according to the Standing Orders for a permit of the type to which the petitioner was entitled, commerce in the seam zone, and issued to him, as aforesaid, a permit for a period of six months.

74. **This means that not only that the sweeping denial of petitioner's application for an entry permit into the seam zone for the purpose of reaching his land, mainly in view of the ostensible connections of his brother with Hamas, is unreasonable, but that this case obviously concerns the most extreme decision which could have been made by the respondents and is therefore disproportionate, considering, as aforesaid, the more proportionate option which they could have adopted – the issue of a permit for a period shorter than the maximum period**.

75. At the same time it should be noted that the issue of an entry permit into the seam zone to the petitioner for a two year period, the full period according to the Standing Orders for an agricultural permit in the seam zone, does not prevent the respondents from continuing to conduct an updated examination of the degree of the risk posed by the petitioner whenever they wish to do so. And it should be emphasized that respondents' procedures enable the forfeiture of a permit in cases in which a security or criminal preclusion is fed against the permit holder.

Conclusion

76. The petitioner has the right to receive an entry permit into the seam zone valid for two years, to farm the land.

77. The respondents, who decided to limit the above right of the petitioner, were obligated to hold a hearing for the petitioner as prescribed by law, in the presence of a security agencies' representative and a real estate advisor, and the members of the appellate committee should have had the ability to make a decision in contrary to the position of the security agencies. In addition, the respondents should have discussed petitioner's ownership of the land and resolve the matter, as well as the issue pertaining to the location of the land, prior to the date on which the committee was convened, and at least, thereafter, and since they have failed to do so, they should resolve these issues forthwith.

78. Each passing day causes the petitioner and his family damage as a result of petitioner's inability to enter the seam zone and farm his land.

79. In view of all of the above, the honorable court is requested to issue an *order nisi* as requested in the beginning of this petition, and after receiving respondents' response, make the *order nisi* absolute and obligate the respondents to pay petitioners' costs and legal fees.

80. In addition the honorable court is requested **to schedule the petition for a hearing as soon as possible and to direct the respondents to submit their response within a very short period of time**, in view of the daily damage caused to the petitioner, and in view of past experience which shows that sometimes, the submission of a response, renders the hearing of the petition on its merits, redundant.

81. This petition is supported by an affidavit which was signed before an attorney in the West Bank and was sent to HaMoked by fax, subject to coordination by phone. The honorable court is requested to accept this affidavit and the power of attorney which was also sent by fax, taking into consideration the objective difficulties involved in a meeting between the petitioner and his legal counsels.

Iyar 1, 5775
April 20, 2015

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Yadin Eilam, Advocate	Nitzan Ilani, Advocate
Counsel to the petitioners	Counsel to the petitioners