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At the Supreme Court **HCJ 6896/18**
Sitting as the High Court of Justice

1. **Ta'meh, ID No.**
2. **Ta'meh, ID No.**
3. **'Abadi, ID No.**
4. **HaMoked - Center for the Defence of the Individual founded by Dr. Lotte Salzberger**

Represented by counsel, Adv. Tehila Meir (Lic. No. 71836) et al., of
HaMoked - Center for the Defence of the Individual founded by
Dr. Lotte Salzberger
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

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

Represented by the State Attorney's Office, Ministry of Justice,
29 Salah-a-Din Street, Jerusalem
Tel: 02-6466590; Fax: 02-6467011

The Respondents

Aaffidavit of Response on behalf of the Respondents

1. I am the undersigned, Major Elisha Hanocayev.

2. I serve as the Head of the Crossings and Seam Zone Division of the Civil Administration in Judea and Samaria.

3. I make this affidavit on behalf of the Respondents in response to an *order nisi* given on December 10, 2020, drafted by the honorable court (Honorable Justices D. Barak-Erez, G. Karra and Y. Elron) as follows:

   > Having reviewed parties' arguments and having considered the matter, an *order nisi* is hereby given, directed at the Respondents and ordering them to appear and show cause:
   >
   > 1. Why Section 14(a)(7) of the 2019 Seam Zone Standing Orders concerning the "examination of the applicant's share of the plot" should not be revoked and/or replaced by another arrangement responsive to shared title in plots of land.
   >
   > 2. Why a Seam Zone entry permit for agricultural needs should not be granted to Petitioner 2, so that he may farm the plot of land owned by his mother, Petitioner 1.

4. The Respondents will argue that the *order nisi* should be canceled and that the petition should be dismissed, and an order for costs be made against the Petitioners since the provisions of section 1 of the *order nisi* have already been complied with as specified in the Updating Notice on behalf of the Respondents dated October 25, 2020; and with respect to Petitioner 2: the Respondents will argue that, as of the date hereof, Petitioner 2 is in possession a "Seam Zone agricultural worker permit," valid for 120 entries from January 19, 2020, to January 17, 2023. In addition, on June 16, 2020, a "personal needs" permit was issued to Petitioner 2, valid for one year until June 15, 2021.

   The permit's validity period was determined based on the recommendation of security officials in view of a security preclusion in his matter (the permit allows entry through the Reihan gate). Said permits enable Petitioner 2, *inter alia*, to farm his mother's plot according to his **actual needs**. Therefore, the Respondents argue that there is no justification to grant Petitioner 2 a "farmer" permit specifically, all as specified in Respondents' procedures.

5. The Respondents will argue that there is no cause for the Honorable Court to intervene in their decision to furnish Petitioner 2 with a "permit for personal needs" and a "Seam Zone agricultural worker permit."

   In this context, the Respondents will argue that **the actual purpose of the petition appears to be the revocation of the permit regime in its entirety. The Petitioners argue that a person wishing to enter the Seam Zone should not be required to prove to the Military Commander any need to enter the Seam Zone in order to receive a permit. According to the Petitioners, there is also no need to balance the issuance of the permit against other interests. The Petitioners argue that the fact that an applicant has a connection to lands in the Seam Zone suffices to compel the Military Commander to grant them regular, daily access to the Seam Zone by virtue of a farmer permit (a permit allowing daily entry into the Seam Zone valid for two years).**

   In other words, the Petitioners argue that no correlation is required between the type of permit and the applicants' actual needs, but rather that it suffices for the applicants to show a connection to lands in the Seam Zone in order to receive a farmer permit. The Respondents will argue that all of the above is contrary to the findings made by this Honorable Court in HCJ 9961/03 **Hamoked Center for the Defence of the Individual founded by Dr. Lotte Salzberger v. Government of Israel** (reported on the Judiciary Authority Website**,** April 5, 2011) (hereinafter: the **permit regime judgment**), in which the Court held, *inter alia*, that "there is a security need to establish a mechanism which would enable close supervision of those who enter through it, as well as assist the security forces and improve their ability to fight Palestinian terror threats designed to harm Israel and its inhabitants." While, at the same time, the Respondents are obligated to preserve and maintain, to the greatest extent possible, the fabric of life within the Seam Zone, in part by granting entry permits **according to the specific needs** of the applicants.

6. Given the above, the Respondents will argue that the petition, which seeks to subvert the permit regime in its entirety, should be dismissed.

Factual Background and the main developments in the proceedings until now

7. On October 4, 2018, the Petitioners filed a petition concerning Petitioner 2's request for "a Seam Zone entry permit, valid for two years, to enable him to farm the land of his mother, Petitioner 1, located in the Seam Zone in the West Bank". In addition, an *order*

nisi was sought to be directed at the Respondents and ordering them to show cause "why they should not cease to deny individuals permits to access land in the Seam Zone on the grounds that the size of the plot they seek to cultivate is less than 330 square meters" (hereinafter: the **original petition**). All of the above against the backdrop of a revision made in 2017 in Respondents' Seam Zone Standing Orders the essence of which was that "As a general rule, there is no sustainable agricultural need where the size of the plot for which a permit is requested is minuscule, not exceeding 330 square meters."

8. According to the Civil Administration's digital data, Petitioner 1, Ta'meh (hereinafter: **Petitioner 1**), is 72 years old. She resides in Tulkarm, is a widow and has six children. Petitioner 1 holds an "old age" permit allowing entry into Israel. According to the Seam Zone entry procedures, which were most recently amended on February 1, 2021, an "old age" permit enables Petitioner 1 to freely enter the Seam Zone through the regulated crossings.

9. Petitioner 2, the son of Petitioner 1, is a resident of Kafin in the Tulkarm District. He is about 39 years old, married, and a father of five children. Petitioner 2 **has not previously held a Seam Zone permit for agricultural cultivation**. Between 2007 and 2019, Petitioner 2 received Seam Zone entry permits for personal needs valid from a few days to several months. In several cases, Petitioner 2 was issued a permit for personal needs valid for one year.

10. To complete the picture and due to the importance of the issue, the Respondents will present the key points in the chain of events respecting the permit issued to Petitioner 2 in 2017, which was the subject of the original petition.

11. On August 3, 2017, Petitioner 2's application for a Seam Zone farmer permit was accepted. The application related to land allegedly inherited by Petitioner 1, Petitioner 2's mother, from her father. According to the inheritance order and the calculation of Petitioner 1's relative share of the plot according to the provisions of the Standing Orders determining how to calculate plot size, **Petitioner 1 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.** In October 2017, Petitioner 2's application was denied after it had been established that in Petitioner 2's matter, the presumption that **there is no sustainable agricultural need to cultivate a plot smaller than 330 square meters** was not rebutted**.**

12. Petitioner 2 had filed an appeal against Respondents' decision and was therefore summoned for a DCO review. The summary of the DCO review clearly indicates Petitioner 2 **has no actual agricultural need to cultivate the plot**, partly considering the fact that the size of the plot was smaller than 330 square meters. It was further explained to Petitioner 2 that he was entitled to receive a Seam Zone permit for personal needs as opposed to a farmer permit. On February 5, 2018, Petitioner 2 was issued a permit for personal needs valid for the usual duration of three months.

    A copy of the appeal filed by Petitioner 2 was attached to the original petition as Exhibit P/7.

    A copy of the summary of the DCO review in Petitioner 2's matter was attached to the original petition as Exhibit P/9.

    A copy of the permit for personal needs issued to Petitioner 2 was attached to the original petition as Exhibit P/11.

13. On February 21, 2018, Petitioner 2 filed an appeal against the decision of the Head of the DCO. As part of the appeal's review, on April 30, 2018, a tour of the plot being the subject matter of Petitioner 2's appeal was conducted by Petitioner 2 and Civil Administration representatives.

The summary of the tour reads as follows:

> … 4. The main points arising from the tour are as follows:
>
> a. Firstly, the resident stated he did not know the exact location of his mother's share of 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 was partially cultivated.
> 5. Considering the fact that the mother's relative share of the entire plot consists of a limited number of trees (according to our estimate, about ten trees) in view of the fact that he cannot point to its exact location, and since the trees in question are large, there is no need to cultivate the land 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 an agricultural need justifying the issuance of an agricultural worker permit (issued to family members) for the relevant plot.**

A copy of the appeal filed by Petitioner 2 was attached to the original petition as Exhibit P/12.

A copy of the summary of the tour dated April 30, 2018, was attached to the original petition as Exhibit P/17.

14. On June 18, 2018, Petitioner 2 filed another appeal in which he requested, inter alia, to receive a summons to a hearing before the appeals committee according to the provisions of the Standing Orders in that regard.

15. On October 4, 2018, the Petitioners filed the **original petition** against the decision to deny Petitioner 2 a farmer permit.

16. On November 21, 2018, the appeals committee heard Petitioner 2's application for a farmer permit. It emerged from the hearing before the committee that despite Petitioner 2's argument in that regard, he, in fact, had no agricultural need to cultivate the plot being the subject matter of his application, let alone a need justifying daily entry into the Seam Zone for two years to cultivate the plot. It also emerged that another family member was cultivating the plot. **It also emerged at the hearing before the committee that in the past, Petitioner 2 misused a permit he had been issued to visit family in the Seam Zone and used it to enter the territory of the State of Israel for work purposes**.

A copy of the transcripts of the hearing before the appeals committee dated November 21, 2018, is attached hereto and marked Exhibit **RS/1**.

17. Following additional inquiries, the appeals committee made its decision on December 10, 2018, denying Petitioner 2's application for a farmer permit due to the failure to prove the 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 them on a daily basis. Furthermore, Petitioner 2 had entered the Seam Zone to cultivate the trees only once during the three months in which the permit was valid (according to Petitioner 2, his mother was sick at that time, and he took care of her and therefore did not visit the plot more often). The committee also determined that Petitioner 2 could file an application for a personal needs permit according to his need to enter the Seam Zone, as he had done in the past.

    A copy of the decision of the appeals committee in Petitioner 2's matter dated December 10, 2018, is attached hereto and marked Exhibit **<u>RS/2</u>**.

18. On May 1, 2019, the Respondents filed a preliminary response to the original petition. In their response, the Respondents argued, inter alia, as follows:

> The Respondents will argue that the petition should be dismissed in the absence of cause for intervention in their decision, wherein Petitioner 2's application for a Seam Zone permit for agricultural needs was denied since Petitioner 2 does not have an actual need to receive a permit for agricultural cultivation. However, Petitioner 2 received a permit for personal needs, which enabled him to enter the "Seam Zone" and maintain his connection 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 revise the provisions of the 2017 Standing Orders with respect to the institution of criteria for the purpose of obtaining permits for agricultural needs. The revisions included in the 2017 amendment of the Standing Orders in the matter which is the subject of the petition are reasonable and designed to establish clear criteria to assist the DCOs in reviewing applications for agricultural permits with respect to "minuscule plots," thereby increasing the correlation between the permit issued and the actual need underlying the application."

19. In their preliminary response, Respondents explained the rationales underlying the amendment of the Standing Orders in 2017: "<u>Firstly</u>, it should be recalled that when a permit to enter the Seam Zone is granted, a balance is struck between the security considerations which led, as specified above, 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**. <u>Secondly</u>, it should be recalled that there is no physical barrier preventing entry into Israel from Seam Zone areas and the resulting security implications thereof. Moreover, the Respondents do not dispute the need to give provide a proper solution for the needs of Palestinian farmers whose lands are located in the Seam Zone. **However, this does not imply that the Respondents must issue permits for agricultural cultivation to individuals who have no need to cultivate the plots with respect to which a permit for agricultural needs is requested**. As aforesaid, a plot located in the Seam Zone may be accessed, and connections to land may be preserved by other permits that address this need." (Emphases appear in the original – the undersigned).

20. The Respondents stated at the conclusion of their above response that staff work on an additional amendment of the Standing Orders was underway and would introduce a

"punch card permit," granting the holder thereof a finite number of entries into the Seam Zone over a longer period of time compared to that given in most permits until then.

21. The Petitioners filed a response to Respondents' response, and on May 15, 2019, a hearing was held before the Honorable Court at the conclusion of which the Court held as follows:

> During the hearing, many questions were raised with respect to the solution provided for plots that are not small but have numerous title holders, all considering 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, the Respondents agree to grant the Petitioner a "personal needs permit," pending submission of their updating notice no later than August 15, 2019, and subject to an undertaking on the Petitioner's part to comply with whatever terms prescribed for him.

22. In the updating notices filed subsequent to the hearing, the Respondents provided updated information about Petitioner 2's family members holding permits for agricultural cultivation of the plot that is the subject of the petition.

The Respondents further apprised the Court of the results of a review conducted by the Civil Administration (showing the prevalence of misuse of Seam Zone entry permits), showing that in the short period from the beginning of 2019 to August 6, 2019, the date of the review, 633 certified official documents* were issued for the Israel Police where residents holding Seam Zone entry permits for agricultural needs (farmer permit, agricultural worker permit to family members and agricultural worker permit) were apprehended <u>unlawfully present inside the territory of the State of Israel</u>. It should also be noted that considering the number of agricultural Seam Zone permits issued, it seems that the practice of illegal use of agricultural Seam Zone permits for the purpose of entering the State of Israel unlawfully is widespread.

The Respondents also advised of an amendment made to the Standing Orders following the above staff work (hereinafter: the **2019 amendment**), in which a "punch card permit" was introduced, whereby the applicant receives an entry permit with **a finite number of entries** for each year (contrary to conditions predating the amendment wherein a permit for agricultural cultivation enabled daily entry for two years). **In addition, the validity period of the permit was extended from two to three years**.

Under the above circumstances, the Respondents argued that the original petition 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 2's application would be assessed according to the provisions of the amended Standing Orders, and Petitioner 2 may obviously exhaust his remedies with respect to any decision made in his matter.

23. The Petitioners filed a reply to Respondents' above updates, and on October 23, 2019, the Honorable Court held as follows:

> 1. The petition shall remain pending at this stage.

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* Translator's note: the term "certified official document" refers to a copy of an official record signed by a relevant public official which the court may admit as evidence.

2. The Petitioners shall file a new application for a Seam Zone entry permit according to their needs and the provisions of the revised Standing Orders within 14 days.

3. The Respondents shall file an updating notice regarding the decision made in Petitioners' application no later than January 22, 2020.

4. Given the overall 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 updating notice is filed by the Respondents.

24. Following the above, on January 22, 2020, the Respondents notified that: "We were informed by Respondents' officials that following an assessment of Petitioner 2's application a decision was made to grant Petitioner 2 a permit for agricultural cultivation valid for three years (from January 19, 202 to January 17, 2023) […] 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 Petitioner 2 was invited to collect the permit from the Israeli DCO."

    The Respondents repeated the argument that the petition, as currently formulated, was no longer relevant since a new administrative decision was made after it was filed and changes were introduced to Respondents' procedures.

25. Once the Petitioners filed their response to Respondents' update, the Honorable Court found the Petitioners should be given leave to file an amended petition, and such was filed on February 27, 2020 (hereinafter: the **amended petition**).

26. In the amended petition, the Petitioners requested the Honorable Court to issue an *order nisi* directing 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, fully valid 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 permits to access land in the Seam Zone with full validity on the grounds that the size of the land applicants seek to cultivate is less than 330 square meters;

    D. Why the new directives instituted by the Respondents subjecting Seam Zone entry permits for agricultural needs to a set number of entries should not be revoked;

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

27. Following the filing of written submission by both parties, a hearing was held in the petition on July 1, 2020, at the conclusion of which the Honorable Court held as follows:

> Following the hearing held before us in the amended petition, we hereby direct the State to supplements its response by way of filing an updating notice, as follows:
>
> 1. The state shall submit figures regarding the number of farmer permits and the number of personal needs permits issued to residents of the area who have connections to land commencing in 2016 – segmented annually. In this context, the number of applications of each type submitted each year will be specified, clarifying with respect to the distinction applied to each year, how many applications were accepted and how many applications were denied. The State may provide further explanations concerning previous years should it see fit to do so. In addition, the Respondents shall clarify the number of permits issued in 2011 when the judgment in HCJ 9961/03 HaMoked Center for the Defence of the Individual founded by Dr. Lotte Salzberger v. The Government of Israel, was given (April 5, 2011) (hereinafter: the Seam Zone case).
>
> 2. The state shall specify the factual data concerning misuse of Seam Zone entry permits for the purpose of entering Israel illegally and the figures on this matter considered by the respondents when making the decision regarding the new policy.
>
> 3. The State will explain whether and how the current policy is congruent with the position and statements it made regarding this matter in the Seam Zone case.
>
> 4. During the hearing, the State confirmed the following statements in response to our questions:
>
> > a. A farmer permit holder may receive a personal needs permit concomitantly.
> >
> > b. A person in possession of a personal needs permit issued for the purpose of preserving a connection to the land may also cultivate the land whenever they access it by virtue of said permit.
> >
> > c. A cultivation permit for agricultural needs may also be granted based on an "aggregation" of the rights of several title holders whose combined share of the land meets the 330 square meter threshold – to a single title holder of their choosing (including with respect to larger plots of land with additional title holders).
>
> The updating notice shall specifically address the provisions of the Standing Orders clarifying the above, and alternatively – according to the statements made – to amended provisions incorporated into the Standing Orders and explicitly clarifying the above.

28. On October 25, 2020, an updating notice was filed by the Respondents according to the decision of the Honorable Court, specifying the figures requested by the Honorable Court. The Respondents also advised that "**After a review of the matter by senior officials, a decision was made to withdraw the "punch card permit" amendment, since, upon completion of the pilot period, it was found not to have achieved its purpose"** and asked the Court for instructions on the continuation of the proceedings before it.

29. On November 22, 2020, the Petitioners filed a response to Respondents' Updating Notice in which they argued, *inter alia*, that Respondents' position limits Seam Zone residents' access to their lands and violates their fundamental rights in a manner which, the Petitioners allege, is incongruent with the findings made by this Honorable Court in the permit regime case (hereinafter: **Petitioners Response to the Updating Notice**).

30. In the interim, and as aforesaid, on June 16, 2020, Petitioner 2 was issued a personal needs permit valid for one year, until June 15, 2021. The permit's validity period was determined based on the recommendation of security officials due to a security preclusion in his matter (the permit allows passage through the Reihan gate). This permit was issued in addition to the agricultural worker permit held by Petitioner 2 as aforesaid.

31. On December 10, 2020, an *order nisi* was issued by this Honorable Court as specified in the opening.

<u>**General relevant background**</u>

<u>**The Seam Zone and the permits for entry thereto**</u>

32. Following acts of terrorism and attacks committed by Palestinians within the State of Israel and in Israeli settlements in the Judea and Samaria area after the surge of violent incidents in September 2000, the Government of Israel decided in early 2002 to build a security fence along the seam line between Israel and the Judea and Samaria Area and to prevent the free passage of Judea and Samaria residents to Israeli territories located west of the fence.

33. The route of the security fence was determined based on a wide array of considerations, security foremost among them, with additional considerations, such as topography. Considering the above, the route of the security fence and the Judea and Samaria boundary do not completely overlap, and in several areas, the security fence was built inside the Judea and Samaria Area, in a manner that caused some Judea and Samaria areas to remain west of the fence, between the security fence and the Judea and Samaria boundary. These areas are referred to as the Seam Zone.

34. Since there is no physical barrier preventing entry into Israel from the Area territories located inside the Seam Zone, and in view of the security risk emanating from the passage of terrorist elements from the Seam Zone into the territory of the State of Israel, the Military Commander exercised the power vested in him under the Order on Closed Zones (Judea and Samaria Area)(No. 34) 1967, and declared the Seam Zone areas a closed military zone, where entry and exit are prohibited without a permit.

35. The premise for the declaration of the Seam Zone as a closed military zone is that free passage from the Judea and Samaria into the Seam Zone and from there to Israel with

no further security screening poses a security threat. Passage without a permit may be exploited for activity against the security of the State of Israel and its citizens.

36. According to security legislation, closed zone declarations do not apply to permanent residents in the closed zone. Therefore, section 90(d) of the Order regarding Security Provisions (Judea and Samaria) (No. 378) 1970 stipulates that the presence of a permanent resident in a closed zone does not constitute a violation of the order.

37. Alongside Seam Zone permanent resident certificates, various different **permits** are granted: "Seam Zone farmer permit," "Seam Zone agricultural worker permit," "Seam Zone trade," "personal needs permit," and the like. These permits enable Judea and Samaria residents to access the Seam Zone for different purposes, according to their connection to the Seam Zone. The conditions established for the issuance of the various additional permits balance between **the security considerations** that led to the closure of the area, and the Military Commander's obligation to maintain reasonable access to Judea and Samaria areas located on the west of the security fence and preserve, to the extent possible, the proper fabric of life of the individuals residing in the Seam Zone and in the area adjacent thereto.

38. The lawfulness and reasonableness of the Seam Zone declaration and the provisions established as specified above were reviewed by this Honorable Court in the public interest petition filed with respect thereto – the permit regime petition, wherein Petitioner 3 in the petition at hand, was one of the petitioners.

39. As aforesaid, security interests require, at this time, preventing uncontrolled entry of Palestinian residents into the Seam Zone in order to protect the security of the Area and the security of the State of Israel and its residents, as well as the lives of Israeli citizens in settlements located in the Seam Zone. Therefore, decisions whether to issue to individuals a permit allowing access to the Seam Zone are made based on established criteria, as well as on the specific factual data of the individuals in question.

40. The procedures governing the issuance of Seam Zone certificates and permits are specified in a Civil Administration file entitled "Seam Zone Entry Procedures" (hereinafter: the Entry Procedures). The Entry Procedures entrench and specify the rules concerning residency in and access to the Seam Zone and include the criteria for receipt of such certificates and permits, as well as the periods for which said certificates and permits are granted and the like. It should be noted that the 2019 amendment to the Entry Procedures renamed it, and it is now entitled "Seam Zone Entry Procedures."[*]

The Seam Zone Standing Orders – The Seam Zone Entry Procedure

41. The Entry Procedures have been in place for years, and they are occasionally amended according to need. With respect to the case at hand, the relevant versions of the Entry Procedures are those from 2014, the amendments from 2017 and 2019, and the current 2021 version.

The 2014 Entry Procedures

[*] Translator's note: The file referred to in this paragraph, now entitled Seam Zone entry Procedures, was originally entitled Seam Zone Standing Orders. The original Hebrew text uses the terms Seam Zone Standing Orders and Seam Zone Entry Procedures interchangeably.

42. On January 14, 2014, an amended version of the Entry procedures was published, incorporating insights and lessons learned drawn from the actual implementation of the permit regime, as well as the comments made by the Honorable Court in the petitions that had been filed in that regard at the time.

43. With respect to agricultural permits, the Entry Procedures stipulated that a farmer permit would be granted to an applicant who proves a 'proprietary connection' to agricultural lands in the Seam Zone and specifies in the application that they have an agricultural need to cultivate their lands (in the absence of a security preclusion). No protocol was put in place for ascertaining the nature of the agricultural need, and whether the applicant does indeed have an agricultural need to cultivate their land, **despite the fact that the permit is granted for agricultural needs**. As a result of the definitions included in the 2014 Entry Procedures, applicants who proved a proprietary connection to a plot the size of **a few meters** also received farmer permits, while it was clear that, in fact, they had no agricultural need to cultivate the plot. **As aforesaid, a farmer permit enabled a daily entry into the Seam Zone for two years**.

44. Consequently, there was a discrepancy between the permits issued by the Civil Administration and the applicants' needs, and DCOs had difficulty establishing clear criteria for assessing the applications and the needs of the population. In fact, as a result of this, many cases emerged in which a large and unreasonable number of permits were requested for the cultivation of minuscule plots the size of a few meters, far exceeding the cited ostensible agricultural needs. This **opened the door for large-scale uncontrolled entry of Palestinian residents into the Seam Zone in a manner incongruent with the security objectives for which the fence had been erected**. Hence the need arose to amend the provisions of the Procedure File, as was done in 2017.

    A copy of the 2014 Entry Procedures is attached hereto and marked **RS/3**.

The 2017 Entry Procedures

45. In view of the above, on February 15, 2017, the Entry Procedures were amended again. This amendment implements lessons learned from the application of the previous version from 2014. In this amendment, several chapters of the Entry Procedures were updated, including the first sub-chapter of Chapter C, concerning "Seam Zone Permits for Agricultural Needs" (hereinafter: **agricultural permits**). Section 1 provides that the **nature of the permits** (issued under this subchapter) is: "permits issued to Judea and Samaria residents for the cultivation of agricultural lands in the Seam Zone"; thereafter, the term "farmer permit" is defined as a permit "issued to a Judea and Samaria resident who has a proprietary **connection** to agricultural lands in the Seam Zone, the purpose of which is to maintain the connection to these lands" (emphasis in original – the undersigned); In addition, an "agricultural worker 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).

46. In addition to the above, in the 2017 amendment, several definitions and changes were added to the subchapter, the main purpose of which was to establish clear criteria and provide assistance to the DCOs as they perform the task of matching the applicant's needs to the permit issued by introducing a clear definition of the term "agricultural need" and establishing a **rebuttable** presumption regarding the minimum plot size requiring agricultural cultivation:

- Plot size – was defined as "… a multiple of the entire plot by the applicant's relative share in the ownership of the plot." See section 5 of the first subchapter of Chapter C (Entry procedures, page 21).

- Agricultural need – was defined as a "need to cultivate land sustainable agricultural production." See section 11 of the first subchapter of Chapter C (Entry procedures, page 21).

- In addition, a **rebuttable** presumption was established regarding the minimum plot size requiring agricultural cultivation: "As a rule, there is no sustainable agriculture need when the size of the plot for which a permit is requested is minuscule, not exceeding 330 square meters. Nevertheless, in exceptional circumstances and for reasons that shall be recorded, the **head of the DCO may issue a farmer permit for a minuscule plot, as aforesaid** (emphasis in original) see section 13(a)(7)(b) of Chapter C (Entry procedures, page 22).

The current petition also concerns the above presumption.

- To complete the picture, it should be noted that section 6 of the **third subchapter of Chapter C,** concerning "**permit for personal needs in the Seam Zone"** (Entry procedures, page 28), sets eligibility criteria for a "personal needs" permit. The criterion established in sub-section c is the existence of a "proprietary connection to a plot for which a permit for agricultural or commercial needs may not be obtained." Accordingly, the Entry Procedures introduce a specific procedure allowing access to land in cases (such as the case in the petition at hand and in other cases) where an agricultural permit cannot be obtained since there is no actual need to cultivate the land, but a proprietary connection to the land had been substantiated.

A copy of the 2017 Seam Zone Entry Procedures is attached hereto and marked **RS/4**.

The 2019 Entry procedures

47. It should be noted at the outset that this amendment was largely canceled by the 2021 amendment to the Entry procedures as specified below. However, in order to present a complete picture, we shall briefly describe said amendment as well.

48. With the above 2017 amendment as the backdrop, the Civil Administration undertook staff work, including a review indicating that from the beginning of 2019 and until August 6, 2019, **633** certified public documents were issued for the Israel Police specifying the types of permits held by residents, after residents holding "Seam Zone" permits for agricultural purposes (farmer permit, agricultural worker permit for a farmer's family members and an agricultural worker permit) were apprehended within the territory of the State of Israel. It was therefore decided to revise the Entry procedures as follows.

49. The major change in the Entry Procedures concerned matching the Seam Zone entry permit and the resident's defined agricultural need by introducing a "**punch card permit.**" A "punch card permit" means that the applicant receives an entry permit with a finite number of entries for each year (contrary to the situation described above, which enabled daily entry for two years), according to the provisions of the Entry Procedures: "According to the Agricultural Staff Officer Table and considering the size

of the plot, the type of the crop and the number of workers in the plot. However, with respect to the landowner, in no event shall the number of entries fall below 40 per year." At the same time, the validity period of the permits was extended: the maximum validity period for a farmer permit was extended from two to three years; the maximum validity period for a personal needs permit was also extended to up to three years. The amendment did not remove the rebuttable presumption concerning plots smaller than 330 square meters, whereby the rule is that there is no sustainable need to cultivate a plot if the plot for which the permit was requested is of a minuscule size (330 square meters). The procedure referred said applicants to the personal needs permit track.

50. As stated by the Respondents in their Updating Notice dated October 25, 2020, **the 2019 amendment of the Entry Procedures including the "punch card permit" was canceled** within a year of commencement, as it was initially launched as a pilot and in view of the fact that the relevant experts concluded that the objectives of the punch card amendment had not been achieved.

A copy of the 2019 Entry Procedures is attached hereto and marked **RS/5**.

The 2021 Entry Procedures

51. On February 1, 2021, a revised version of the Seam Zone Entry Procedures was published, **revoking, as noted, the 2019 amendment, including the punch card permit**.

52. In addition to the cancelation of the punch card permit, several sections were revised in these Entry Procedures according to the decision of the Honorable Court dated July 1, 2020, which stated as follows:

> During the hearing, in response to our questions, counsel for the State stated that the State confirms the following statements:
>
> a. A farmer permit holder may receive a personal needs permit concomitantly.
>
> b. A person in possession of a personal needs permit issued for the purpose of preserving a connection to the land may also cultivate the land whenever they access it by virtue of said permit.
>
> c. A cultivation permit for agricultural needs may also be granted based on an "aggregation" of the rights of several title holders whose combined share of the land meets the 330 square meter threshold – to a single title holder of their choosing (including with respect to larger plots of land with additional title holders).
>
> The updating notice shall specifically address the provisions of the Standing Orders clarifying the above, and alternatively – according to the statements made – to amended provisions incorporated into the Standing Orders and explicitly clarifying the above.

53. Pursuant to this decision, the following revisions were made in the 2021 Entry Procedures:

- With respect to the definition of a "minuscule plot," Section 14.a.7.a in Chapter C, Article A was amended. The section currently stipulates as follows: "A cultivation permit for agricultural needs may also be granted based on an 'aggregation' of the rights of several title holders whose combined share of the land meets the 330 square meter threshold – to a single title holder of their choosing (including with respect to larger plots of land with additional title holders. Arguments regarding cultivation of additional parts must be supported by suitable documents."

- In addition, the final clause of the following clarification was added to Section 1 in Chapter C, Article C, concerning a permit for personal needs: "a resident in possession of a permit as aforesaid may use it for any legitimate purpose which is not contrary to the law and security legislation, including agricultural purposes."

- In addition, Section 6.d. was added in Chapter C, Article C stipulating as follows: "A person holding a permit according to Article A of this Chapter (permit for agricultural needs) shall not be prevented from receiving a permit for personal needs according to this Article."

54. To remove any doubt, we clarify that following the cancelation of the punch card permits, the 2019 amendment, which extended the validity of the permits to three years (as part of the "punch card permit") was also canceled, and Seam Zone entry permits for agricultural needs are now again valid for two years. In addition, permits for personal needs are now again valid for a maximum period of up to three months.

55. The 2021 updated version of the Entry Procedures entered into effect on January 31, 2021, and it is the Entry Procedures file in force at this time.

    A copy of the updated 2021 Entry Procedures is attached hereto and marked **RS/6**.

Respondents' Position

56. The Respondents will argue that the *order nisi* should be revoked and that the petition should be dismissed. As explained below, Respondents' policy, as reflected in their Entry Procedures, is congruent with their policy as reflected in the permit regime judgment. Contrary to Petitioners' arguments, Respondents' Entry Procedures do not prevent large-scale entry of applicants into the Seam Zone, nor do they seek to enforce the laws regulating the entry into Israel.

    Respondents' procedures fall in line with the principles of the permit regime, which is premised on the security need for which the fence was erected, emphasizing the correlation between the needs of the population and the type of permit granted. This reflects no change in Respondents' basic approach, let alone a drastic change, as argued by the Petitioners.

57. We open by noting that it is a well-known rule that the court shows great restraint when requested to intervene in the decisions of an administrative authority and reserves such intervention for decisions that are extremely unreasonable or legally flawed on grounds recognized in administrative law. For institutional reasons deeply rooted in the separation of powers, the court does not substitute its own discretion for the discretion of the authority. See HCJ 3975/95 **Kaniel v. The Government of Israel**, IsrSC 53(5) 459:

The decision to subsidize or support pension funds is patently an economic policy and public resource allocation priority decision, and it is at the discretion of the government. **The court does not tend to intervene in decisions regarding the formulation of government policy and government socio-economic priorities and does not instruct the government how to act in such matters**:

> The policy instituted by the government concerns priorities for national spending per its considerations and its evaluation of national needs. National priorities, including economic and political priorities, are as a matter of course, determined and decided by the government and **'this court shall not intervene in established policy unless the authority failed to comply with the rules of administrative law outlining the proper exercise of administrative discretion**" (HCJ 5035/92 **Land Redemption Fund at the College of Eretz Israel Kdumim v. The State of Israel** [21], paragraph 3 of the judgment).

58. The Respondents will argue that the procedures that are the subject of this petition are deeply rooted within the realm of reasonableness, and therefore, there are no grounds for the intervention of this court.

<u>The Amendment of Section 14(a)(7) of the Seam Zone Entry Procedures</u>

59. As aforesaid, in the *order nisi*, this Honorable Court directed– "Why Section 14(a)(7) of the 2019 version of the Seam Zone Entry Procedures concerning the "examination of applicant's share of the plot should not be revoked and/or replaced by another arrangement responsive to shared title in plots of land.

We hereinafter address the text of Section 14(a)(7) of the Entry Procedures, which, as explained below, was different at the time the original petition was filed and has been changed following the remarks of this Honorable Court. The Respondents maintain that the revisions provide a solution to shared title in plots of land.

To remove any doubt, it should be noted that the Petitioners' arguments in their Response to the Updating Notice (paragraph 146) concerning the definition of "Who is a farmer" are irrelevant since the procedure referred to by the Petitioners is not valid and has been replaced with the revised Entry Procedures specified in this Response (see, in this regard, page 20 of the 2021 Entry Procedures defining the terms "agricultural permit" and "agricultural need").

60. As noted above, the **2017** Entry Procedures introduced the "minuscule plot" arrangement in Section 13(a)(7) of Chapter C, Sub-Chapter A, which stated as follows:

> 7) <u>Examination of applicant's share in the plot</u> – agricultural worker permits **will be issued for the farmer's relative share in the land**, according to documents. It should be emphasized that:
>
> a) Arguments regarding cultivation of additional parts must be supported by suitable documents.

b) As a rule, there is no sustainable agriculture need when the size of the plot for which a permit is requested is minuscule, not exceeding 330 square meters. Where a need arises to enter a minuscule plot, the resident may submit an application for a "personal needs" permit, which will be examined according to the provisions of Article C of this Chapter."

The same text appeared in Section 14(a)(7), Article A of the **2019** Seam Zone Entry Procedures.

The 2017 Entry Procedures were attached above and marked RS/4.

The 2019 Entry Procedures were attached above and marked RS/5.

61. In their updating notice dated October 25, 2020, the Respondents advised with respect to this section as follows:

> According to Respondents' statement given at the hearing held before the Honorable Court, the Respondents advise that they have taken action to amend the provisions of the Standing Orders to include the requested clarifications. Said amendment, which is described below, will enter into effect within the next few weeks and published as acceptable.
>
> Accordingly, with respect to the definition of "minuscule plot," Section 14.a.7.a. in Chapter C, Article A, has been amended and currently provides as follows: "**A cultivation permit for agricultural needs may also be granted based on an 'aggregation' of the rights of several title holders whose combined share of the land meets the 330 square meter threshold – to a single title holder of their choosing (including with respect to larger plots of land with additional title holders. Arguments regarding cultivation of additional parts must be supported by suitable documents.**"

62. On February 1, 2021, a revised version of the Entry Procedures was published. In this version, the above provision appears in Section 12(a)(7), Chapter C, Article A, which provides as follows, as stated in Respondents' notice:

> 7) Examination of applicant's share in the plot – agricultural worker permits **will be issued for the farmer's relative share in the land**, according to documents. It should be emphasized that:
>
> a) As a rule, there is no sustainable agriculture need when the size of the plot for which a permit is requested is minuscule, not exceeding 330 square meters. Where a need arises to enter a minuscule plot, the resident may submit an application for a "personal needs" permit, which will be examined according to the provisions of Article C of this Chapter.
>
> b) A cultivation permit for agricultural needs may also be granted based on an 'aggregation' of the rights of several title holders whose combined share of the land meets the 330 square meter threshold – to a single title holder of their choosing (including with respect to larger plots of land with additional title holders.

Arguments regarding cultivation of additional parts must be supported by suitable documents.

A copy of the revised 2021 Entry Procedures was attached above and marked RS/6.

63. The Respondents maintain that the revisions **provide a solution to shared title in plots of land**, since it enables several title holders to come together for the purpose of receiving a farmer permit issued to a person of their choosing among them. The provision does not require all title owners to act jointly, but only to reach a minimal cumulative area of 330 square meters. Accordingly, Petitioner 2 may act jointly with other title holders in his mother's plot.

64. The Respondents further argue that the updated arrangement from 2021 falls in line with the comments of the Honorable Court and Respondents' statements at the hearing dated July 1, 2020. For the sake of convenience, we recall the decision of the Honorable Court dated July 2, 2020: " During the hearing, in response to our questions, counsel for the State stated that the State confirms the following statements: […] c. A cultivation permit for agricultural needs may also be granted based on an 'aggregation' of the rights of several title holders whose combined share of the land meets the 330 square meter threshold – to a single title holder of their choosing (including with respect to larger plots of land with additional title holders)."

65. According to the Petitioners, as emerges from their reply to Respondents updating notice, the language of the above section is unclear, since the first part of Section 14(a)(7) – currently Section 12(a)(7) – provides as follows: "An agricultural worker permit will be issued for the farmer's relative share in the land, according to documents." It, therefore, appears that the provision concerns an agricultural worker permit rather than a farmer permit; while sub-section B refers to a "cultivation permit for agricultural needs," a type of permit the Petitioners allege does not exist. In view of the above, the Petitioners argue that the 2021 Entry Procedures are implemented in an erroneous manner and are unclearly drafted. Second, the Petitioners argue that the requirement whereby "arguments regarding cultivation of additional parts should be supported by suitable documents" is unfeasible with respect to large plots with joint ownership, as no documents attesting to cultivation in a particular area or any sort of division exists, and, in effect, the application cannot be supported by documents. Third, the Petitioners argue that they "oppose a requirement for land owners to 'pick' which one of them receives a permit."

66. The Respondents respond to the above arguments as follows:

First, with respect to the ambiguity of the language of Section 14(a)(7) – currently, Section 12(a)(7): Section 7 refers to an "agricultural worker permit" – we clarify that the intention is that the section shall refer to permits given for agricultural needs, and the section is implemented accordingly, as emerges from the subsequent sub-sections.

Second, it is clarified that the wording "**cultivation permit for agricultural needs**" given for an agricultural plot larger than 330 square meters, refers to all relevant permits intended for agricultural cultivation: farmer permit, agricultural worker permit for family members, and agricultural worker permit; each of these permits is relevant to an agricultural plot which is not a minuscule plot, according to the applicant's needs and the circumstances. The definition of "cultivation permit for agricultural needs" clearly indicates that the purpose of the permits is to enable sustainable agricultural cultivation according to existing need.

Third, the Respondents clarify that in order to aggregate the rights of several title holders in the land, in addition to the documents each applicant is required to submit in order to prove their proprietary connection to the land, applicants are required to provide: 1) an affidavit or power of attorney signed by any landowners who are not seeking Seam Zone entry permits. 2) affidavits made by title holders waiving their right to request a Seam Zone entry permit based on connection to the plot for the duration of validity of the permit issued to the applicant. 3) an application to cultivate the land via the applicant. However, if the applicant claims cultivation of additional parts of the land to which a **proprietary connection has not been proven**, then the applicant is required to support the application with suitable documents, such as a signed declaration by the owner(s) of the additional parts of the land stating that they do not receive Seam Zone entry permits on the basis of their connection to the plot.

Fourth, with respect to Petitioners' argument that there is no room to force farmers who share a plot to choose who among them will receive a farmer permit, the Respondents will argue that said arrangement is proportionate and provides a solution to a situation whereby, in fact, only one family member cultivates the plot and the other title holders have no need for a permit for de facto agricultural cultivation, but rather, their need is to maintain their proprietary connection to the land, which is fulfilled through personal needs permit. Mote well, the situation described by the Petitioners whereby dozens of permit holders actually cultivate the plots simultaneously regardless of their size is illogical and does not, in fact, exist. Accordingly, for instance, according to Petitioners' said argument, 20 applicants may be entitled to a daily Seam Zone entry permit for two years for a 20-square-meter plot based on the argument that they all cultivate the plot.

It should be added that the Military Commander is aware of the different times of year in which emphasis is put on joint cultivation of plots by family members, and accordingly, during certain times, including the olive harvest, permits are also generously given to landwoners' family members.

The Respondents will again note that they are aware of their obligation to answer the needs of the population while balancing the security needs. However, according to the Petitioners, the obligation of the Military Commander is to answer to the **desire** rather than the **need**. It is, however, clear that accepting the Petitioners' above argument is effectively tantamount to the revocation of the permit regime.

We reiterate that the change introduced to the Entry Procedures in 2017 regarding "minuscule plot" **helps determine whether or not the applicant has an actual need to obtain a farmer permit**, thus reducing the inherent concern that the permit is not intended for agricultural cultivation but rather for the purpose of entering Israel without a permit – thus posing a potential threat to national security. The Respondents are of the opinion that said policy falls in line with the decisions of this Honorable Court in the permit regime judgment and Respondent's position presented therein, as discussed in more detail below with specific reference to Petitioner 2.

67. In view of the above, the Respondents will argue that there is no room for the Honorable Court's intervention in the wording of Section 12(a)(7) in Chapter C, Article A as drafted in the 2021 Entry Procedures, since the provision provides a solution, on the one hand – to an actual agricultural need for agricultural cultivation where there are multiple heirs while only a few of them actually cultivate the plot, and, on the other, to the security needs for which the fence was erected. We stress emphasized that according to said provision, agricultural permits may be given to several heirs for the same plot, provided that the size of their relative share in the plot is no less than 330 square meters.

B. Petitioner 2's application for a farmer permit

68. In the *order nisi*, the Honorable Court directed as follows with respect to Petitioner 2: "Why should a Seam Zone entry permit for agricultural needs not be granted to Petitioner 2, so that he may farm the plot of land owned by his mother, Petitioner 1."

69. As specified above, Petitioner 2 holds a permit for personal needs valid for one year, until June 15, 2021, in addition to a Seam Zone agricultural worker permit valid until January 17, 2023, and consisting of 120 entries for three years (it should be noted that despite the fact that the punch card permit arrangement had been canceled as aforesaid, permits already issued remain valid).

70. We begin by clarifying that in the hearing held on July 1, 2020, the Honorable Court instructed the Respondents to clarify, inter alia, that - "A person in possession of a personal needs permit issued for the purpose of preserving a connection to the land may also cultivate the land whenever they access it by virtue of said permit"; and indeed in their Updating Notice dated October 25, 2020, the Respondents advised that in the 2021 amendment to the Entry Procedures, a clarification was added to the final clause of Section 1 in Chapter C, Article C, which concerns personal needs permits, as follows: "**A resident in possession of a permit as aforesaid may use it for any legitimate purpose which is not contrary to the law and security legislation, including agricultural purposes.**" A copy of the amended 2021 Entry Procedures was attached as RS/6 above.

71. Accordingly, Petitioner 2, who, as aforesaid, holds a personal needs permit valid for one year, **may enter the Seam Zone, access his mother's land and cultivate it without any limits on the number of Seam Zone entries during the permit's validity period, in addition to the agricultural worker permit**.

72. According to the Respondents, as emerges from the provisions of the Entry Procedures, Petitioner 2 is not entitled to receive a farmer permit for his mother, Petition 1's relative share of the plot, according to the 2017 amendment of the Entry Procedures concerning minuscule plots, since Petitioner 1 inherited 288 square meters out of a 17.5-dunam plot which was divided by way of inheritance between Petitioner 1 and her siblings.

    It should be noted that as specified above, if Petitioner 2 wishes to cultivate the plot and receive a farmer permit for this purpose, he may submit a farmer permit application with the consent of additional plot owners – Petitioner 1's family members, whose entire area exceeds 330 square meters, as stated in Section 12(7)(a) of the revised Entry Procedures. Otherwise, each of the deceased's heirs would ostensibly be entitled to a farmer permit on the basis of proprietary rights in a minuscule plot, despite the fact that not all of them cultivate the land, allowing them regular access to the area for a long period of time. It seems that this result is unreasonable in the context of the balance that the Entry Procedures seek to create based on material needs.

73. It is further noted that as described above, Petitioner 2 filed an appeal against the denial of his application for a farmer permit. On November 21, 2018, the appeal was heard by the appeals committee, and it emerges from the hearing before the committee that notwithstanding Petitioner 2's argument, he did not, in fact, prove an agricultural need to cultivate the plot that is the subject of his application, much less a daily need to cultivate the plot. It also emerged that another family member was cultivating the plot. **It further emerged in the hearing before the committee that Petitioner 2 had misused the permit given to him for the purpose of a family visit and exploited it**

<u>to enter the territory of the State of Israel for work purposes</u>. Transcripts of the committee hearing were attached above and marked RS/1.

74. The Respondents argue that all the foregoing indicates that the permit given to Petitioner 2 answers his actual needs, and there are no grounds for intervention by this Honorable Court in the **<u>type</u>** of permit given to Petitioner 2.

75. Note well, as emerges from Petitioners' arguments, they do not focus on the actual need but rather on the principle whereby any applicant with a connection to land in the Seam Zone (regardless of the size of the plot and applicant's need) is specifically entitled to receive a farmer permit. Why a farmer permit specifically? Because said permit allows daily entry into the Seam Zone for two years. However, as aforesaid, the above argument is effectively tantamount to the revocation of the permit regime in its entirety, in view of the fact that the permit regime is based on the concept that a permit answers a need.

76. The Respondents argue that the definition of a "minuscule plot" stems from the military commander's understanding that monitoring and control over the individuals entering the Seam Zone have eroded as a result of numerous agricultural permits issued to applicants with proprietary connections to small plots, **occasionally plots of just a few square meters**. Consequently, measures had to be taken to reduce the risk of misuse of Seam Zone for the purpose of unlawful entry into Israel, bearing in mind the all implications thereof – a phenomenon which undermines the original purpose underlying the erection of the security fence and the closure of the Seam Zone for uncontrolled entry.

According to the Petitioners, Respondents' current Entry Procedures constitute a departure from Respondents' position as presented in the permit regime judgment. The Respondents argue that this argument made by the Petitioners has no merit. We explain.

The purpose of the permit regime and the proportionality tests established in the permit regime judgment

77. The Petitioners argue that the changes to Respondents' Entry Procedures and particularly the "minuscule plot" stipulation are incongruent with the findings of this Honorable Court in the permit regime judgment. The Petitioners argue further in paragraph 69 of the amended petition that since the permit regime judgment, "…there has been no relevant change except Respondents' policy. When the legality of the permit regime was under scrutiny, the Respondents stated they would maintain the fabric of life in the Seam Zone. However, after the permit regime was upheld by this Honorable Court, the Respondents changed course and declared a new policy that runs contrary to their undertakings and to the judgment…". Therefore, the petitioners argue that the current policy differs from the policy upheld in the permit regime judgment.

78. The Respondents will argue this argument should be dismissed since the purpose of the Entry Procedures, as argued by the Respondents, is **to provide a proper solution to the different needs of permit applicants,** and the above change does not deviate from the balance upheld by this Honorable Court in the permit regime judgment, and that it falls in line with it.

79. The permit regime judgment, delivered on April 5, 2011, by Honorable President Beinisch, Honorable Deputy President Rivlin and Honorable Justice Procaccia,

dismissed the petition, subject to the Honorable Court's remarks regarding required changes to the relevant arrangements, including, 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, it was held many times by this court that such harm was inevitable, taking into consideration the clear security need underlying the erection of the security fence**. […] 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.

80. In the permit regime judgment, the Respondents explicitly addressed issues arising in the petition at hand as well. In their Statement of Response in the permit regime judgment, the Respondents argued as follows:

> 119. It should be noted that, indeed initially, the security establishment applied a very liberal policy with respect to the issuance of Seam Zone permits. However, there is genuine concern that said policy would be misused for the purpose of entering Israel illegally, such that residents of the Area who receive Seam Zone entry permits would misuse said permits to enter Israel without a permit, rather than to cultivate their lands in the Seam Zone.
>
> **Due to said concern, which is not at all negligible, the Respondents currently wish to ensure that the applicants do indeed have a real connection to agricultural land located in the**

Seam Zone, thus reducing the inherent concern that the purpose of the permit is to enter Israel without a permit.

81. To remove any doubt, it is noted that contrary to Petitioners' argument in this regard (Paragraph 144 of Petitioners' Response to the Updating Notice), Respondents argument in that regard referred to all applicants and not only to applicants who are second-degree relatives. This conclusion also arises from the judgment of this Honorable Court.

82. Accordingly, in the permit regime judgment, the Honorable Court also held, in reference to Respondents' position as presented to it, as follows:

> "33. […] 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, according to the specific needs of the farmer. The data attached by the state supported its above position, even if there is merit in petitioners' position, according to which the decline in the number of permanent permits was not fully compensated by the temporary permits. In addition, the state has concisely referred to the gamut of farmer related arrangements, which, according to it, provide a reasonable solution to this section of the population. This applies both to the issuance of the permits themselves – with a distinction drawn between their issuance on a routine basis and their issuance during the olive harvest, and to the opening of the different gates according to the needs of the population, as balanced against security needs. In this context, the state has already pointed out in its response that a directive was issued according to which whenever an agricultural gate located near the relevant agricultural plots of a resident was not open all year round on a daily basis, an additional gate or crossing which was open all year round on a daily basis, would be specified on the permit, through which the resident would be able to enter the zone, provided that the crossing would not necessitate the entry of the resident into Israel. The state has also responded to petitioners' argument concerning the difficulties in proving ownership of land in the Area, as a condition for proving a connection that gives rise to a right to obtain a permanent agricultural permit. According to the state – the requirements raised by it for the purpose of proving a connection to the land are reasonable – in registered lands through a land registration extract, and in unregistered lands using other evidence, such as property tax registration extract etc. The state has also raised in its response possible solutions for the entry of vehicles and agricultural machinery

into the Seam Zone as well as for the transfer of the goods to the territories of the Area located outside the Seam Zone.

34. […] **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 a 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 to the needs of the farmers in the Area are indeed filled by them with real substance**."

83. The Respondents will argue that the policy that is the subject of the petition, including the current version of the Entry Procedures and the "minuscule plot" stipulation, are congruent with the permit regime judgment and do not deviate from the balance which set therein, as specified below.

The "minuscule plot" stipulation forms part of an array of provisions aimed at providing solutions to the different needs of permit applicants

84. As emerges from the permit regime judgment, the premise is that agriculture in the Seam Zone should be facilitated to the extent possible, and the rights of Judea and Samaria residents who are prevented from entering the Seam Zone should be respected. However, as held in the permit regime judgment, these rights are balanced against the security objective for which the fence was erected. **Said balance is fulfilled through Seam Zone entry permits granted according to the different needs of the applicants**. The actions taken by the Respondents to examine the different needs of permit applicants and **allocate the proper permit to each need** has been recognized and approved by this Honorable Court in the permit regime judgment, as cited above "…we assume in our said determination that Respondents' declarations concerning the importance of giving proper solutions to the needs of the farmers in the Area are indeed filled by them with real substance."

    Respondents' Entry procedures that are the subject matter of the petition at hand are also congruent with the above.

    The foregoing reinforces the conclusion that the Petitioners effectively seek the cancellation of the permit regime in its entirety and sever the connection between the permit issued and the needs of the population, thus canceling the balance between the needs of the population and the security needs for which the fence was built. The Respondents will argue that this position is, in fact, the position that runs contrary to the judgment of this Honorable Court and with all due respect should not be accepted.

85. As explained, Respondents' Entry Procedures provide for different permits designed to answer applicants' different. The Respondents will argue, as argued by them in prior notices, that the "minuscule plot" amendment helps the Respondents determine whether or not the applicant has **an agricultural need to cultivate the relevant plot**. Note well, not having an agricultural does not mean the applicant is not entitled to receive any other permit and that they are prevented from entering the Seam Zone. Rather the applicant is entitled to receive a permit that matches their actual needs – a personal needs permit.

Therefore, and since the applicant does receive a permit, there is no room for intervention by this Honorable Court in the discretion of the Military Commander regarding the **<u>type</u>** of the permit issued.

86. Beyond the aforesaid, we add that the 2017 amendment to the Entry Procedures that are the subject of the petition **was based on the expert opinion of the Agricultural Staff Officer from 2016**. After the petition was filed, the opinion was re-evaluated by the Respondents and updated in an opinion provided by the Agricultural Staff Officer in January 2019. It should be noted that Petitioners' main grievance is not that Respondents' Entry Procedures prevent or hinder the agricultural cultivation of the plot, and, in any event, such argument has not been proven. Rather, their main grievance is that Respondents' Entry Procedures should answer applicants' desire to enter the Seam Zone on a daily basis rather than their need to do so.

87. Firstly and in order to understand the agricultural needs in the Seam Zone, we will provide some further details on the qualities of the Seam Zone as an agricultural area based on the opinion of the Agricultural Staff Officer at the Civil Administration (details that demonstrate what the agricultural <u>need</u> in a 330-square-meter plot really is): more than 95% of the agricultural areas within the Seam Zone consist of olive groves. Small quantities of different crops may be found in the remaining areas, including wheat, barley, tobacco, avocado, hyssop (za'atar), cucumbers and tomatoes. The vast majority of the olive groves consist of mature trees. As such, and considering the planting method in the area, one dunam of land consists of ten trees on average.

88. In general, mature olive trees do not require constant tending. They grow and bear olives without artificial irrigation and are nourished by the soil. However, tending is required at certain times of year in order to preserve tree health and produce maximum yield. Such tending includes annual pruning, bi-annual plowing and specific treatment in the event of disease or pests. Yield is collected once a year during the olive harvest.

89. Olives grown in the Seam Zone are used for two purposes, pickling and olive oil production. The vast majority of the olive trees produce olive oil since only certain olives in each tree are suitable for pickling.

90. To produce a single olive oil canister weighing 16 kilograms, at least 64 kg of olives are required. Over the course of ten years, each mature olive tree in the Seam Zone yields an average of 16 kg of olives every year. Hence, on average, at least four olive trees are required to produce a single canister of olive oil each year. Given the planting method in the Seam Zone, four trees "occupy" at least 400 square meters of land.

91. Of the average quantity of 16 kg per tree, only 2 kg, on average, are suitable for pickling. Frequently, about a month before the harvest, olives suitable for pickling are picked, thus 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 single canister of olive oil. Hence the assessment by the relevant experts at

the Civil Administration that there is no actual agricultural need to cultivate a plot smaller than 330 square meters.

A copy of the opinion of the Agricultural Staff Officer from 2016 is attached hereto and marked **RS/7**.

92. Furthermore, in the 2019 opinion, the Agricultural Staff Officer re-evaluated and mapped all agricultural crops in the Seam Zone and established, following a professional assessment, how often a landowner **actually** needs to cultivate the plot with respect to each dunam. Accordingly, for instance, following the assessment, olives grown on a one-dunam plot were found to require 40 days of cultivation per year. Note that a lenient approach was taken in determining the number of days. Accordingly, a table specifying the number of workdays required for the cultivation of one dunam of different crops has been prepared (see the opinion of the Agricultural Staff Officer from 2019 and the workdays table attached as an annex to the 2019 Entry Procedures).

    A copy of the opinion of the Agricultural Staff Officer from 2019 is attached hereto and marked **RS/8**.

93. Hence, the 2019 amendment to the Entry Procedures introduced the "punch card permit" whereby applicants received a permit according to the number of cultivation days actually required for the relevant agricultural crop, as calculated according to the size of the plot based on the table. So, for instance, an applicant with a proprietary connection to four dunams of olive crops could receive a Seam Zone entry permit consisting of 160 entries per year to cultivate their plot.

    As aforesaid, the punch card permit was canceled in the 2021 amendment of the Entry Procedures, but the professional opinion of the Agricultural Staff Officer stands and remains instructive as for the needs pertaining to actual agricultural cultivation of plots, including minuscule plots.

94. The Respondents will again argue that as emerges from the 2016 and 2019 expert agricultural opinions, the presumption is that **there is no actual agricultural need to cultivate a "minuscule" plot smaller than 330 square meters, and therefore there is no justification to grant a farmer permit to an applicant who demonstrates a connection to such plot**, as opposed to another type of permit that answers the need to maintain the proprietary connection to the plot. In addition to the above, it should be emphasized that this is a rebuttable presumption, and to the extent that the resident wishes to dispute said determination after their application for a Seam Zone permit for agricultural needs is denied, an application for a DCO review may be submitted in which they can explain why they need a permit for daily entry valid for two years for the cultivation of a minuscule plot.

95. In view of the above, Petitioners' arguments that the Respondents "disregard" the right of the owners of minuscule plots to maintain proprietary connections to their lands should be dismissed. As explained, the Respondents recognize applicants' aforesaid right. However, it is not mandatory for such recognition to be reflected in the grant of a specific type of permit for a need that does not actually exist. For this purpose and in order to answer the need to maintain proprietary connections, other types of permits designed to provide a solution in such cases are available.

The number of Seam Zone entry permits issued each year has not declined

96. According to the Petitioners, the revisions made over the years to the Seam Zone Entry Procedures had caused a "drastic" decline (as stated by the Petitioners) in the number of approved applications each year, compared to the number of applications approved when the permit regime judgment was given; therefore, Respondents' policy is incongruent with the findings made by this Honorable Court in the permit regime judgment. The Respondents argue that contrary to Petitioners' argument, the figures presented by the State's response in the permit regime judgment paint a different picture, showing that the number of permits did not decline but remained stable. We specify.

97. As explained, following the changes in Respondents' Entry Procedures, beginning with the 2017 amendment of the Entry Procedures, some of the applicants who have shown a proprietary connection to a minuscule plot no longer receive a farmer permit, but rather a personal needs permit. In 2017, a new permit was introduced – "Seam Zone farmer family member permit." This permit is issued to applicants who previously received agricultural worker permits. At the same time – the number of approved personal needs permits has increased, all of the above as presented by the Respondents below.

98. We shall note at this early stage that the conclusion arising from the entire data is that the total number of permits given to applicants, as a whole, has not declined following Respondents' policy, contrary to Petitioners' argument in this regard.

Figures from the Permit Regime Judgment

99. As recalled, in their Updating Notice dated October 25, 2020, the Respondents presented the following figures, also presented in the permit regime case, with respect to the number of Seam Zone permits issued by year and permit type (to avoid overloading the court's docket, the Respondents will not attach again the exhibits of the Updating Notice dated October 25, 2020, and will refer the Honorable Court to the exhibits of the notice in reference to the figures presented in the permit regime case beyond the figures specified below). It should be noted that in the permit regime case, the Respondents presented figures for the years 2007-2009:

Year	Resident	Farmer	Temp. Farmer	Worker	Trade	Personal Needs	Intl. Org. Employee	Education	Infra-structure Worker	Medical Team	Total
2007	4,944	9,977	1,487	9,309	640	4,796	27	213	212	58	31,573
2008	5,148	2,601	2,308	13,429	828	3,815	49	136	247	93	28,654
2009	5,496	1,640	2,445	9,935	679	3,214	1	63	245	87	23,805

100. WE explain that the table refers to **all permits which were valid in each year**. Hence, a farmer permit valid for more than one year is counted in the table twice, in two consecutive years. Consequently, the figures in the table are slightly higher, which reinforces Respondents' position that the total number of permits has not declined since the permit regime judgment (and may have even increased), as shall be specified.

101. It is important to note that some of the permits in the above table are not relevant to the petition at hand, mainly the "resident" permit, which is designated for Seam Zone residents and is not an entry permit; as well as the education, medical and other permits. Therefore, when the particular permits **relevant to the case at hand**, namely: the farmer permit; the temporary farmer permit; the agricultural worker permit (as explained above, most work in the Seam Zone is agricultural work), and the personal

needs permit are tallied, the following picture emerges with respect to the permits valid each year:

Year	Agricultural	Temp. Agricultural	Worker	Personal Needs	Total
2007	9,977	1,487	9,309	4,796	25,569
2008	2,601	2,308	13,429	3,815	22,153
2009	1,640	2,445	9,935	3,214	17,234

102. Consideration of permit denials and approvals by percentage at the time of the permit regime judgment reveals that according to the figures presented by the Respondents in their Statement of Response in the permit regime judgment, filed on November 13, 2006 (page 9 of the Statement of Response), in the months of August-September 2006:

- In the Jenin district, 960 applications were submitted, of which 745 were approved, and 215 were denied – namely, approximately 25% of the applications were denied.

- In the Tulkarm district, 993 applications were submitted, of which 460 were approved, and 533 were denied – namely, approximately 53% of the applications were denied.

- In the Kalkilya district, 560 applications were submitted, of which 241 were approved, and 319 were denied – namely, approximately 56% of the applications were denied.

- In total, 2,513 applications were submitted, of which 1,524 were approved, and 1,067 were denied – namely, approximately 42% of the applications were denied.

As noted there – most applications were denied due to failure to prove a connection to the land as required. In addition, noticeably, the rate of denials has not materially changed, and many irrelevant applications were denied in those years as well.

A copy of the Statement of Response in the permit regime judgment dated November 13, 2006 (excluding exhibits) is attached hereto and marked **RS/9**.

It should be emphasized that these were the figures considered by the Honorable Court when it upheld Respondents' policy in the permit regime judgment.

Current figures

103. In their last updating notice dated October 25, 2020, the Respondents presented figures concerning the following permit types: **personal needs permit; permanent agricultural permit; agricultural worker permit; and agricultural permit for family members** (as aforesaid, a new permit introduced in 2017, which apparently has not been calculated by the Petitioners). The figures were presented for the years 2013 through 2020, with partial figures for 2020, until October 1, 2020. The figures included the number of applications submitted, the number of permits granted, and the number of applications denied, specifying the percentage of applications accepted each year (it should be noted that these figures relating to the number of **valid** permits, as was done in the permit regime judgment).

When the total **approved** permits for the years presented are tallied, the following picture emerges:

Year	Farmer	Personal Needs	Agricultural Worker	Agricultural Family Members	Total	Percentage of approved Applications of all applications	Percentage of denied applications of all applications
2013	2,831	10,918	1,214		14,963	74%	26%
2014	3,180	11,531	16,916		31,627	67%	33%
2015	2,694	9,682	14,247		26,623	75%	25%
2016	4,286	9,278	13,703		27,267	70%	30%
2017	2,409	10,536	9,947	3,663	26,555	75%	25%
2018	2,161	12,871	2,235	4,983	22,250	66%	34%
2019	2,741	16,228	1,467	4,481	24,917	75%	25%
2020	1,581	3,500	513	3,384	8,978	59%	41%

104. The above indicates that throughout 2013 – 2019 (bearing in mind that figures for 2020 are partial, considering the difficulties arising as a result of the spread of the coronavirus and the lack of coordination between the Palestinian Authority and the State of Israel over a period of approximately six months) the total number of permits of the types relevant to the case at hand **has not declined** despite the changes made to Respondents' Entry Procedures, contrary to Petitioners' argument. **In addition, the rate of approved applications among the total number of applications has remained relatively stable**.

It should be clarified that, as noted in the Updating Notice dated October 25, 2020, as well, the figures do not reflect the number of residents with or without possession of Seam Zone entry permits, **but only the number of applications approved and denied relative to the number of applications submitted**. We explain – for instance, in many cases, a resident whose application for a Seam Zone entry permit was denied on technicalities (for instance, absence of documents, insufficient details, inconsistency between the documents and the requested permit etc.), may submit another application once the deficiencies are corrected, and this application would be approved. Hence, as far as the figures are concerned, that same person would appear both as someone whose application was denied as well someone whose application was approved, usually in the same year. Another example can be found in cases where a resident's application was initially denied but later approved following an appeal. In such cases, applicants would also appear in the figures as persons whose applications were both denied and approved.

It should also be noted that the above permits exclude agricultural family members permits issued during the olive harvest. As aforesaid, in order to accommodate and given that the vast majority of Seam Zone lands are used to grow olive trees, each year **thousands of Seam Zone entry permits** are issued for the olive harvest **in addition** to the permits specified above, in order to meet increased needs during the olive harvest.

105. According to the foregoing, the Respondents will argue that in their Response to the Updating Notice, the Petitioners left all permits specified above out of their arguments and focused mainly on applications for agricultural permits denied as a result of the changes in the Entry Procedures, which led them to conclude that the number of permits had declined – however, this conclusion is incongruent with all relevant figures specified above.

So, for instance –looking at permits for agricultural needs issued in 2019 – if we examine the percentage of approved farmer permit applications exclusively – only 37% of the applications were approved. At the same time, 91% of applications filed for permits for personal needs in the Seam Zone were approved, 77% of applications filed for agricultural worker permits in the Seam Zone were approved, and 75% of applications filed for agricultural family member permits in the Seam Zone were approved. Numerically, as indicated in the above table, 24,917 Seam Zone permits for agricultural needs and for personal needs were issued. The above figure does not include all Seam Zone entry applications approved that year, and it alone shows that the number of permits issued in 2019 increased relative to the years relevant to the permit regime judgment.

106. With respect to Petitioners' argument that personal needs permits are irrelevant to the tally since they are given for a variety of reasons which are not agriculture-related (such as: participating in a wedding or funeral; visiting family members, and the like), the Respondents shall explain that these needs existed ever since the Seam Zone was closed and they are not new. Therefore, **the increased number of personal needs permits, in tandem with the decline in the number of agricultural permits, shows, *prima facie*, that some applicants received a personal needs permit in lieu of a farmer permit, while the total number of permits remained similar**. Therefore, this permit is certainly relevant to the case at hand since, as aforesaid, this permit is also given to persons who have a proprietary connection but do not cultivate the land for the purpose of maintaining said connection.

A table summarizing the figures presented by the Respondents in the Updating Notice dated October 25, 2020, for the years 2013-2020, is attached hereto and marked **RS/10**.

107. With respect to the figures for 2011, as stated in the Updating Notice, these figures are not available digitally at this stage, and the earliest figures in the system are from 2013. The Petitioners argued that figures for 2011 were included in Respondents' responses in HCJ 8083/12, HCJ 8283/12 and HCJ 2518/12 and that an analysis of these figures shows that the number of permits issued has declined.

We first explain that a review of these figures shows these are partial numbers that cannot assist in the matter at hand and that they relate to personal needs, trade, international organizations employee, infrastructure employee and permanent agricultural permits. In addition, Respondents' response in said proceeding provided general information which precludes specific analysis, unlike the above figures provided by the Respondents, which present the full picture.

A copy of Respondents' response in HCJ 8083/12 is attached hereto and marked **RS/11**.

Therefore, the Respondents will argue that a review of the figures provided in said proceedings does not assist in the matter at hand, and they certainly cannot be used to arrive at the conclusion that the number of permits issued has declined, all of the above, contrary to the detailed figures provided by the Respondents in the proceeding at hand, clearly indicating there was no decline in the number of permits issued.

108. To conclude this part, the Respondents will further argue that to the best of their understanding of Petitioner 3's argument in this regard, it had processed a total of approximately 190 applicants/proceedings relating to the issue at hand. Given the overview of the total number of permits issued, as emerges from the above figures, the Respondents argue that it appears that the extent of the difficulties indicated by the Petitioners has not been sufficiently clarified, nor has the extent to which Respondents' Entry Procedures constitute a drastic change as argued by the Petitioners.

Exploitation of permits to enter Israel is widespread

109. The Respondents argue that contrary to Petitioners' argument, misuse of permits is widespread. **This argument is supported primarily by the position of Respondents' relevant experts are physically present in the Seam Zone on a daily basis and see with their own eyes the number of individuals entering the Seam Zone and the scope of cultivation in the area, in addition to the figures presented by the Respondents in this regard.**

110. The Petitioners argue that Respondents' argument regarding misuse of Seam Zone entry permits for the purpose of unlawful entry into Israel is unsubstantiated and that it was not considered by them when formulating the policy in 2017. The Petitioners argue in particular that if Respondents' officials had received information from the "ground," it should have been supported by reports from soldiers stationed at the crossings, tours by Respondents' officials in the Seam Zone, and discussions held by Respondents' officials. However, the Respondents did not submit any such documentation. According to the Petitioners, Respondents' figures concerning certified public documents (as presented in Respondents' Updating Notice) do not reflect any sort of specific number, and it is doubtful whether these figures, in whole or in part, were gathered before the 2017 amendment of the Entry Procedures. The investigation mentioned in the Updating Notice regarding misuse of Seam Zone entry permits for the purpose of committing a terrorist attack was not mentioned in Respondents' court documents until the Updating Notice, and it was conducted in 2018 and not before the change of the policy.

    The Respondents shall respond to these arguments as follows.

111. First, the Respondents reiterate that the fact that the permits are **widely** misused is gleaned, first and foremost, from the work of Respondents' officials on the ground, **as argued in Respondents' Updating Notice dated October 25, 2020, and supported by the affidavit of the Head of the Civil Administration**.

    Accordingly, and according to the experience and reports of officials physically present at each one of the Seam Zone entry gates daily, although thousands of permit holders pass through the gates in the morning hours, patrols conducted several hours later in the Seam Zone shows that only a very small number of individuals are found in their lands and engaging in cultivation.

112. The Respondents explain that gate openings and field tours are **routine**, and in many cases, senior officials from the Civil Administration and the Command join these tours. For instance, during the month of September, at the "Magen Dan" gate alone, several routine tours were conducted, including the opening of the gate, in the presence of senior officials from the Civil Administration and the Command, including the Head of the local DCO and the Deputy Head of the Public Liaison Department of the Command.

    It should be noted that the above were conducted in addition to other frequent visits and tours by additional officials, including the commander of the Military Police company in the sector. In addition, many tours and patrols are conducted by field officials in the region daily, and obviously, not every tour is documented.

    The above tours give rise to a clear picture – thousands of permit holders enter in the morning hours, and as aforesaid, after several hours, only a few individuals can be found cultivating their lands.

113. With respect to Petitioners' argument that the fieldwork is performed by "junior" officials who are ostensibly disconnected from the decision-makers, the Respondents shall argue that although this argument is factually erroneous – as clarified above – nevertheless the importance of the professional evaluation made by field officials who open the gates and patrol the region regularly should not be perfunctorily dismissed, since their vast experience and the mere fact that they "feel the field," considerably contribute to the Military Commander in his decision making process. The vast experience and knowledge they accumulate in the field provide senior officials who do not perform the day-to-day tasks a perspective they sometimes lack.

114. Contrary to the above factual basis, the factual basis by virtue of which the Petitioners argue against the foregoing is unclear. Do the Petitioners visit the Seam Zone on a daily basis and gain a direct, long-term familiarity with what actually transpires in the Seam Zone? It seems that the answer to this question is negative, and therefore Petitioners' arguments in this regard should also be dismissed.

115. With respect to Petitioners' arguments concerning certified official documents. As recalled, in their Updating Notice, the Respondents argued that thousands of Seam Zone entry permits were misused for the purpose of unlawful entry into Israel as follows:

> "… the Respondents have in their possession data regarding "certified official documents" given by them to the Israel Police with respect to illegal aliens apprehended in Israel who were in possession of Seam Zone entry permits. Namely, these figures refer only to illegal aliens apprehended more than three times for illegal entry into Israel, and as such, meet prosecution policy with respect to illegal entry into Israel, as required with respect to certified official documents issued by the Civil Administration. […] In 2016, certified official documents recorded a total of 1,350 incidents of entry into the State of Israel through misuse of Seam Zone entry permits (not necessarily farmer permits), which in view of the enforcement policy described - according to which this would have been at least the third time said individuals were apprehended in the territories of the State of Israel; and in view of the clear fact that not everyone who illegally enters Israel is actually apprehended by the police, this figure reflects at least thousands of incidents in which permits were misused this year and in previous years. Note well, when an individual is apprehended for the third time, the Respondents regard it as three separate violations of law, regardless of the fact that it is the same person."

116. The Respondents will argue that contrary to Petitioners' arguments, the above is not an estimate but rather an **absolute and minimal** figure representing a minimum baseline and, in fact, reflecting a practice that is much more widespread than the figure presented above. The numerical value presented is accurate (not estimated), and, given the policy employed by the police whereby charges are laid only after the third time an individual is apprehended, this figure leads to the conclusion that the phenomenon is much more widespread than shown by the above data.

     Note well; there is no connection between this figure and the figures relating to illegal aliens, as the two are disparate issues that are addressed by different procedures. The fact that the issue of illegal aliens needs to be addressed does not mean there is no room to simultaneously address the issue of permit misuse.

117. As for the argument that the above figures refer to misuse of all permits, the Respondents clarify that first, the figures do not refer to individuals holding Seam Zone **resident** certificates, since these are not permits. Second, of all the remaining permits, **most** permits issued for the Seam Zone are Seam Zone entry permits for agricultural purposes (personal needs, farmer permits, agricultural family members permits and agricultural worker permits), given that the vast majority of the area is agricultural. Therefore, any deviation between figures focusing exclusively on agricultural purposes would be minimal. In any event, the Respondents presented the overall figures in order to illustrate the broad aspect of the phenomenon.8

118. With respect to Petitioners' argument that the Respondents did not consider the above figures before the Entry Procedures were amended in 2017, the Respondents argue that, as cited above, considerable numerical data had already been presented, dating back to 2016. In addition, the figures concerning certified official documents depict a phenomenon familiar to the Military Commander prior to that year, and the figures merely illustrate its actual scope.

119. To conclude the above, the figures, in addition to the experience of Respondents' officials, unequivocally indicate the practice is pervasive and widespread, including the increase in these figures over the years. In paragraph 139 of Petitioners' Response to the Updating Notice, the Petitioners argued that "there is no factual basis for the argument that the "the permits are misused – on a large scale – for the purpose of unlawful entry into Israel." The Respondents repeatedly make this argument, but have never supported it with any evidence or clear data…." The Respondents will argue that the figures presented with respect to the certified official documents constitute clear and unequivocal data, together with the position of Respondents' officials, which, as aforesaid, is based on day-to-day experience in the Seam Zone.

120. With respect to Petitioners' arguments regarding the 2018 investigation, the Respondents shall explain that the investigation in question was conducted by the Civil Administration regarding uncontrolled entry into the Seam Zone due to multiple permits that had been misused and, in part, given a terrorist attack perpetrated by a resident who held a Seam Zone entry permit. The investigation was an internal, classified investigation, which did not lead to changes in the Entry Procedures. The conclusions of the investigation were that the procedures should be strictly followed, nothing more. Therefore, the Respondents did not find it necessary to provide any further details regarding the investigation. The Respondents will further argue that the administrative authority routinely reviews the manner in which its procedures are implemented and that such review is desirable (and proper).

     The Respondents will argue that this example suffices to illustrate the security need.

121. The Petitioners also argue that no comparison was made between the number of certified official documents issued with respect to individuals apprehended with a permit and those apprehended without a permit. The Petitioners argue that forced entries through the fence without a permit are a widespread phenomenon unrelated to permit holders. We reiterate that the above figures refer to residents apprehended in Israel who **had a Seam Zone entry permi**t and not to illegal aliens who did not have such a permit. We explain again that measures taken to address illegal aliens in Israel do not contradict measures taken to address misuse of permits.

122. **Parenthetically, we recall that, as aforesaid, and as emerges from the hearing before the appeals committee in the case at hand, Petitioner 2 admitted that he had**

misused the permit issued to him in order to work in the territory of the State of Israel, which in and of itself reinforces Respondents' argument.

Misuse of permits to enter Israel – a potential threat to the security purpose for which the fence was constructed

123. The Petitioners argue that the amendment made by the Respondents to the Entry Procedures was intended to limit the unlawful entry of permit holders into Israel (enforcement of the laws governing entry into Israel). The Petitioners maintain this is not a security purpose, and therefore, does not fall in line with the objectives sought by the closure of the Seam Zone as reviewed in the permit regime case.

124. As recalled, in the permit regime judgment, the Honorable Court addressed the security purpose underlying the need to apply the permit regime, stating as follows: " In view of the nature and character of the Seam Zone, being an area which is not separated from the territory of Israel by any barrier, it is difficult not to accept the argument that there is a security need to establish a mechanism which would enable close supervision of those who enter through it and which would assist the security forces and improve their ability to fight Palestinian terrorism threats the purpose of which is to cause harm to Israel and its inhabitants." (see Paragraph 17 of the judgment of Honorable President Beinisch in the permit regime judgment).

125. In addition, the Honorable Court made a finding, which remains undisputed, that, bearing the security consideration in mind, "[…] the Military Commander must ensure proper protection for the human rights of the Palestinians living under his control in an area which is under belligerent occupation, who are protected persons under international law." (see Paragraph 19 of the judgment of Honorable President Beinisch in the permit regime judgment).

126. According to Respondents' position, the requirement to prove an agricultural need for the purpose of receiving a farmer permit entitling its holder to enter the Seam Zone on a daily basis for two years upholds the above security purpose in the sense that it is aimed at reducing the concern that farmer permits will be used to enter the territory of the State of Israel without a permit. This has nothing to do with collective punishment (as argued by the Petitioners).

     It should be emphasized that Respondents' procedures sought, on the one hand, to ensure a correlation between the need to enter the Seam Zone and the type of permit issued, thus enabling to preserve the fabric of life, and, on the other, to maintain supervision and control so as to prevent misuse of the permits for unauthorized entry into Israel rather than for the purpose of cultivating lands within the Seam Zone.

127. Petitioners' assessments that **widespread unlawful entry into Israel for work purposes poses no security threat** are merely assessments, the factual basis for which remains unclear. This, contrary to the clear purpose for which the fence was constructed, which was thoroughly examined by this Honorable Court in the permit regime judgment.

128. <u>It should be emphasized that contrary to Petitioners' argument, the security screening conducted for the purpose of issuing a permit to enter Israel is different from the security screening conducted for a Seam Zone entry permit. Seam Zone permit applicants do not undergo the same security screening enabling entry into Israel, and therefore, it is impossible to rule out a security threat on their part based on the screening they undergo</u>.

129. As for Petitioners' argument that the Respondents should act on two other fronts: securing the fence and closing breaches; and enforcing the laws governing entry into Israel using enforcement powers, the Respondents will say that **they do the best they can on those fronts as well**, in addition to refining procedures and reviewing the efficacy of the procedures on all required levels.

We add that the need, recognized as aforesaid in the permit regime judgment "**to establish a mechanism which would enable close supervision of those who enter through it and which would assist the security forces and improve their ability to fight Palestinian terrorism threats the purpose of which is to cause harm to Israel and its inhabitants**" cannot be disregarded. (Paragraph 17 of the judgment of Honorable President Beinisch in the permit regime judgment cited above).

As cited from the State Comptroller's report regarding the Seam Zone (attached to Petitioners' response and marked P/3) in Paragraph 16 of Petitioner's Response to the Updating Notice: "The main components of the Seam Zone plan are: establishing a special purpose headquarters; allocating human resources for security activities; operational coordination between the IDF and Israel Police; building barriers and checkpoints; declaration of a closed military area; and addressing the issue of Palestinians illegally present in Israel (illegal aliens) […] the components of the Seam Zone plan are interdependent, and the success of the plan lies in the combined implementation of all components thereof …" (emphases added, the undersigned). In other words, it seems that the Petitioners expect the Respondents to act only on the two fronts they mentioned and refrain from taking measures to ensure the Seam Zone remains a closed military zone which may be accessed only according to the applicant's need and in a controlled manner. The Respondents argue that this position should be rejected since the ability to achieve the security purpose for which the fence was constructed depends on **all components rather than on some of them**.

130. The Respondents shall add to the foregoing that petitions filed by Petitioner 3 are pending before the Honorable Court. Said petitions concern the requirement made in the Entry Procedures to submit a copy of a *Tabu* [land registry] extract when applying for a farmer permit with respect to plots located in registered land (HCJ 3066/20; HCJ 3068/20; HCJ 3070/20 and HCJ 3071/20 – hereinafter: the ***Tabu* petitions**). As explained below, Respondents' policy arising from this petition is also reflected in Respondents' approach to the enforcement of the requirement to provide a *Tabu* extract:

We clarify that the above requirement in the Entry Procedures was instituted back in the 2005 version of the Entry Procedures, which was presented to the Honorable Court in the permit regime case. However, the requirement was only partially enforced prior to 2018 (the petitions were filed against the enforcement of the requirement by the Respondents in 2018). As explained below, in 2018, after the Civil Administration conducted an investigation with regards to the Seam Zone permit regime, a decision was made to instruct the DCOs to enforce this requirement across the board.

As advised by the Respondents in the *Tabu* petitions, the above investigation was conducted following a stabbing attack committed on December 10, 2017, at the central bus station in Jerusalem by a West Bank resident from Nablus, who was in possession of a permit to access and work in the Seam Zone but had actually worked in construction in the Harish Regional Council. The terrorist did not have a permit to enter Israel. According to the sentencing decision, the terrorist purchased a knife with which he planned to commit the stabbing attack. He hid the knife inside his coat and, using the Seam Zone entry permit he had been issued, he reached the central bus station in Hadera, where he took a taxi to Jerusalem. Upon arrival at the central bus station in

Jerusalem and failing to pass the security check due to the knife he was hiding, the terrorist stabbed the security guard at the entrance into the Jerusalem central bus station, severely injuring him (see Severe CrimC (Jerusalem District) 59601-12-17 State of Israel v. Yasin Abu al-Kar'a (reported in Nevo, March 18, 2019). Following the above, the Head of the Civil Administration ordered an investigation into the Seam Zone permit regime.

The investigation was conducted during the first half of 2018. The regional DCOs responsible for the seam zone, led by the Jenin DCO, then undertook staff work, which included meetings with regional councils in the Seam Zone, field tours in the Seam Zone, including a tour held by the Head of the DCO with landowners in the Seam Zone, field tours by DCO officers in the different crossings and mapping of the different areas within the Seam Zone.

The mapping revealed that the scope of agriculture in the Seam Zone did not match the number of permits issued for said areas, raising suspicion that a considerable number of permits were misused to enter Israel.

The conclusions of the staff work were presented to the Head of the Civil Administration, who decided to clarify procedures to the DCOs and impose a uniform examination standard to be applied by the DCOs. As part of this process, a decision was made to enforce the *Tabu* registration requirement in order to ensure the reliability of the applications and enhance control and monitoring.

In view of the above, the Respondents argued in the *Tabu* petitions that:

> The Respondent maintains that the requirement to prove title to farmland in registered land within the Seam Zone using a *Tabu* extract fulfills the security purpose presented above in the sense that it is intended to reduce concern that farmer permits would be used for purposes of unauthorized entry into the territory of the State of Israel. Accordingly, a farmer permit will be given to a person who has a "proprietary connection." Said person would, in most cases, be entitled to permits valid for three years for cultivating their land in the Seam Zone. At the same time, concern that such permits would be misused for the purpose of unauthorized entry into Israel, rather than for cultivating land in the Seam Zone, will be reduced.
>
> Accordingly, the Respondent instituted a requirement in its procedures in 2015, a requirement which has not changed since and remains in force, whereby, for the purpose of substantiating a "proprietary connection" to registered farmland, a farmer permit applicant must provide a copy of a *Tabu* extract.
>
> […]
>
> Hence, the Respondent will argue that the requirement to prove a "proprietary connection" to registered agricultural land in the Seam Zone using a *Tabu* extract upholds the security purpose, as it enables issuing a farmer permit to a person who has a "proprietary connection" to the land, while reducing concern that the permits would be misused for the purpose of unauthorized entry into Israel, rather than for the purpose of cultivating land in the Seam Zone."

131. This, therefore, demonstrates that Respondents' policies emerging from both the petition at hand and the *Tabu* petitions are identical, compatible and directly extend from one another. Both cases amount to enhanced procedure compliance, although from different aspects, intended to **fulfill the security purpose by issuing farmer permits to persons who have an actual agricultural need while reducing concern that the permits would be misused for the purpose of unauthorized entry into Israel**.

132. To complete the picture, it should be noted that on September 21, 2020, a hearing was held in the *Tabu* petitions before the Honorable Court, at the conclusion of which the Honorable Court noted that the state should examine and clarify its position on the three following issues:

    (a) Respondent's requirement for an inheritance registration fee equalling 1% of the value of the land for the purpose of land registration.

    (b) The option of presenting a power of attorney for the cultivation of plots belonging to other landowners.

    (c) The option of receiving a farmer permit after commencing a *Tabu* registration process pending a decision, and the period of time granted in the permit.

    The Honorable Court directed the Respondents [there] to file an updating notice on the above issues.

133. The Respondents further note that as part of the updating notice in the "*Tabu*" petitions, they have, *inter alia*, advised as follows:

    > As advised by the State during the hearing, an applicant applying for a farmer permit **can** present a power of attorney for the cultivation of plots of other landowners. It should be further noted that Section 14.a.7.a., Chapter C, Article A of the 2019 Seam Zone Entry Procedures concerning a "minuscule plot" was amended. Currently, the Section provides that "A cultivation permit for agricultural needs may also be granted based on an "aggregation" of the rights of several title holders whose combined share of the land meets the 330 square meter threshold – to a single title holder of their choosing, subject to the provision of consent from other title holders in the land. It should be noted that although the Entry Procedures which were published are expected to enter into effect on January 31, 2021, the Respondent is already willing, at this time, to examine applications submitted according to the provisions of the Section, as stated during the hearing as well…

    The above update falls in line with Respondents' positions as presented to this Honorable Court in the above-captioned proceeding and with the content of this Affidavit of Response.

134. The Petitioners further argue that the Entry Procedures include specific provisions regarding misuse of permits and a chapter specifying the measures by which to address it. Therefore, according to the Petitioners, sweeping action by way of a policy change that harms persons **not** suspected of misuse is unjustified. The Respondents argue that their policy enhances and clarifies the correlation between the actual need and the type

of permit issued. Where applicants have no actual agricultural need, they are, ipso facto, not entitled to receive a farmer permit, and their right to maintain the connection to the land is unharmed.

Furthermore, the chapter in the Entry Procedures stipulating measures used to address misuse of permits by permit holders is an enforcement tool per se, in addition to Respondents' policy, and the two are not mutually exclusive. Through the prism of the rationale for Respondents' policy, as discussed in detail above, it is only clear that said enforcement chapter in the Entry Procedures cannot, alone, address the erosion that has occurred in the supervision and control performed by the Military Commander, requiring an additional, more significant change in the form of enhancing the correlation between the actual need and the type of permit, and as aforesaid, the enforcement tool included in the Entry Procedures is insufficient.

Response to additional arguments made by the Petitioners

135. The Petitioners cited from their notice in HCJ 8084/19 **Kamal Radad v. Military Commander for the West Bank Area**, arguing that in December 2019, two cases occurred in which farmer permits were confiscated en mass from farmers waiting for an agricultural gate to open by two soldiers who suspected they were misusing their agricultural permits to enter Israel. In said case, notice was filed on behalf of the Respondents on February 9, 2020, with a letter from the Public Liaison Officer attached thereto. The letter indicates the Respondents maintain that in the vast majority of the cases, the individuals in question have an Israeli work permit. According to the Petitioners, a person holding a permit to enter Israel may also enter the Seam Zone without a Seam Zone permit for the sole purpose of transiting into Israel.

136. The Respondents explain that it is an erroneous understanding of the law and that an erroneous conclusion has been drawn from the letter of the Public Liaison Officer. The Seam Zone is a closed military zone. Palestinians in possession of an entry permit into Israel may pass through the Seam Zone only via permitted crossing points and not through agricultural gates. We explain: The Order regarding Closed Zones (Judea and Samaria Area) (No. 34), 1967, stipulates that "A resident of the Area who is not an Israeli shall not travel from the Area to Israel and shall not enter the Area from Israel other than through the crossing points". The Order stipulates further that "The Head of the Civil Administration may establish by notice crossing points for residents of the Area who are not Israelis who are traveling from the Area to Israel and entering the Area from Israel […] and the arrangements that shall apply in the crossing points." In the supplementary Order regarding Closed Zones – Transitional Provisions, the Head of the Civil Administration set forth that only the declared points may be used as crossing points. Agricultural gates are not declared as crossing points as aforesaid. In addition, agricultural gates are intended to facilitate access by landowners to land in the Seam Zone. These are simple gates, which are not equipped with the innovative technologies available at regulated crossing points, which are designed for daily passage by tens of thousands of Palestinian workers into the State of Israel. The [agricultural] gates open at specific times for a relatively short duration and are designed to enable the passage of a limited number of people in a relatively short time, lenient security screening conducted by a limited complement staffing the gate. Hence, use of the gates by a large number of people for the purpose of traveling to Israel is not possible due to both the crossing infrastructure and the screening infrastructure.

The same was stated in the letter cited by the Petitioners: "Unlawful exit occurs through a gate which is not one of the designated crossing points for entering Israel while misusing the Seam Zone permit for different purposes other than the agricultural

purpose for which it was given." The letter further explained that a review indicated that 48 of the 70 farmer permit holders who were detained and questioned in the aforesaid incident – namely, most of them - **could not point at an agricultural plot they cultivate:** rather, pointing, inter alia, at state land or land under a confiscation order. This finding reinforces Respondents' position that a considerable proportion of the permits are not actually used for agricultural cultivation.

137. In the same context, the Petitioners also argue in paragraphs 103-104 of their Response to Respondents' Updating Notice that Respondents' argument whereby following the filing of the above High Court petition, a review was conducted, which indicated that "… all individuals who passed through said gate in the month of September and in the first half of October 2020, have, across the board, said they were on their way to Israel to work, while in most cases, they did not have in their possession work permits; or argued that they were going to cultivate their lands in the Seam Zone, but a real-time examination revealed that, in fact, they crossed the Seam Zone and entered the territory of the State of Israel for work purposes" – "is not true" and that "there was no room for mass confiscation of the permits of the farmers who were waiting for the gate to open."

The Respondents will argue that, as explained above, the Petitioners described two incidents of permit confiscations in December 2019, while Respondents' review was conducted in September – October 2020. Hence, *prima facie*, these were not the same incidents. In any event, the Respondents will argue that they stand behind their position as consistently argued and supported by affidavits and by the letter of the Public Liaison Officer in HCJ 8084/19, which was cited by the Petitioners as aforesaid, whereby the vast majority of farmer permit holders do not actually cultivate agricultural land in the Seam Zone. Therefore, **the confiscation of the permits and the examination conducted were in place**. The questioning conducted in December 2019 and Respondents' review from October 2020 **yielded the same results**, which coincide with Respondents' arguments.

Summary of Respondents' position in Petitioner 2's matter

138. Based on all of the foregoing, the Respondents reiterate their argument that the amendment of the Entry Procedures and particularly the change concerning the "minuscule plot" stipulation is necessary and compliant with the tests outlined by this Honorable Court in the permit regime judgment.

139. As argued above, the Respondents stand behind their argument that the misuse of agricultural permits for the purpose of unlawful entry into Israel is widespread and that **it constitutes a security vulnerability that undermines the security purpose for which the fence was constructed**.

140. It was also explained that the minuscule plot stipulation helps the Respondents determine whether the permit applicant has an agricultural need or a different need, and helps match each applicant with their appropriate need. Note well; the matter herein concerns a correlation between the permit and the need, not a blanket ban on entry, as argued by the Petitioners. The Respondents are of the opinion that their procedures strike a proper balance between the rights of individuals who have a connection to land and the need to ensure that the permits are not misused for the purpose of unlawful entry into Israel while posing the security threat for which the fence was built [sic], by having permits issued in a controlled manner and according to the applicants' needs.

141. The foregoing indicates that Petitioner 2 is not entitled to a farmer permit and was instead issued a personal needs permit. Moreover, he has been issued an agricultural worker permit in the Seam Zone according to the 2019 Seam Zone Entry Procedures.

As clarified, Petitioner 2 may use the permit for any purpose which is not prohibited by law, including visiting his mother's plot and cultivating it. As such, the Respondents will argue that the permits issued to Petitioner 2 answer his actual needs.

142. It is further recalled that, as aforesaid, Petitioner 2 may submit an application with the consent of additional owners in the plot whose rights will be aggregated such that he would be able to receive a farmer permit for cultivating a larger part of the land, which, according to the Respondents, requires sustainable agricultural cultivation.

Scope of intervention in the discretion of the Military Commander

143. Prior to concluding, the Respondents will argue that given all the foregoing, there is no room for the Honorable Court's intervention also according to the acceptable scope of judicial intervention. For the principles of the scope of intervention, see HCJ 794/17 **Ziada et al. v. Commander of IDF Forces in the West Bank** (reported on the Judicial Authority Website, October 13, 2017)**:**

> This court has stressed more than once that the Military Commander, like any other administrative body, is obligated to exercise his power according to the principles of reasonableness and proportionality and that his discretion will be subject to judicial scrutiny (Abu Safia, paragraph 27; Bethlehem, page 747; compare: Abu Daher, page 378; Mar'aba, pages 507-509). With respect to the scope of intervention in the Military Commander's discretion, where his decision relies on military knowledge – the court gives special weight to his military expertise and allows him broad discretion (see al Hawajeh, paragraph 32; 'Ajuri, page 375; See also Beit Sourik, page 844; Hass, page 458; Dweikat, page 25; HCJ 258/79 'Amirah v. Minister of Defence, IsrSC 34(1) 90, 92 (1979)). On the other hand, where the decision of the Military Commander violates human rights, the proportionality of the violation shall be determined according to the acceptable tests in this matter (Mar'aba, paragraph 32; Beit Sourik, page 846; Fighting in Rafa, page 393)."

144. The Respondents will argue that the procedures being the subject of this petition are reasonable and proportionate and that they strike a balance between the security purpose for which the fence was constructed and the needs of the population, all according to the jurisprudence of this Honorable Court. It should be emphasized that this petition focuses on the **type of permit** issued by the Military Commander rather than a blanket ban on entry into the Seam Zone, with all implications that such an argument has on the discretion vested with the Military Commander. It should be further added that the Petitioners have not satisfied the required burden of proof and have failed to prove that, contrary to the position of Respondents' experts, the amendment of the procedures is not required for security reasons, as they allege. With respect to the above burden of proof, see and compare the findings made by this Honorable Court in HCJ 9516/10 **Walaja Village Council v. Military Commander in the West Bank** (reported on the Judiciary Authority Website, August 22, 2011), as follows:

> … Petitioners' arguments in this context should be dismissed. This court has repeatedly clarified that in matters within the expertise of the Military Commander, who is responsible for maintaining order and security in the Area, his professional position should be given great weight. This court has also held that where a professional disagreement arises between the position of the Military Commander

and other security experts, a heavy evidentiary burden is imposed on the applicant wishing to refute the position of the Military Commander (Beit Sourik, page 845; Beit Sahur, paragraph 14 of the judgment).

145. In view of all of the above, the Respondents will argue that accepting Petitioners' position would lead to the effective cancelation of the entire permit regime, contrary to the judgments of this Honorable Court, which recognized the patent security need for the construction of the fence and for the introduction of the permit regime, which enables the Military Commander to maintain the required control and monitoring with respect to individuals entering the Seam Zone.

Conclusion

146. In conclusion, in view of the above, the Respondents repeat their argument that the *order nisi* should be revoked, the petition herein should be dismissed, and an order for costs should be made against the Petitioners.

147. The facts specified in this affidavit are true to the best of my knowledge and belief. The legal arguments are made according to legal advice I have received.

148. This is my name, and this is my signature.

(Signature)
Elisha Hanocayev, Major
Head of Crossings and Seam Zone Division
Civil Administration, Judea and Samaria

Certification

I, the undersigned, Neaaman Khateeb, Adv., hereby certify that on March 24, 2021, Major Elisha Hanocayev, whom I know personally, appeared before me and after I warned him that he must state the truth, and that should he fail to do so he will be subject to the penalties prescribed by law, he signed his affidavit before me.

(Signed)
Neaaman Nahed Khateeb, Advocate
License No. 79847