At the Supreme Court Sitting as the High Court of Justice — HCJ 6896/18
Scheduled for July 1, 2020

1. _____ Ta'meh
2. _____ Ta'meh
3. _____ 'Abadi
4. HaMoked - Center for the Defence of the Individual founded by Dr. Lotte Salzberger
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The Petitioners

v.

1. Military Commander of the West Bank Area
2. Head of the Civil Administration
3. Legal Advisor for the West Bank
Represented by Counsel from the State Attorney's Office,
Ministry of Justice, Jerusalem
Tel: 02-6466590, Fax: 02-6467011

The Respondents

Respondents Response to the Amended Petition

1. According to the decision of the Honorable Court dated February 9, 2020, Respondents' response to the amended petition is hereby filed as follows.

2. In the amended petition, the Petitioners request the Honorable Court to issue an *Order Nisi* instructing the Respondents to show cause:

   A. Why they should not issue Petitioner 2 a fully valid permit to enter the seam zone with no restrictions on the number of entries into the seam zone, for the purpose of regular access to land belonging to his mother, Petitioner 1;

   B. Why they should not issue Petitioner 3 a seam zone farmer permit, a fully valid permit to enter the seam zone with no restrictions on the number of entries into the seam zone, for the purpose of regular access to his land;

   C. Why they should not cease to refuse issuing individuals permits to access land in the seam zone with full validity on the grounds that the size of the land they seek to cultivate is less than 330 square meters;

D. Why should the new directives instituted by the Respondents subjecting seam zone entry permits for farming purposes to a set quota of entries not be revoked*;*

E. Alternatively, why should the decision to close the seam zone to Palestinians should not be revoked as it is disproportionate.

3. The Respondents will argue that the petition should be dismissed *in limine* and on its merits in the absence of cause for intervention by the Court in Respondents' decisions that are the subject of the amended petition (with respect to the individual Petitioners) and that the "general" petition should also be dismissed since all Respondents' procedures are reasonable and proportionate and comply with the case law produced by this Honorable Court. We explain.

4. The petition concerns Respondents' specific decisions concerning permits issued to Petitioners 2-3 allowing them entry into the seam zone according to needs they presented. In addition, the Petitioners request "general remedies" in the form of revoking Respondents' directives "subjecting seam zone entry permits for farming purposes to a set quota of entries," specified in the Seam Zone Entry Procedure, and alternatively, the Petitioners request to revoke the "decision to close the seam zone to Palestinians".

5. **With regards to the individual decisions – Respondents shall argue that the petition, with respect to Petitioner 2, should be dismissed *in limine* as he abused the permit he had been given. During the committee hearing held in late 2018, Petitioner 2 told the Respondents he had abused and made prohibited use of the permit he was granted for the purpose of entering the seam zone, and instead of entering the seam zone to fulfil the purpose of the permit (visiting family members) Petitioner 2 used the permit he had been granted to enter the State of Israel for work**.

It should be further noted that during questioning in 2013, Petitioner 3 also told the Respondents that he had abused the permit he had been granted and instead of entering the seam zone to farm his land, he used the permit to enter the territory of the State of Israel to work.

The Respondents will argue that the above sufficiently demonstrates the main rationale for the Respondents' procedures, namely, to give the military commander effective supervision and control over individuals who enter the seam zone, passage from which into the territory of Israel is free and open, **all of the above while protecting the initial security purpose of the security fence**. The Respondents will argue that the procedures that are the subject of this petition are reasonable and proportionate, that they conform to the judgments of this Honorable Court and that they do not give rise to any cause for intervention by the Honorable Court. Therefore, the Respondents will argue that the "general remedies" sought in the petition should be denied.

The main developments in the proceeding until now

6. On October 4, 2018, Petitioners 1-2 and 4 filed a petition concerning Petitioner 2's application to be granted a "seam zone entry permit, valid for two years, to enable him to cultivate land belonging to his mother, Petitioner 1, in the seam zone in the West Bank". In addition, an *order nisi* was requested to be directed at the Respondents instructing them to show cause "why they should not cease to refuse issuing individuals permits to access land in the seam zone on the grounds that the size of the land they seek to cultivate is less than 330 square meters."

7. In their preliminary response to the petition, the Respondents argued, *inter alia*, that:

> The Respondents will argue that the petition should be dismissed in the absence of cause for intervention in their decision, which denied Petitioner's application to receive a seam zone entry permit for agricultural purposes, since the Petitioner has no practical need for a permit for the purpose of agricultural cultivation. However, the Petitioner did receive a permit for personal needs allowing him to enter the "seam zone" and maintain his ties to his mother's land.
>
> The Respondents will further argue that the general remedy requested in the petition should be denied since there is no cause for intervention in Respondents' decision to amend the provisions of the Seam Zone Standing Orders in 2017 concerning the criteria for receiving permits for agricultural purposes. The revisions which were included in the 2017 amendment to the Seam Zone Standing Orders with respect to the issue that is the subject of the petition are reasonable and are intended to establish clear criteria to assist the work of the DCOs when reviewing applications for agricultural permits for "miniscule plots", thus reconciling the permit issued to the actual need contained in the application.

8. The Respondents further explained the rationales for the 2017 amendments in their preliminary response: "Firstly, it should be recalled that when a seam zone entry permit is granted, a balance is struck between the security considerations which led, as aforesaid, to the closure of the area, and the obligation of the military commander to maintain reasonable access by Palestinian residents to the area, **each according to their needs**. Secondly, it should be remembered that there is no physical barrier preventing entry into Israel from the "seam zone", with all security risks entailed. Moreover, the Respondents do not dispute the need to provide a proper response to the needs of Palestinian farmers whose lands are located in the "seam zone". However, it does not mean that the Respondents should issue permits for agricultural cultivation to individuals who have no need to cultivate the plots with respect to which they requested an agricultural permit. As aforesaid, plots located in the "seam zone" are accessible and the applicants' ties to the land can be preserved through other permits that provide a solution for this need." (emphasis appears in the original – the undersigned).

9. The Respondents concluded their response by noting: "Prior to concluding, the Respondents wish to further update that staff work is currently underway on an additional amendment to the Seam Zone Standing Orders, which would allow for the issuance of "punch card permits". Punch card permits will provide for a set number of entries into the seam zone over a longer period of time than currently granted by most permits. According to the Respondents, this will improve the correlation between the applicants' specific needs and their entries into the seam zone. It should be clarified that said staff work has not yet come to fruition and its provisions, in their entirety, are not yet known."

10. The Petitioners filed a response to Respondents' preliminary response and on May 15, 2019 a hearing was held before the Honorable Court (Honorable Justices D. Barak-Erez, G. Karra and Y. Elron), at the conclusion of which the Court held as follows:

> During the hearing, many questions were raised with respect to the solution for plots that are not small but have numerous right

holders, all with attention to the principles applicable to the preservation of ties to these plots, as laid out in the jurisprudence of this Court.

On the recommendation of the Court, and in the specific circumstances of the case, subject to an undertaking on the Petitioner's part to comply with whatever terms prescribed for him, the Respondents agree to grant the Petitioner a "personal needs permit" pending submission of their updating notice, no later than August 15, 2019.

11. In the updating notices filed subsequent to the hearing, the Respondents provided updated information about Petitioner 2's family members who hold permits for agricultural cultivation of the plot that is the subject of the petition. The Respondents further apprised the Court of the results of the review conducted by the Civil Administration, which indicated:

> … [F]rom the beginning of 2019 until August 6, 2019, 633 public servant certificates were issued for the Israel Police listing the types of permits held by residents after residents with "seam zone" farming permits (farmer permit, farmer relative permit and agricultural work permit) were apprehended within the territory of the State of Israel.
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> As indicated by Respondents' officials, considering the prosecution's policy to prosecute illegal aliens only after the third time they are apprehended, and considering the total number of agricultural seam zone permits issued (to illustrate, in 2018 alone (up to November 2018), 1876 agricultural permits were issued - it should be noted that the above periods do not fully overlap but these figures suffice to illustrate the breadth of this practice). It emerges that illegal use of agricultural seam zone permits for the purpose of entering and working in Israel is widespread…"

12. The Respondents also advised of amendments made to the Seam Zone Standing Orders following the above administrative work (2019 amendment):

    a) One major amendment made in the Seam Zone Standing Orders concerns the extension of the validity of the permits: until the amendment different types of agricultural permits could be issued for a maximum period of two years. In the current amendment the period was extended to **three years**. A maximum period of three years was also established for a "personal needs" permit issued to applicants having proprietary ties to a plot, for which permit for commercial or agricultural cultivation may not be obtained, **in the absence of such need**.

    b) Another revision – introducing a seam zone "punch card permit" aimed at increasing the correlation between applicant's needs and the permit issued to them, all according to the general balancing between security

considerations and the needs of the population. A "punch card permit" means that from now on applicants shall receive an entry permit with a **finite number of entries** for each year (contrary to the previous situation enabling daily entry for two years under a permit for agricultural cultivation). **In addition, the maximum period of the permit was extended from two to three years**.

The number of the entries was defined in the 2019 amendment: "Quota of entries – checking the number of entries required for the landowner and the workers in each permit issued according to the agricultural need as per the Agricultural Staff Officer Table and considering the size of the land, type of crop and number of workers in the plot. However, with respect to the landowner, in no event shall the quota of entries fall below 40 entries per year."

13. Under the above circumstances the Respondents argued that said petition in its current version was no longer relevant and that Petitioner 2 should file a new application for an entry permit into the seam zone according to his needs. Petitioner's application shall be examined according to the provisions of the amended Standing Orders and the Petitioner may obviously exhaust his remedies with respect to any decision made in his matter.

14. The Petitioners filed a reply referring to the updates which had been provided by the Respondents and on October 23, 2019 the Honorable Court held as follows:

> "1. The petition shall remain pending at this stage.2. The Petitioners shall file within 14 days a new application for entry permit into the seam zone according to their needs and the revised provisions of the Standing Orders.
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> 3. The Respondents shall file an update notice regarding the decision made in Petitioners' application no later than January 22, 2020.
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> 4. Under the entire circumstances the permit issued to Petitioner 2 "for personal needs" shall be extended subject to the conditions specified in the panel's decision dated May 15, 2019, until an update notice is filed by the Respondents."

15. Meanwhile and before an update notice was filed by the Respondents, the Petitioners filed an application for "an interim injunction and an interim order" instructing the Respondents "to refrain from applying to landowners in the seam zone and their workers the new procedures, "Procedures and Guidelines on Entry into the Seam Zone", until a decision is made in the petition." After Respondents' response had been filed objecting to the application and following additional replies on behalf of the Petitioners, on December 8, 2019 the Honorable Court held that "after having reviewed the arguments of the parties, we did not find room to accept the application for an interim order. After an update notice is filed by the Respondents a decision shall be made on how to proceed with this case."

16. Following the above, on January 22, 2020, the Respondents updated as follows: "We were informed by Respondents' bodies that after Petitioner's application had been

checked a decision was made to grant the Petitioner permit for agricultural cultivation valid for three years (from January 19, 202 until January 17, 2023). The Petitioner may use the permit on week days from 05:00 through 19:00. The permit is limited to 120 entries into the seam zone. Notice of Respondents' decision was given to Petitioners' counsel on January 20, 2020 and the Petitioner was invited to collect the permit for the Israeli DCO."

The Respondents reiterated that: "The petition in its current version is no longer relevant in view of the fact that after the petition had been filed a new administrative decision was made and changes were introduced into Respondents' procedures being the subject matter of this petition (see and compare HCJ 9209/18 **A v. Ministry of Interior** (reported on the Judiciary Authority's Website, January 6, 2020). Hence, the petition in its current version should be deleted. The Respondents shall reiterate that in order to learn the effects and implications of the amended procedures the Respondents should be given the required time to absorb the new procedures and monitor them on an ongoing basis, all according to the arguments specified in the responses and notices which have been filed by the Respondents."

17. After the Petitioners had filed their reply to Respondents' update the Honorable Court held as follows: "Having reviewed the arguments of the parties we are of the opinion that in view of the entire circumstances and considering the changes which have occurred since the petition had been filed, the Petitioners should be allowed to file an amended petition which would be based on the current legal and factual infrastructure, and whose requested remedies would also be revised accordingly. The amended petition shall be filed within 21 days. Thereafter hearing in the case shall be scheduled before the panel or most of it, given staffing constraints. The Respondents shall file a response to the amended petition no later than 21 days before the date which shall be scheduled for the hearing."

18. On February 27, 2020 the Petitioners filed an amended petition and hence Respondents' current response.

General relevant background

The seam zone and the permits allowing entry thereto

19. Following acts of terror and attacks committed by Palestinian residents in the State of Israel and in the Israeli settlements located in the Judea and Samaria area after the surge of violent incidents in September 2000, the Government of Israel decided in the beginning of 2002 to build a security fence along the seam line between Israel and the Judea and Samaria area, preventing the free passage of Judea and Samaria residents to Israeli territories located west of the fence.

20. The route of the security fence was determined based on a wide array of considerations, primarily the security consideration which was accompanied by additional considerations, including topographic considerations. Considering the above, the route of the security fence and the border line of the Judea and Samaria area do not completely overlap, and in several areas the security fence was built inside the Judea and Samaria area, in a manner which caused Judea and Samaria areas to remain west of the fence, between the security fence and the border line of the Judea and Samaria area. These areas are referred to as the "seam zone".

21. Since there is no physical barrier preventing entry into Israel from areas in the region located in the "seam zone", and in view of the security threat embedded in the passage

of terrorists from the seam zone into the territory of the State of Israel, the military commander exercised the power vested in him according to the Order on Closed Areas (Judea and Samaria Area)(No. 34), 5727-1967, and declared the seam zone areas closed military zone. Entry into and exit from this area are prohibited without a permit.

22. The assumption underlying the declaration of the seam zone as a closed military area is that security threats are embedded in a situation allowing free entry and exit from the Judea and Samaria area into the seam zone and therefrom to Israel, with no further checking. Passage without a permit may be exploited for activity against the security of the State of Israel and its citizens.

23. According to security legislation, the declarations closing the area do not apply to permanent residents in the area. Hence, section 90(d) of the Order on Security Directives (Judea and Samaria) (No. 378), 5730-1970 stipulates that the presence of a permanent resident in the closed area does not constitute a violation of the order.

24. Along permanent residency certificates in the seam zone, various different permits are granted: "farmer's permit in the seam zone", "agricultural employment permit in the seam zone", "Trade permit in the seam zone", "personal needs permit" and the like. These permits enable Judea and Samaria residents to enter and stay in the seam zone for different purposes, according to their ties to the seam zone. The conditions established for granting the different additional permits balance between the security considerations which led to closing the area, and the obligation of the military commander to maintain reasonable access to Judea and Samaria areas located on the west side of the security fence and preserve to the maximum extent possible the proper fabric of life of the individuals residing in the seam zone and in the area adjacent thereto.

25. The lawfulness and reasonableness of the seam zone declaration and the provisions established as specified above, were examined by this Honorable Court in the framework of general and in principle petitions which had been filed in that regard (HCJ 9961/03 **HaMoked Center for the Defence of the Individual founded by Dr. Lotte Salzberger v. Government of Israel** (reported in the Judiciary Authority Website, April 5, 2011, hereinafter: the **permits judgment**), one of whose Petitioners – **HaMoked Center for the Defence of the Individual – is Petitioner 4 in the petition at hand.**

In the judgment, which was given on April 5, 2011 by the Honorable Justice Beinisch, the Honorable Deputy President Rivlin and the Honorable Justice Procaccia, the petition was denied, subject to the honorable court's comments regarding required changes in *the* relevant arrangements, holding, *inter alia*, as follows:

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

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

[Emphases added – the undersigned]

26. As aforesaid, the security needs requires, at this time, to prevent the uncontrolled entry of Palestinian residents into the seam zone, to protect the security of the area and the security of the State of Israel and its residents, and to protect the lives of the Israeli citizens in settlements located in the seam zone. The decision whether to issue a person a permit allowing entry and presence in the seam zone is a decision based on criteria which were established, as well as on the specific factual data of the specific person.

The procedures regulating the issue of the certificates and permits in the seam zone are specified in a collection of orders of the Civil Administration referred to as the "Seam Zone Standing Orders" (hereinafter: the "**Seam Zone Standing Orders or Standing Orders**"). The Standing Orders entrench and specify the rules concerning living in, entry into and presence in the seam zone, including the criteria for receiving the certificates and the permits, as well as the periods for which said certificates and permits are granted and the like. It should be noted that in the 2019 amendment of the Standing Orders the name was changed and it is currently referred to as the "Entry Procedure into the Seam Zone".

The Seam Zone Standing Orders – Entry Procedure into the Seam Zone

27. The Seam Zone Standing Orders has been in place for years and is amended from time to time according to need. With respect to the case at hand the relevant versions of the Standing Orders are those from 2014 and the 2017 and 2019 amendments thereof.

The 2014 Seam Zone Standing Orders

28. On January 14, 2014, an amended version of the Standing Orders was published, incorporating insights and lessons learnt from the actual implementation of the permit

regime, as well as the comments made by the Honorable Court in the petitions which had been filed in that regard at the time.

With respect to agricultural permits the Standing Orders stipulated that an agricultural permit shall be granted to an applicant who proves 'proprietary ties' to agricultural lands in the seam zone and specifically noting in his application that he has agricultural need to cultivate his lands (in the absence of security preclusion).

According to the 2014 Standing Orders, the chapter regulating applications for agricultural permit did not include an orderly procedure for examining the nature of the agricultural need, and whether the applicant did or did not in fact have an agricultural need to cultivate his land**, despite the fact that the permit was granted for agricultural needs**. An agricultural permit was granted to any applicant, in the absence of security preclusion, who had only presented to the Civil Administration evidence regarding proprietary ties to the plot, regardless of the size of the plot. As a result of the definitions of the 2014 Standing Orders, applicants who proved proprietary ties to a plot in a size of a **few single meters** have also received an agricultural permit, while it was clear that, in fact, they had no agricultural need to cultivate the plot. **It should be added that said agricultural permit enabled daily entry into the seam zone for two years**.

Consequently, the permits issued by the Civil Administration were inconsistent with the need of the applicants and the DCOs encountered difficulties in establishing clear criteria for the examination of the applications and the needs of the population. In this situation, in many cases a large and unreasonable number of permits were requested for the cultivation of miniscule plots in the size of a few single meters, significantly veering from the ostensibly required agricultural needs **and the door was opened for a wide and uncontrolled entry of Palestinian residents into the seam zone, in a manner which cannot be reconciled with the security purposes for which the fence had been erected**. Hence the need to amend the provisions of the Standing Orders, as was done in 2017.

A photocopy of the 2014 Seam Zone Standing Orders is attached and marked **R/1**.

The 2017 Seam Zone Standing Orders

29. In view of the above, on February 15, 2017, the Standing Orders were amended again. This amendment also implements lessons learnt from the application of the previous version from 2014. In the framework of the 2017 amendment, several chapters of the Standing Orders were amended including the first chapter of Chapter C, concerning "permits to Judea and Samaria residents for entry and presence in the seam zone permits for agricultural purposes in the seam zone" (hereinafter: **agricultural permits**). Section 1 of the sub-chapter provides that the nature of the permits (issued according to the provisions of said sub-chapter) is: "permits issued to Judea and Samaria residents for the cultivation of agricultural lands in the seam zone; thereafter the term "agricultural permit" is defined as permit "issued to a Judea and Samaria resident having proprietary **ties** to agricultural lands in the seam zone, whose purpose is to maintain the ties to these lands" (emphasis appears in the original – the undersigned); In addition, an "agricultural employment permit" is defined as a permit "issued to a Judea and Samaria resident employed by a farmer in his land **according to an application submitted by the farmer who is the applicant** for the cultivation of said lands (as stated in the original version – the undersigned).

30. In addition to the above, in the 2017 amendment several definitions and changes were added to the sub chapter, the main purpose of which is to establish clear criteria and assist the DCOs to issue permits befitting the needs the applicants, by introducing a

clear definition of the "agricultural need" and a definition or a rebuttable presumption, of the minimal size of a plot for the purpose of agricultural purposes:

- Plot size – was defined as "… the entire plot multiplied by the applicant's relative share in the ownership in the plot" (see section 5 of the first sub-chapter of chapter C (Standing Orders, page 21).

- Agricultural need – was defined as a "need to cultivate land for sustainable production of agricultural produce" (see section 11 of the first sub-chapter of chapter C (Standing Orders, page 21).

- In addition a rebuttable presumption was established regarding the minimal plot size presumed to require agricultural cultivation: "As a general rule, there is no sustainable agricultural need when the size of the plot for which the permit is requested is minuscule, not exceeding 330 square meters. However, in extraordinary circumstances and for reasons that shall be recorded, the head of the DCO may issue agricultural permit for a miniscule plot, as aforesaid (emphasis appears in the original) see section 13(a)(7)(b) of chapter C (Standing Orders, page 22).

  The current petition also concerns the above presumption although, as specified below, in view of the procedure's 2019 amendment its implications were significantly reduced.

- To complete the picture it should be noted that in section 6 of **the third sub chapter of chapter C**, concerning "**permit for personal needs in the seam zone**" (Standing Orders, page 28), criteria were established for determining the eligibility to receive a "personal needs" permit. The criterion established in sub-section C is the existence of "proprietary ties to the plot for which permit for agricultural or commercial needs may not be obtained." Accordingly, the Standing Orders introduces a specific procedure allowing access to land in cases (such as the case in the petition at hand and in other cases where agricultural permit may not be obtained since there is no actual need to cultivate the land, but proprietary ties to the land were substantiated.

  A photocopy of the 2017 Seam Zone Standing Orders is attached and marked **R/2**.

Entry Procedure into the Seam Zone - 2019

31. Against the backdrop of the above 2017 amendment, administrative work was carried out by the Civil Administration in the framework of which an examination was conducted indicating that from the beginning of 2019 and until August 6, 2019, **633** public certificates were issued for Israel Police specifying the types of permits held by residents, after residents holding "seam zone" permits for agricultural purposes (agricultural permit, permit for the family members of a farmer and permit for agricultural employment) were caught within the territory of the State of Israel.

    As informed by Respondents' bodies considering the prosecution's policy to commence proceedings against illegal aliens only after the **third time they are caught** and considering the total number of agricultural permits issued for the seam zone (for demonstration purposes only in 2018 (until November 2018) 1876 agricultural permits were issued – it should be noted that the above periods do not fully overlap but these data suffice to demonstrate the scope of the phenomenon) we can see that there is a widespread phenomenon of illegal use of agricultural permits to the seam zone for the purpose of entering and working in Israel. **We wish to remind that Petitioners 2-3**

have also admitted that they used the permit which had been granted to them to work within the State of Israel.

32. **Therefore and against the backdrop of the above occurrences we shall specify the changes made in the seam zone procedure which are also the subject matter of the petition at hand** – a major change in the current amendment of the procedure relates to the extension of the permits' validity: prior to the amendment, different types of agricultural permits could be issued for a maximum period of two years. According to the current amendment the period was extended to three years. A maximal period of three years was also established for a "personal needs" permit issued to an applicant having proprietary ties to a plot for which permit for commercial and agricultural cultivation purposes cannot be obtained, **in the absence of such need**.

    It should be noted that in fact the extension of the permits' validity from two to three years shall also make it easier for the Palestinian population which shall need to submit fewer and less frequent applications (particularly with respect to permits for personal needs) thus reducing bureaucracy as compared to the current situation.

33. Another major change relates to the correlation between the entry permits into the seam zone and the resident's defined agricultural need ("punch card permit"). Its purpose is to increase the correlation between applicant's needs and the permit granted to him all according to the general balancing between the security considerations and the needs of the population. A "punch card permit" means that from now on applicants receive an entry permit consisting of a finite number of entries for each year (contrary to the situation described above which enabled daily entries for two years). This, as aforesaid, **was accompanied by an extension of the maximal period of the permit from two to three years**. For this purpose the definition of the term "Number of Annual Entries" was added: "shall be determined according to the agricultural need, according to plot size and type of relevant crop, all according to the provisions of these Standing Orders and according to the Agricultural Staff Officer Table attached as Annex 4 to these Standing Orders.

    The number of the entries was also defined in the amendment: "Quota of entries – examination of the number of entries required for the landowner and workers in each permit issued according to the agricultural need. The examination shall be made according to the Agricultural Staff Officer Table and considering the size of the land, type of crop and number of workers in the plot. However, with respect to the landowner, in no event shall the quota of entries fall below 40 entries per year."

34. For this purpose the Agricultural Staff Officer prepared a table mapping all existing agricultural crops in the seam zone. In addition, following a professional examination, the number of entries that a landowner needs to cultivate a plot was established, with respect to each dunam. Accordingly, for instance, for one dunam of olives 40 entries per year are required to cultivate the plot. The table also specifies the number of work days required to cultivate the land. Accordingly, for instance, an applicant having proprietary ties to 4 dunam of olives can obtain an entry permit into the seam zone consisting of 160 entries per year for the purpose of cultivating his plot. And so on.

35. According to the above rule, the definition of the term 'Agricultural Permit' as it appears in the definitions part of chapter C (permits to residents of Judea and Samaria for entry and presence in the seam zone) Article A (permits for agricultural needs in the seam zone) of the procedures was also amended. The definition in its revised version provides as follows: "Issued to a Judea and Samaria resident having proprietary ties to agricultural lands in the seam zone, the purpose of which is to enable cultivation of the agricultural land according to the agricultural need arising from the size of the plot and the type of the crop, maintaining the ties to these lands. The number of permits and

scope of entries shall be established according to the provisions of these Standing Orders." (Emphasis appears in the original – the undersigned).

36. It should be clarified that the current amendment of the procedure does not revoke the rebuttable presumption concerning a plot smaller than 330 square meters according to which the general rule is that there is no sustainable need to cultivate a plot if the plot for which the permit was requested is of a miniscule size (330 square meters). The procedure refers applicants having proprietary ties to miniscule plots to the route of personal needs permit: "If the need arises to enter land of miniscule size, the resident may file an application for a "personal needs" permit, which shall be examined according to the provisions of Article C of this chapter." The current amendment to the procedure provides that permits for "personal needs" may be received for a maximal period of three years similar to the agricultural permits. Hence, the current amendment of the Standing Orders affects permits given for agricultural purposes as well as permits for "personal needs".

    Accordingly, the criteria for determining the eligibility for a "personal needs" permit were also amended: "c. Proprietary ties to a plot for which permit for commercial or agricultural cultivation may not be obtained. Permit issued due to proprietary ties to a plot according to this sub-section, shall be issued for a maximal period of three years. The number of entries shall be determined according to the specific needs of the applicant and according to the entire circumstances of the case."

    A photocopy of the 2019 Entry into the Seam Zone Procedure is attached and marked **R/3**.

37. It should also be explained that as a result of the 2019 amendment, in fact, the Respondents do not decline applications for agricultural permits concerning miniscule plots, and instead of referring the applicant to the route of filing a new application for a personal needs permit, as was done until now, the Respondents make things bureaucratically easier for the applicants and the applicants are issued a new permit granting them the minimal number of 40 entries per year.

38. To understand the professional explanation underlying the (rebuttable) presumption concerning the "miniscule size" of a plot and the adjustment of the entries in the "punch card permit" to the actual need to cultivate land, we shall provide a brief explain of current agriculture in the seam zone.

The seam zone as an agricultural area

39. It should be explained that the 2017 amendment to the Standing Orders being the subject matter of the petition, was based on a professional opinion of Agricultural Staff Officer from 2016. After the filing of the petition the opinion was re-examined by the Respondents and was updated in an opinion from January 2019. The Agricultural Staff Officer's table was added thereto presenting his professional position regarding the number of days that a farmer actually needs to cultivate his land, all according to the type of the crop and the size of the plot.

40. **We shall shortly elaborate on the characteristics of the seam zone as an agricultural area** based on the opinion of Agricultural Staff Officer at the Civil Administration: more than 95% of the agricultural areas in the seam zone consist of olive groves. In the remaining area small quantities of different crops may be found, such as: wheat, barely, tobacco, avocado, hyssop (za'atar), cucumbers and tomatoes.

41. The vast majority of the olive groves consist of mature trees. As such and given the planting method used in the area, each dunam of land consists of 10 trees, in the average.

42. In general, mature olive trees do not require constant tending. They grow and bear olives without artificial irrigation and are nourished from the ground. However, tending is required on certain dates, to preserve the tree's health and to produce maximum yield. These treatments include: pruning once annually, plowing once every two years and specific treatment in the event of disease or pests. Olives are picked once annually in the harvest season.

43. Olives grown in the seam zone are used for pickling and for the purpose of producing olive oil. The vast majority of the olive trees produce olive oil since only certain olives in each tree are suitable for pickling.

44. For the purpose of producing a small amount of one 16 kg jug of olive oil at least 64 kg of olives are required. Every mature olive tree in the seam zone, in the last ten years, yields about 16 kg of olives, in the average. Hence, in the average, at least 4 olive trees are required to produce one jug of olive oil per annum. Given the planting method I the seam zone, 4 trees "occupy" at least 400 square meters of land.

45. Of the average quantity of 16 kg per tree, only 2 kg, in the average, are suitable for pickling. Frequently, about a month before the harvest, the olives which are suitable for pickling are picked, hence reducing the number of olives used for the production of olive oil. Therefore, if the olives suitable for pickling are picked, an additional tree is required to produce a jug of olive oil.

46. Hence the assessment of professionals at the Civil Administration that there is no actual agricultural need to cultivate a plot of land the size of which is less than 330 square meters. However, this presumption may be rebutted by the applicant, provided he proves that he does indeed have an agricultural need to cultivate his land.

47. As aforesaid, the table prepared by the Agricultural Staff Officer maps all agricultural crops in the seam zone and establishes, following a professional examination, the required number of entries that a landowner needs to cultivate the plot with respect to each dunam. Accordingly, for instance, to grow olives on a one dunam plot, 40 entries per year are required to cultivate the plot. The table also specifies the number of work days which are required to cultivate the plot. Accordingly, for instance, an applicant having proprietary ties to 4 dunam of olives can receive an entry permit into the seam zone consisting of 160 entries per year to cultivate his plot. And so on.

    A photocopy of the 2016 and 2019 opinions of Agricultural Staff Officer is attached and marked **R/4**.

    A photocopy of the Agricultural Staff Officer's table from 2019 is attached and marked **R/5**.

Numerical data regarding the amount of agricultural permits granted throughout the years

48. To complete the comprehensive picture we shall present before the Honorable Court data regarding the scope of applications for agricultural permits filed with the Civil Administration throughout the years (commencing as of 2014) and the how many therefrom ere approved, all according to the relevant provisions of chapter C of the Standing Orders. We shall specify:

    In 2014, 4288 applications for agricultural permit in the seam zone had been filed, out of which 3221 were approved. **Namely, approximately 75% of the applications were approved**.

In 2015, 4347 applications for agricultural permit in the seam zone had been filed, out of which 2661 were approved. **Namely, approximately 61% of the applications were approved**.

In 2016, 9687 applications for agricultural permit in the seam zone had been filed, out of which 4311 were approved. **Namely, approximately 45% of the applications were approved**.

In 2017, 5,460 applications for agricultural permit in the seam zone had been filed, out of which 2,389 were approved. **Namely, approximately 44% of the applications were approved**.

In 2018, 7,187 applications for agricultural permit in the seam zone had been filed, out of which 1,876 were approved. **Namely, approximately 26% of the applications were approved**.

In 2019, 6,414 applications for agricultural permit in the seam zone had been filed, out of which 2,741 were approved. **Namely, approximately 42.7% of the applications were approved**. It should be added that in 2019 1,834 applications for agricultural employment had been filed out of which 1,467 applications were approved and 367 applications were denied and that 4,482 applications for agricultural permit for immediate family members were approved while 1,160 applications were denied.

To present the complete picture to the Honorable Court the Respondents shall attach to their response a detailed answer on their behalf to a freedom of information request submitted by Hamoked Center for the Defence of the Individual (Petitioner 4 in the petition at hand) in which information in Respondents' possession had been specified concerning the number of applications for different permits, including the number of applications which had been approved and the number of applications which had been refused and the reason for the refusal.

49. A photocopy of Respondents' answer to the freedom of information request is attached and marked **R/6**.

From the General to the Case at hand

Petitioners 1-2

50. According to the Civil Administration's computerized data, Petitioner 1, _____ Ta'meh, holder of ID No. _____, is 72 years old. She resides in Tulkarm, is a widow and has 6 children. Petitioner 1 holds a "senior citizen" permit allowing her entry into Israel.

51. Petitioner 2, Petitioner 1's son, resides in Kafin located in the Tulkarm region. He is about 38 years old, married and father of five children. Petitioner 2 **did not hold in the past a permit for agricultural cultivation in the seam zone**. The entry permits that Petitioner 2 received between 2007 – 2019 were permits for personal needs ranging between several single days to several months. In certain cases permits for personal needs were issued to Petitioner 2 for a year. Currently, following the 2019 Entry Procedure into the seam zone, Petitioner 2 was issued an **agricultural employment** permit in the seam zone valid from January 19, 2020 until January 17, 2023. Said permit is limited to 40 entries per year due to the miniscule size of the plot for which the permit had been requested. It is the permit being the subject matter of the amended petition. It should be noted that the Petitioner did not exhaust his remedies in this regard and did not file an appeal against Respondents' said decision.

52. To complete the picture and due to the importance of the issue, although the permit which had been issued to Petitioner 2 in 2017 (which was the subject matter of Petitioner's previous petition) is not the subject matter of the amended petition, the Respondent shall describe the main chain of events concerning the 2017 permit (all documents referred to by us below were attached to the previous petition which had been filed by the Petitioner and to Respondents' response – to avoid encumbering the court's file and considering the fact that the 2017 permit is not the subject matter of the petition at hand, the Respondents shall not attach again the documents specified below).

53. On August 3, 2017, Petitioner 2's application for an agricultural permit in the seam zone was accepted in the Efraim DCO. The application relates to land allegedly inherited by Petitioner 1 from her father. According to the probate order and the calculation of Petitioner's relative part according to the provisions of the Standing Orders defining how the size of the plot should be calculated, the Petitioner had inherited 288 square meters out of a 17.5 dunam plot which was divided by way of inheritance between Petitioner 1 and her siblings.

54. In October 2017, Petitioner 2's application for an agricultural permit was denied after it was established that the presumption whereby, as a general rule, there is no sustainable agricultural need to cultivate a plot smaller than 330 square meters, had not be rebutted by Petitioner 2.

55. After Petitioner 2 had filed an appeal against Respondents' decision he was summoned for an inquiry with the head of the DCO which was scheduled for January 21, 2018. According to the protocol of the inquiry with the head of the DCO, it was established that the Petitioner had no actual agricultural need to cultivate the plot, *inter alia*, considering the fact that the plot was smaller than 330 square meters. It was further explained to Petitioner 2 that he was entitled to receive a personal needs permit *in lieu* of the agricultural permit that did not befit his needs.

56. On February 5, 2018, a personal needs permit was issued to Petitioner 2 which was valid until May 1, 2018 (personal needs permits are usually issued for a three month period).

57. On February 21, 2018 Petitioner 2 filed an appeal against the decision of the head of the DCO.

58. In the framework of reviewing Petitioner's appeal and after several delays, on April 30, 2018, the plot being the subject matter of Petitioner's appeal was visited by the Petitioner and Civil Administration representatives. According to a summary of the visit dated May 17, 2018, the purpose of the visit was to check whether there was an agricultural need to cultivate said plot, in view of it being smaller than 330 square meters and the rebuttable presumption established in the provisions of the Standing Orders whereby there is no agricultural need to cultivate a plot smaller than 330 square meters. The summary reads as follows:

> "… 4. In the visit:
> a. Firstly, the resident said that he did not know which part was the exact part of his mother in the plot, and that he only knew what the general area of the entire plot had been before it was bequeathed to his mother by his grandfather, but also not accurately.
>
> b. The entire plot pointed at by the resident had about 35 large olive trees and it partly cultivated.
>
> 5. Considering the fact that the relative part of the mother in the entire plot consists of a limited number of trees (according to our estimate, about 10

trees) in view of the fact that he cannot point at its exact location, and since we are concerned with large trees, there is no need to cultivate the land all year round.
Hence, it seems that the resident did not satisfy the required burden of proof to substantiate his claim that under the circumstances there was agricultural need justifying the issue of permit to a farmer's family members for the plot at hand".

59. On June 18, 2018, the Petitioner filed another appeal in which requested, inter alia, to summon him to hearing before the appeals committee according to the provisions of the Standing Orders in that regard.

60. On November 21, 2018, the appeals committee heard Petitioner 2's application for an agricultural permit. It was argued in the hearing before the committee that notwithstanding Petitioner 2's argument in that regard, in fact there was no genuine agricultural need to cultivate the plot being the subject matter of Petitioner 2's application, let alone a daily need to cultivate the plot. It was also argued that another family member was cultivating the plot. **It was also argued before the committee that the Petitioner abused a permit which had been issued to him to visit family and used it to enter the territory of the State of Israel for work purposes**.

61. In addition, at the request of Petitioner 2, Petitioner 1 did not attend the hearing before the committee and therefore, the committee's members requested in a letter dated November 28, 2018, to receive from Petitioner 1 supplementary information with respect to three questions: 1) what is the need of Petitioner 2 to receive an agricultural permit to cultivate the plot 2) who was cultivating the plot as was argued by the Petitioner before the committee 3) is the plot cultivated by additional persons.

62. On December 5, 2018 Petitioner 1, through Petitioner 4, answered Respondents' letter and stated, inter alia, that "Mrs. Ta'meh [Petitioner 1 – my addition – the undersigned] requests that her son ____ receives an entry permit into the seam zone to maintain the family's ties to its land. Due to her advanced age and medical condition she is unable to do so…". It was further stated by Petitioner 1 that she did not know who of the extended family member had been issued an entry permit to cultivate the land and did not know who was the Petitioner referring to in this context and that none of her children had an entry permit for the purpose of cultivating the and maintaining the ties thereto.

63. It should be noted that in a later examination conducted by the Respondents it became evident that an agricultural permit had been issued to Petitioner 2's brother ____ Ta'meh between 2016-2018 and that an application from 2018 was denied due to insufficient documents. Another brother of Petitioner 2, _____ Ta'meh, had filed applications for agricultural permit which were denied due to insufficient documents in the applications.

64. After the supplemental material had been received from Petitioner 1, Respondents' decision was made on December 10, 2018 denying Petitioner 2's application for agricultural permit due to failure to prove agricultural need, as it was found that the plot being the subject matter of the application had a small number of mature olive trees and there was no agricultural need to cultivate then on a **daily** basis. In addition, Petitioner 2 entered the seam zone only once during the three months in which the permit was in force to cultivate the trees (according to the Petitioner his mother was sick at that time and he took care of her and therefore he did not go to the plot more often). The committee has also determined that Petitioner 2 could file an application for a personal needs permit according to his need to enter the seam zone.

65. As described above, in the framework of the previous petition which had been filed by Petitioner 2 and according to the decisions of the Honorable Court, the Respondents issued to Petitioner 2 a personal needs permit. It should be reiterated that according to the 2019 procedure a permit for **agricultural employment** in the seam zone was issued to Petitioner 2 valid from January 17, 2020 through January 19, 2023. Said permit is limited to 40 entries per year due to the miniscule size of the plot for which the permit had been requested and the type of the crop (olive trees). This is, as aforesaid, the permit being the subject matter of the amended petition. As specified above, the petition did not exhaust his remedies in this regard and did not file an appeal against Respondents' above decision.

Petitioner 3

66. Petitioner 3 - ____ 'Abadi, holder of ID No. _____ is 54 years old. He resides in Tura el-Gharbiyeh located in the Jenin region. He is married and has 6 children. It should be noted that there are no family relations between Petitioner 3 and Petitioners 1 and 2. Several seam zone permits had been issued to Petitioner 3 in the past. Among the more recent permits, he had a permit for agricultural cultivation in the seam zone which was in force from August 17, 2017 until August 16, 2019, a permit with unlimited entries as was accepted according to the 2017 Seam Zone Standing Orders.

67. For the sake of good order it should be noted that in an inquiry conducted to the Petitioner in 2013, after Respondents' computerized system detected regular and "suspicious" entries of the Petitioner into the seam zone, the Petitioner admitted that he had abused the permit issued to him in order to work in Israel.

68. Currently the Petitioner holds an entry permit into the seam zone valid from November 11, 2019 through November 9, 2021. The permit is limited for 40 entries per year due to the miniscule size of the plot for which the permit had been requested (181 square meters) and due to Petitioner's failure to prove the existence of actual agricultural need.

It should be noted that as informed by Respondents' bodies the permit was issued by mistake, a mistake which was discovered following inquiries conducted towards preparing the response to the amended petition. In said inquiry it became evident that the land for which the permit had been requested was not located in the seam zone, but rather in the Judea and Samaria area and therefore Petitioner 3 could access the plot without any limitation (plot 10 block 20388 Barta'ah).

A copy of the scheme of plot 10, block 20388, Barta'ah **R/7**.

It should be also be noted that in addition to the above permit for agricultural cultivation the Petitioner holds an employment permit in the seam zone valid from May 26, 2020 until August 26, 2020. This permit allows daily entries into the seam zone for a pre-defined employment with a pre-defined employer.

69. Petitioner 3 filed on November 11, 2019 an appeal against Respondents' said decision and on January 22, 2020 his matter was heard by the appeals committee. During the hearing before the committee Petitioner 3's counsel argued against the military commander's policy whereby agricultural permits with a limited number of entries are issued to farmers who have not substantiated a genuine need for unlimited entry during the year. Petitioner 3's counsel has also argued that Petitioner's need to regularly enter the area was required to maintain his ties to the land by preserving the custom whereby Petitioner 3 enters the land, makes coffee and in so doing preserves the family tradition. During the hearing before the committee it was clarified to Petitioner 3's counsel that the described need was a personal need rather than an agricultural need. In addition, Petitioner 3's counsel was asked how many additional entries were required by

Petitioner 3 to enter his plot of land per year and she replied as follows: "The appellant requests 365 entries per year. He wishes to access his land freely."

A copy of the protocol of the appeals committee dated January 22, 2020 **was attached to the amended petition P/18**.

70. On January 27, 2020, the decision of the chair of the appeals committee, Head of the Crossings and Seam-Zone Unit, was given whereby it was decided to extend the validity of Petitioner 3's permit for three years according to the Seam Zone Entry Procedure but to deny his application for a permit consisting of 365 entries per year, since he had not substantiated a genuine agricultural need. Instead, Petitioner 3 was issued a permit allowing 40 entries per year according to the miniscule size of the plot for which the permit had been requested.

As aforesaid, following inquiries conducted towards preparing this response it became evident that the land for which the permit had been issued to the Petitioner was not located in the seam zone. Due to an error, this fact has not been discovered earlier.

A copy of the decision of the chair of the committee dated January 27, 2020 **was attached to the amended appeal P/19**.

71. To complete the picture it should be noted with respect to Petitioner 3's siblings as follows: 1) his brother ____ 'Abadi, has permanent residency status in the seam zone; 2) his brother ____ 'Abadi, his application for permit was denied due to security preclusion; 3) his sister ____ 'Abadi, received on October 7, 2018 a permit for olive harvest in the seam zone valid until December 1, 2018; 4) his brothers ____ 'Abadi and ____ 'Abadi had filed applications which were denied on February 2, 2020, due to application with documents of land which is not located in the seam zone.

72. We shall now discuss Respondents' position as it relates to the arguments made in the amended petition and towards the hearing scheduled before this Honorable Court.

Respondents' Position

73. The Respondents shall argue that the petition as it relates to Petitioner 2 should be **dismissed *in limine***, mainly due to the fact that Petitioner 2 abused the permits which had been issued to him by entering Israel for working purposes using the permit which had been given to him for family visits, despite the prohibition against it (as aforesaid Petitioner 3 has also abused the permit which had been issued to him as was discovered in an inquiry conducted to him in 2013). The petition, as it relates to the specific remedies, should also be dismissed on its merits since there is no cause for the interference of this Honorable Court with Respondents' decisions.

74. Accordingly, the petition should also be dismissed on the "general level", since the amendments which were included in the 2017 and 2019 amendments to the Standing Orders are reasonable and proportionate and comply with the holding of this Honorable Court as it arises from the permits judgment.

We shall open our argument by referring in general to the amendments made in the procedure and their underlying rational. Thereafter we shall apply things to the Petitioners.

75. The legal framework for examining Petitioners' arguments was described in the permits judgment, in which it was, inter alia, held as follows:

> "…over the years a real connection was created in our judgments between the security fence issue (and the judgments rendered in

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

It has also been held by the Honorable Court that:

"… Therefore, it seems that the decision to close the zone and facilitate the passage thereto through specifically defined gates, and the establishment of a unique permit regime which enables the Respondents to employ individual supervision over those who enter and leave the zone and the application of a movement and traffic regime for the implementation of all of the above, have a rational connection to the declared security objective.

[Emphasis added – the undersigned].

76. Hence, this court approved the permit regime and recognized the need to enable the military commander to maintain effective supervision and control over the individuals entering the seam zone, in a bid to realize the purpose of the security fence.

77. In the framework of the permits judgment the court has also addressed arguments relating to agricultural permits and the population's need to cultivate their land. It should be noted that the Respondents do not dispute the harm caused to residents who cultivated their lands in the seam zone and that said harm requires the establishment of arrangements "which preserve, to the maximum extent possible, the fabric of life which preceded the declaration, subject to security needs which require same" (paragraph 33 of the permits judgment), as was held by this Honorable Court.

78. The state in its arguments in the permits judgment has already emphasized the concern that the application of a liberal policy in this context would be abused, and things were described by the Honorable President D. Beinisch in the permits judgment as follows: **"… It seems that the state is also aware of the fact that a significant decline has occurred in the issuance of agricultural permits from the commencement of the permit regime. It is argued that this has occurred, due to the concern that the liberal policy which was allegedly applied in the past to the issuance of entry permits into the zone would be abused. Therefore, as specified above, it was decided that in lieu of permanent agricultural permits, the family members and the workers would be issued temporary working or agricultural permits, <u>according to the specific needs of the farmer</u>**." [Emphasis added – the undersigned]

Accordingly, Respondents' policy whereby permits for agricultural needs would be issued **<u>according to the specific needs of the farmer</u>** was recognized and approved by this Honorable Court.

79. The Honorable President Beinisch has also held that:

"Under the circumstances at hand, *prima facie*, it indeed seems that the Respondents acknowledge the residents' right to continue to

> farm their lands and seek to enable those who have a connection to lands in the seam zone to continue to farm them, by enabling family members and other workers to assist them with their work. In addition, special crossings exist the purpose of which is to regulate the entry into the zone – some of which are adapted to agricultural activity according to the seasonal needs. It seems to us that this arrangement gives reasonable solution which minimizes the violation of the rights of the farmers, and we assume in our said determination that Respondents' declarations concerning the importance of giving proper solutions for the needs of the framers in the Area with real substance are filled by them with real substance. However, and as specified above, we cannot deny the possibility that in specific cases severe injury is caused to the human right to livelihood and land of Palestinian residents who cannot adequately farm their lands or who encounter other access difficulties, and the Respondents, on their part do not take adequate measures to minimize said injury. As stated above, these cases may be reviewed within the framework of 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.
>
> [Emphasis added – the undersigned].

80. Hence, we should examine whether the recent amendments to Respondents' procedures (the 2017 and 2019 amendments) meet the balancing requirement as outlined in the permits judgment – did the Respondents apply in their procedures the balancing between the needs of the population to cultivate their land and the security interest underlying the erection of the fence.

81. As extensively specified below the Respondents shall argue that the procedures being the subject matter of the petition (the definition of "miniscule plot" and the introduction of a "punch card permit") provide a solution to the population's **agricultural needs**, on the one hand, and to the **security needs**, on the other, while it was made clear to the Respondents that the liberal policy which had been applied prior to said amendments was abused by permit holders, including Petitioners 2 and 3, who abused the permits and used them to enter the State of Israel.

The 2017 amendment – the definition of "miniscule plot"

82. In the 2017 amendment to the Standing Orders a rebuttable presumption was added to the first sub-chapter of chapter C of the Standing Orders concerning permits for agricultural needs in the seam zone whereby: "As a general rule, there is no sustainable agricultural need when the size of the plot for which the permit is requested is minuscule, not exceeding 330 square meters." According to the Petitioners said definition disproportionately violates the landowners' right to property, harms their livelihood and is contrary to international law and Israeli judicial precedent. The above,

according to the Petitioners, particularly in view of the definition set out in the 2017 standing order for the term "Plot Size".

"Plot size" was defined as follows: "… the entire plot multiplied by the applicant's relative share in the ownership in the plot" (see section 5 of the first sub-chapter of chapter C (Standing Orders, page 21).
"Agricultural need" – was defined as a "need to cultivate land for sustainable production of agricultural produce" (see section 11 of the first sub-chapter of chapter C (Standing Orders, page 21).

83. The Respondents shall argue that there is no basis for Petitioners' argument whereby the above amendments to the Standing Orders violate Petitioners' property rights, their livelihood or other rights, and that in general we are not concerned with an application of a policy the purpose of which is to limit the grant of permits, but rather, its purpose is to improve the correlation between the permit which was granted and the applicant's actual needs, in a bid to enhance the military commander's ability to supervise and control those entering the seam zone while providing solution to the needs of the population (we shall note once again that said amendment was not revised in the procedure's 2019 amendment and the above definitions remained in force).

According to the Petitioners the military commander should grant a permit for **agricultural cultivation** to anyone requesting it even if the applicant **does not have an actual need to cultivate his land** and the applicant's sole desire is to maintain his ties to his lands, to preserve "the deep connection locals have to their lands", as stated by the Petitioners. The Respondents shall argue that there is no merit to Petitioners' argument – in view of the fact that the Respondents enable the preservation of the connection to the land for non-agricultural needs, by giving the proper permit thereto – **permit for personal needs**.

84. Moreover, it should be recalled that when an entry permit into the seam zone is granted, balancing is made between the security considerations which led, as aforesaid, to the closure of the area, and the obligation of the military commander to maintain reasonable access of Palestinian residents to the areas of the zone, **each one according to his needs**. It should also be remembered that there is no physical barrier preventing entry into Israel from "seam zone" areas, with all security risk implications embedded therein. Moreover, the Respondents do not dispute the need to give proper solution to the needs of the Palestinian farmers whose lands are located in the "seam zone". **However, it does not mean that the Respondents should issue permits for agricultural cultivation to individuals having no need to cultivate the plots with respect of which they request permit for agricultural purposes**. As aforesaid, plots located in the "seam zone" may be entered into and applicants' ties to the land may be maintained through other permits providing a solution to this need such as the permit for personal needs.

85. As specified above, in the past the Standing Orders did not expressly define an "agricultural need" and different provisions were not established in connection therewith. It was sufficient for an applicant to present to the Civil Administration proof regarding his proprietary rights in the plot even if the plot consisted of a few single meters, and to check in the permit application form that he had agricultural need, to receive an agricultural permit (in the absence of security preclusion). The Respondents did not consider the size of the plot and whether the applicant did in fact have a need to cultivate his land. And note well, the agricultural permit which was granted is long term permit allowing continuous entry of the permit holder over a period of two years into the "seam zone" on a daily basis.

Consequently, thousands of Palestinians held agricultural cultivation permits while they were not farming their lands, and it is therefore clear that they held

permits allowing daily entry into the "seam zone" unlawfully and without need, which may *prima facie* increase the ability to abuse the permits in a bid to unlawfully enter Israel.

The abuse of permits is also demonstrated in this case, as Petitioners 2-3 admitted that they had abused the permits granted to them and despite the prohibition against it they have entered the State of Israel for work purposes. It seems that things speak for themselves. It should also be noted that according to Respondents' experience the permits are abused numerous time for the purpose of illegally entering Israel alongside veering from the conditions set forth in the permit. The numerical data of this phenomenon were clarified in an examination carried out in that regard by the Civil Administration in the framework of the administrative work which led to the 2019 amendment. Said data, as specified above, point at a widespread phenomenon of permit abuse, and that the liberal policy which was applied until now, has been *prima facie* abused for the purpose of illegally entering Israel.

86. Moreover, the provisions of the 2014 Standing Orders did not give DCO personnel adequate tools to examine the permit applications for agricultural needs and to adjust the need to the type of permit granted. The Respondents wanted to change this situation in 2017 by introducing clearer provisions for the definition of plot size, the definition of agricultural need and by establishing a **rebuttable** presumption regarding the size of the plot which ***prim facie*** requires agricultural cultivation.

87. It should be further explained that the "miniscule" plot size of 330 square meters was established based on the opinion of the Agricultural Staff Officer at the Civil Administration. According to the opinion which was attached as R/4 and which characterizes the seam zone as an agricultural area, the vast majority of the agricultural areas in the "seam zone" (more than 95%) are olive groves consisting of mature trees. According to the professional assessment of the Agricultural Staff Officer, generally, mature olive trees do not require constant tending. They do not need artificial irrigation and are nourished from the ground. However, "tending" is required on certain dates: pruning once annually, plowing once every two years and specific treatment in the event of disease or pests and obviously in the harvest season.

Hence, and based on the Civil Administration's understanding that there is a difficulty in setting a "firm" period for permits which are issued for the harvest season, the 2017 amended Standing Orders provide that the validity of the permits for the harvest season shall be determined each year on the basis of a seasonal estimate concerning harvest dates and they shall no longer be granted for a "firm" period as was the case previously (see section 16 of Chapter C of the Standing Orders, page 23 of the Standing Orders).

88. The opinion of the Agricultural Staff Officer also provides that according to his examination of the acceptable uses of olives in the seam zone and the quantity of olives required for each use, the assumption is that sustainable agriculture may not be upheld on an area smaller than 330 square meters. This does not mean that a person applying for an agricultural permit for a plot smaller than 330 square meters shall not be able to receive it under any condition, but that he shall have to prove that he has an actual need to cultivate the plot. To the extent the existence of such need is proved the applicant shall be able to receive an agricultural permit. **Namely, the miniscule size of the plot as determined by the Agricultural Staff Officer constitutes a rebuttable presumption**. As aforesaid, to rebut the presumption, the only thing that should be done is to present proof that there is an actual need to cultivate the plot.

And note well, there is no basis for Petitioners' argument that there contradictions between the opinions of the Agricultural Staff Officer. A review of the opinions as a

whole, these are supplementary opinions which emphasize the professional principal according to which sustainable agriculture may not be upheld in miniscule plots smaller than 330 square meters. In addition, a review of the opinions and of the Agricultural Staff Officer's tables from 2016 as compared to 2019 shows that number of defined entries for the purpose of agricultural cultivation were extended in a manner benefitting farmers and their employees. With respect to landowners as compared to workers employed on land, a larger quota of days was established by the Agricultural Staff Officer in favor of landowners.

89. While, as aforesaid, the determination of the miniscule size of a plot was made on the basis of a professional opinion, alongside the determination that the size of the plot is a rebuttable presumption, these are reasonable decisions which should not be interfered with by this Honorable Court, all according to case law of this Honorable Court regarding the scope of judicial review of matters in which the administrative authority has special expertise such as this case (see and compare for this purpose, HCJ 2435/20 **Yedidya Leventhal Advocate v. Binyamin Netanyahu, Prime Minister** (reported in the Judiciary Authority's Website, given on April 7, 2020)). Furthermore, it cannot be said that the above presumption violates property rights or livelihood rights of Palestinians, since if the plot is used to provide a living, namely, there is a need to cultivate the land, the applicant shall receive an agricultural permit. It should also be added that according to Respondents' policy, in the harvest season, taking place each year in the fall, the permit policy is broader and in said period members of the extended family (including family members who do not receive agricultural permits during the year) are allowed to enter the seam zone.

    Accordingly, the applicant may maintain his ties to the land, to the extent this is his need, through other permits (personal needs permit) rather than through a permit which is intended to provide a daily solution to persons cultivating their land. In that regard reference is made again to the relevant sub-chapter governing permits for "personal needs", designating a special category for individuals who have proved proprietary connection to the plot for which, in the absence of need for agricultural cultivation, permit for agricultural or commercial needs may not be obtained.

90. **In addition to all of the above, the Respondent wish to point out that in a situation in which ownership of agricultural plots is shared by multiple owners, there is no preclusion, that all heirs request that one heir or a small number of heirs cultivate the plot in its entirety for all heirs. Under these circumstances the heirs who were "chosen" by their family members to cultivate the plot in its entirety shall receive an agricultural permit (in the absence of security preclusion) which shall enable to cultivate the plot and the other heirs wishing to maintain their ties to the land may receive permits for personal needs, providing a solution to all such needs**.

91. The Respondents shall argue that this arrangement reconciles with the judgment of the Honorable Court and Respondents' declarations made before this Honorable Court. It should be explained that Petitioners' reference to HCJ 5078/11 **Abu Zer v. The Military Commander for the West Bank Area** (reported in the Judiciary Authority's Website, July 27, 2011) has no merit since in said case Petitioner had been totally prevented from entering his grandfather's plot, while in the case at hand the Petitioner was granted an entry permit for personal needs and he can enter the plot. However, the Petitioner wishes to receive an agricultural permit.

    The Respondents shall argue that the decision concerning the type of permit which would be held by the applicant is a decision which is made by the military commander at his discretion according to the balancing made in the Standing Orders between the security aspect and the needs of the population. In view of the fact that the Petitioner can realize the need that he and his mother declared of, preserving the connection to the

land, through a permit for personal needs, there is no room for the Honorable Court's interference with the **type** of permit issued to the Petitioner.

92. It should also be added that there is no connection between the size of the miniscule plot and the ability of Palestinians to be assisted by their children and by workers in cultivating the plots – the only thing which was added is a rebuttable presumption that there is an agricultural need justifying the grant of permits to worker to work on the plot and to children to enter the plot for cultivation purposes. As aforesaid, children can enter the plot and preserve their ties to the land, ties that do not necessarily require cultivation, through other permits.

93. It should also be explained that the amended provisions of the Standing Orders do not violate the right to property since, *ab initio,* the applicants did not have the right to receive a permit for agricultural cultivation in view of the fact that they did not have an actual need to cultivate the plot. As aforesaid, the above does not prevent the applicants from filing an application which shall provide a solution to their need to maintain ties to the land through a permit for personal needs.

94. According to the above, Petitioners' arguments regarding considerations of "profitability" or the "value" of the crops should be denied – with all due respect the application filed with the military commander cannot be severed from permit issued – the question does not relate to the profitability of olive growing as opposed to other crops. The opinion of the Agricultural Staff Officer is a professional opinion presenting a professional position with respect to the number of days which are required for agricultural cultivation, according to the size of the plot and type of crops grown thereon. In any event, considerations of profitability are not considered by the military commander and the considerations underlying the decision of the military commander are considerations relating to the needs of the applicant balanced against security needs.

The above does not mean that the military commander does not recognize the need of the Palestinians to maintain their ties to their lands, but maintaining the ties does not mean granting a daily cultivation permit for a plot that, in fact, the crops grown thereon do not require daily cultivation according to the professional determination of the Agricultural Staff Officer. Cultural ties can be maintained through other permits whose purpose was defined as such – permit for personal needs.

Accordingly, in the case at hand it is only clear that Petitioner 3 has no **actual** need to cultivate a 181 square meter plot having a small number of olive trees, **365 days per year** as requested by him. And note well, Petitioner 3 does not argue that he cultivates the entire plot, but his request is to maintain his ties to his lands "freely" as he perceives it. The Respondents shall argue that in fact, the meaning of Petitioner 3's application for entry "365 days per year" is **revocation of the permit regime in its entirety**, a regime which has long been approved by this Honorable Court and there is neither room nor justification to revisit the security justifications for the erection of the separation fence and the permit regime.

95. With respect to the definition of the term "Plot Size": the Petitioners argue that according to the way many agricultural lands are customarily passed down in the west bank, the land is not divided into specific parts when it is passed down to the heirs, but rather, the entire plot is jointly owned by all heirs. This custom, according to the Petitioners, does not reconcile with the definition of "Plot Size" in the Standing Orders whereby the size of the plot is calculated according to the relative part of the applicant in the plot. This calculation method, according to the Petitioners, increases the number of "miniscule" plots to the extent that in the future "all lands in the seam zone shall be deemed lands not requiring cultivation".

The Respondents shall reiterate their argument that the determination of the size of a "miniscule plot" does not mean that an applicant showing an agricultural need to cultivate his land shall not receive an agricultural permit. He is only required to show that he has such an agricultural need. To the extent such need exists, an applicant having property rights in a plot smaller than square meters shall also receive an agricultural permit. The Respondents shall argue that it is a proportionate and balanced arrangement.

96. It shall also be explained that the inheritance writs determine the relative share of each heir in the entire plot, not the Respondents. According to the Petitioners it should be determined that all heirs have proprietary rights with respect to the entire plot – namely and for demonstration purposes, a 20 dunam plot inherited by 10 siblings, each sibling has proprietary connection to all 20 dunam. Thereafter, and assuming that all siblings bequeath their share to their children (30 children), all 30 children have proprietary connection to said 20 dunam and so on, generation after generation. In fact, it makes no sense and is practically impossible. All said 30 children cannot cultivate the plot. Therefore, there is also no justification to give all these children a permit which is designed to provide solution to an actual agricultural need to cultivate the plot.

97. We shall emphasize again that the Respondents are aware of the importance of maintaining the ties of Palestinians to their lands which are located in the "seam zone". However, having said that, there are also security considerations which justify the policy of granting permits **according to needs**. Hence, a permit enabling long term and daily entry which is granted for a specific need should not be granted if the applicant does not actually have said specific need. The Respondents enable to realize and maintain the ties through other, more limited, permits enabling closer supervision and control by the military commander alongside the realization of applicant's need.

98. As aforesaid, since there is no need for actual agricultural cultivation no harm is caused as a result of Respondents' failure to currently grant a permit for an non-existent need according to the amended provisions of the 2017 Standing Orders. Moreover, the Respondents shall argue that applicants' proprietary rights were not violated since the Respondents do not sweepingly prevent them from entering the lands, but rather check whether an agricultural need exists and if no such need exists; entry to the land is facilitated through a different permit.

The 2019 amendment

99. It should be reminded once again that against the backdrop of the administrative work mentioned above and earlier amendments to the Standing Orders, the Civil Administration conducted an examination according to which from the beginning of 2019 until August 6, 2019, Israel Police **633** public certificates were issued for Israel Police specifying the types of permits held by residents, after residents holding "seam zone" permits for agricultural purposes (agricultural permit, permit for the family members of a farmer and permit for agricultural employment) were caught within the territory of the State of Israel.

As informed by Respondents' bodies considering the prosecution's policy to commence proceedings against illegal aliens only after the **third time they are caught** and considering the total number of agricultural permits issued for the seam zone (for demonstration purposes only in 2018 (until November 2018) 1876 agricultural permits were issued – it should be noted that the above periods do not fully overlap but these data suffice to demonstrate the scope of the phenomenon) we can see that there is a widespread phenomenon of illegal use of agricultural permits to the seam zone for the purpose of entering and working in Israel. **We wish to remind that Petitioners 2-3**

have also admitted that they used the permit which had been granted to them to work within the State of Israel.

100. We shall emphasize once again the importance of said data to the case at hand – firstly, when permit to enter the seam zone is granted, balancing is made between the security considerations which led to the closure of the area and the obligation of the military commander to maintain reasonable access of Palestinian residents to the area, **each one according to his needs**. Secondly, there is no physical barrier preventing entry into Israel from "seam zone" areas with all security risk implications embedded therein. Moreover, the Respondents do not dispute the need to give proper solution to the needs of the Palestinian farmers whose lands are located in the "seam zone". **However, it does not mean that the Respondents should issue permits for agricultural cultivation to individuals having no need to cultivate the plots with respect of which permit for agricultural purposes is requested and the solution is provided through other permits befitting applicants' needs**.

101. Hence and against the above backdrop we shall discuss the changes made as a result of the current administrative work on the Seam Zone Standing Orders - one major revision in the current amendment of the Standing Orders concerns the extension of the validity of the permits: currently, different types of agricultural permits may be issued for a maximum period of two years. In the current amendment the period was extended to **three years**. A maximum period of three years was also established for a "personal needs" permit issued to applicants having proprietary ties to a plot, for which permit for commercial or agricultural cultivation may not be obtained, **in the absence of such need**.

It should be noted that in fact the extension of the permits' validity from two to three years shall also make it easier for the Palestinian population which shall need to submit fewer and less frequent applications (particularly with respect to permits for personal needs) thus reducing bureaucracy as compared to the current situation, bureaucracy of which the Petitioners have complained in their petition.

102. Another major revision relates to the correlation between the entry permits into the seam zone and the defined agricultural need of the resident ("punch card permit"). We shall explain once again that until the 2017 amendment of the Standing Orders, the Standing Orders provided that permit for agricultural cultivation would be granted to any applicant, in the absence of security preclusion, who had proved proprietary ties to a plot, regardless of its size. No orderly procedure was in place for examining the nature of the agricultural need, and whether the applicant did in fact have an agricultural need to cultivate his land. Consequently, the Respondents encountered many cases in which applicants filed with the DCO permit applications for agricultural cultivation with respect to miniscule plots (at times the miniscule plot consisted of 20 square meters). In other cases multiple permits were requested for the same miniscule plot, and there were cases in which dozens of persons requested at the same time agricultural permit for the same plot, regardless of any actual connection to the specific agricultural need.

Consequently, applicants who proved proprietary ties to a plot in a size of a **few single meters** have also received an agricultural permit, while it was clear that, in fact, they had no agricultural need to cultivate the plot.

103. The current amendment of the Standing Orders, in which seam zone "punch card permits" were introduced for the first time, is aimed at increasing the correlation between applicant's needs and the permit issued to them all according to the general balancing between security considerations and the needs of the population. A "punch

card permit" means that from now on applicants shall receive an entry permit with a **finite number of entries for each year** according **to the size of the plot and type of the crops they wish to cultivate. In addition, the maximum period of the permit was extended, as aforesaid, from two to three years**.

For the avoidance of doubt it should be noted that the "punch card permit" does not replace the entries which farmers may require in the harvest season and the Respondents continue to apply their policy which provides broader solutions according to needs in the harvest season. It should also be emphasized that in cases in which a resident exhausts his "punch card permit" quota of entries and needs a few more days, he can file an application with the DCO in a bid to increase the number of entries.

It should be noted that considering the above the definition of 'Agricultural Permit' in the definition section of chapter C has also been amended (permits to Judea and Samaria residents for entry and presence in the seam zone) Article A (permits for agricultural needs in the seam zone). The definition in the revised version provides as follows: "Issued to a Judea and Samaria resident having **proprietary ties** to agricultural lands in the seam zone, the purpose of which is to enable cultivation of the agricultural land according to the agricultural need arising from the size of the plot and the type of the crop, maintaining the ties to these lands. The number of permits and scope of entries shall be established according to the provisions of these Standing Orders." (Emphasis appears in the original – the undersigned).

104. The above definition emphasizes the purpose of the permit – in the 2017 Standing Orders the purpose was defined as "maintaining the ties". The 2019 amendment whetted and emphasized that the purpose of the agricultural permit was to "enable cultivation of agricultural land, according to the agricultural need arising from the size of the plot and the type of the crop…".

The definition of the term "Number of annual entries" was also added – "Shall be determined according to the agricultural need, according to plot size and type of relevant crop, all according to the provisions of these Standing Orders and according to the Agricultural Staff Officer Table attached as Annex 4 to these Standing Orders.

The 2019 amendment also provides as follows: "Quota of entries – examination of the number of entries required for the landowner and workers in each permit issued according to the agricultural need. The examination shall be made according to the Agricultural Staff Officer Table and considering the size of the land, type of crop and number of workers in the plot. However, with respect to the landowner, in no event shall the quota of entries fall below 40 entries per year."

The introduction of "punch card permits" consisting of a finite number of entries according to the specific agricultural need, considering the type of the crops and size of the land – enables to issue permits for the realization of the agricultural need, on the one hand, while increasing the supervision and control by the military commander and encumbering permit abuse, as it does not enable daily entry, on the other.

105. To evaluate the agricultural need the Agricultural Staff Officer prepared a table mapping all existing agricultural crops in the seam zone. In addition, following a professional examination, the number of entries that a landowner needs to cultivate a plot was established with respect to each dunam. Accordingly, for instance, for one dunam of olives 40 entries per year are required to cultivate the plot. The table also specifies the number of work days required to cultivate the land. Accordingly, for instance, an applicant having proprietary ties to 4 dunam of olives can obtain an entry permit into the seam zone consisting of 160 entries per year for the purpose of cultivating his plot. And so on.

It should be noted that according to Petitioners' argument one can get the impression that any person wishing to receive permit for the cultivation of olive trees shall only receive a "punch card permit" for 40 entries per year, but this is not the case. It should be noted that said 40 entries refer to **a plot which does not exceed one dunam**. According to the Agricultural Staff Officer table, if the resident has a plot which exceeds one dunam the quota of entries shall be determined accordingly. Accordingly, for instance, a resident having three dunam of olive trees shall receive an entry permit into the seam zone consisting of 120 entries per year and 360 entries for the entire period (three years). Following this example it should be noted that a Palestinian resident who grows olive trees and whose plot exceeds eight dunam, shall receive permit consisting of unlimited number of entries.

It is evident that professional correlation is created by the Agricultural Staff Officer table between the size of the plot, the type of the crops and the actual days needed to cultivate the plot in an optimal manner. It should be added that Petitioners' entire arguments alleging that the number of entries established by the Agricultural Staff Officer is insufficient for agricultural cultivation were merely argued without any factual or professional basis and for this reason only they should be rejected.

Moreover and according to case law of this Honorable Court the binding position in this context is the professional position of the competent body acting on behalf of the authority (see and compare on this issue, among many, HCJ 1554/95 **"Shocharei Gilat" Association through the manager of the program, Ms. Shlomit v. Minister of Education, Culture and Sports**, IsrSC 50(3) 200 (1996), paragraph 30 of the judgment of Justice T. Or).

106. It should also be noted that the opinion of the Agricultural Staff Officer was prepared in a manner benefitting the farmers and the number of cultivation days which was established in the opinion is on the higher end of the professional evaluation. Alongside the table of the Agricultural Staff Officer, a minimal quota of entries was established, according to which a permit consisting of less than 40 entries into the seam zone shall not be issued. This provision is also aimed at benefitting the Palestinian residents such that in cases in which the residents have miniscule plots, the number of entries included in the permit issued to them shall not be calculated in relation to the size of the plot but shall rather be generously given even beyond the agricultural need, if any.

107. It should be clarified that the current amendment of the Standing Orders does not revoke the rebuttable presumption concerning a plot smaller than 330 square meters whereby, as a general rule, there is no sustainable agricultural need when the plot with respect of which the permit is requested is of a miniscule size (330 square meters) (it should be noted that in the 2019 amendment, due to a mistake, the definition of "miniscule plot" was attributed only to applications for agricultural employment permits. As aforesaid it is a mistake and the definition of miniscule plot applies to all applications filed under this chapter).

However, to date, in view of the opinion of the Agricultural Staff Officer, the above presumption loses force in view of the fact that currently the Respondents do not deny applications of applicants claiming to have proprietary ties to a miniscule plot who did not prove agricultural need, but grant them permits allowing 40 entries (the minimal number of entries) per year.

108. According to the Standing Orders applicants having proprietary ties to miniscule plots are referred to the route of personal needs permit: "If the need arises to enter land of miniscule size, the resident may file an application for a "personal needs" permit, which shall be examined according to the provisions of Article C of this chapter." The current amendment of the Standing Orders provides that permits for "personal needs" may be received for a maximal period of three years similar to the agricultural permits. Hence,

the current amendment of the Standing Orders affects permits given for agricultural purposes as well as permits for "personal needs". It should be reiterated that in a bid to avoid burdensome bureaucracy, the Respondents do not insist on the above and in lieu of declining applications for agricultural permits while the applicant has land of miniscule size and actual agricultural need has not been substantiated, the Respondents issue to said applicants permit consisting of the minimal number of entries per year (40), and obviously, if the applicant is of the opinion that he has an increased need compared to that, he may present said need.

Accordingly, the criteria for determining the eligibility for a "personal needs" permit were amended: "c. Proprietary ties to a plot for which permit for commercial or agricultural cultivation may not be obtained. Permit issued due to proprietary ties to a plot according to this sub-section, shall be issued for a maximal period of three years. The number of entries shall be determined according to the specific needs of the applicant and according to the entire circumstances of the case."

It should also be explained that permit for personal needs is a more dynamic permit in nature and therefore if the resident has used up, during the year, all entries given to him under the permit, there is no preclusion preventing the resident from filing an additional permit application, all according to his actual needs.

109. The Petitioners argue further in their amended petition that the minimal number of entries currently given to residents having miniscule plots, is lower than permits which had been issued in the past, for instance in the harvest season, which were valid for three months. The Respondents shall argue that it is an erroneous argument stemming from the failure to distinguish between the permit's "validity" and the entries into the seam zone. Permit issued for a three month period does not mean that the applicant has a daily need to enter the seam zone (in this context it should be noted that said daily use often results in the abuse of such permits and entry into Israel for work purposes.

The issue of long term permits is made to accommodate the Palestinian residents and to facilitate the work of the DCO by reducing the bureaucratic procedure and the need to file frequent applications. The entry procedure into the seam zone from 2019 extended the validity of entry permits into the seam zone for agricultural purposes and for personal reasons precisely for the above reasons and accordingly each such permit is valid for up to three years (as opposed to the past when permits for personal reasons were valid up to a maximum period of three months). As aforesaid, it does not mean that any resident receiving entry permit into the seam zone has a daily need to enter the seam zone.

110. The Respondents shall argue that all changes in the procedures which were described above conform to the holdings of this Honorable Court in the permits judgment which recognized the need to balance between the needs of the population and security needs. After the Respondents have discussed in length the situation which preceded the amendment of the procedures alongside the scope of the abuse of said permits, there can no longer be any doubt that the main purpose of the amendments is a security purpose in light of which a better correlation should be attained between the need underlying the application and the permit which is granted.

Said security purpose was expressly approved by this Honorable Court as aforesaid.

111. It should also be clarified that contrary to Petitioners' arguments it is not practically possible to satisfy the above security needs by revoking the permits of applicants breaching the conditions of use of said permits (such as Petitioners 2-3). It should be noted that if we acted as proposed by the Petitioners the Respondents should not have issued to the Petitioners any permit whatsoever and Petitioners' permits should have been revoked.

112. The Respondents shall also argue that the procedures being the subject matter of the petition are reasonable and proportionate as was broadly explained above. The procedures do not prevent entry of Palestinians into the seam zone but rather increase the correlation between the actual needs of the applicant and the permit which is granted, based on a professional opinion which had examined the actual needs of the farmers. In view of the fact that there is a correlation between the permit which is granted and applicant's declared need, their rights are not disproportionately violated, as argued by the Petitioners.

Furthermore, clearly a resident who used up the entries granted to him, can re-apply to the Civil Administration explaining his need for additional entries into the seam zone and his application shall be reviewed according to the circumstances of the case.

113. In addition to all of the above it should be noted that in view of the fact that less than year has elapsed since the application of the amendment in September 2019, the Respondents have not yet collected all required information and have not yet learnt the entire implications of the amended procedures. Therefore, it seems that the petition is pre-mature and the Respondents should be given the opportunity to act according to the procedures over a longer period of time after which they would be able to learn the implications of the amended procedures.

114. The Respondents shall also respond to Petitioners' arguments concerning HCJ 6411/18 **Yasin v. The Military Commander** (reported in the Judiciary Authority's Website, December 12, 2019. The Respondents shall argue that with all due respect the Petitioners chose certain quotes from the protocol of the hearing from which they are trying to draw conclusions which do not reflect things are really are. In said matter, inter alia, in view of the long duration of the proceedings the court found to propose the parties to conclude the proceeding as manifested in the judgment:

> "1. Having reviewed the entire material in the file and following inquiries we have conducted with the parties' representatives we proposed that the denial given to the Petitioners shall be revoked, and during the next year the following arrangement shall apply:
>
> a) Permit shall be granted to the Petitioner allowing him to cultivate, as of December 17, 2019, the agricultural land owned by his family in the seam zone (about 64 dunam) for a period of one year.
>
> b) Within 45 days from today – the Petitioner shall file a new application according to the new procedures in which a new decision shall be made by the Respondents, provided that if the new decision is negative – the Petitioner shall be entitled to appeal it, and the rights and arguments of the parties with respect thereto shall be reserved to them, and provided further that a negative decision does not revoke the one year permit which shall be granted according to our above proposal.
>
> c) Without derogating from the above said – Respondents' right to revoke the permit for security reasons, if any, or for breach of the permit's condition, if any, shall be reserved. The arguments of the parties shall also be reserved to them in the above occurrences.

2. After consultation – we were advised by the parties' representatives that the parties accepted the court's proposal, which is therefore approved, and the petition is hereby exhausted."

It should be emphasized that Respondents' consent to the arrangement proposed by the honorable court was given due to the circumstances of that specific case, and nothing may be inferred from said consent to the petition at hand.

115. It should also be added with respect to another proceeding which was mentioned in the petition (AP 18534-09-19) **Yasin v. The Military Commander**) relating to alleged invasion into the lands of said Petitioner – without derogating from the severity of the deeds which had been allegedly committed in said matter, the way to handle the matter is filing a complaint with Israel Police and the matter is not directly connected to Respondents' procedures.

From the general to the particular and with respect to Petitioners' specific case:

116. Firstly, the Respondents acted in Petitioners' matter according to the provisions of the Standing Orders and enabled Petitioners 2-3 to prove that have an actual need to cultivate their land, despite the fact that Petitioners 2-3 plots consist of 280 square meter and 181 square meter, respectively. However, a more thorough examination of the matter following a visit in Petitioner 2's plot and discussions held by the committee, revealed that Petitioners 2-3 **did not have an actual agricultural need** and that they have primarily wanted to maintain their connection to the land. Secondly, both Petitioners have clearly stated in an inquiry held in their matter that they had abused the permit issued to them and exploited it for work purposes within the territory of the State of Israel. Beyond need it should be noted that according to the provisions of the Standing Orders suspicion of permit abuse constitutes cause for its confiscation and/or non-issuance.

117. Since things stand as described above, Petitioners' desire to maintain connection to their land may be realized through other permits, as had already been granted to the Petitioners in the past. Moreover, the Petitioners and their family members not holding agricultural permits, may request a specific purpose entry permit for the harvest season to the extent the personal needs permit does not provide sufficient solution for this season.

118. The Respondents wish to reiterate that they do not dispute the fact that proper solution should be given to the needs of the Palestinian farmers whose lands are located in the seam zone. However, this does not mean that the military commander should issue permits for agricultural cultivation to persons having no need to cultivate the plots for which permits for agricultural needs are requested by them. Miniscule plots that the desire to maintain the connection to them is not on the agricultural level for livelihood or sustainable purposes, and which are located in the seam zone, may be entered into, and applicant's connection to the land may be maintained through other permits providing solution to this need.

119. In view of all of the above, Respondents' position is that their decision to grant Petitioners 2-3 entry permit into the seam zone consisting of 40 entries per year is a reasonable decision and that there is no cause for the honorable court's interference therewith. All of the above given that the Petitioners do not have actual agricultural need to cultivate the plots being the subject matter of the petition and after Petitioners 2-3 had personally admitted to have abused the permits issued to them. Accordingly, the petition should also be dismissed on its general level, given that the amendments to

chapter C of the Standing Orders have proper purpose, are reasonable and proportionate and even reconcile with judgments of this Honorable Court.

120. In view of all of the above, the Honorable Court is requested to dismiss the petition and obligate the Petitioners to pay costs.

121. The facts specified in this response shall be supported by the affidavit of Major Elisha Hanukayev, Head of Crossings and Seam-Zone Unit at the Civil Administration.

Today, 17 Sivan 5780
June 9, 2020

[Signature]
Sharon Huash-Eiger, Advocate
Senior Assistant HCJ Department
At the State Attorney's Office