At the Supreme Court **HCJ 6896/18**
Sitting as the High Court of Justice **Scheduled for May 15, 2019**

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

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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, Jerusalem
Tel: 02-6466590; Fax: 02-6467011

The Respondents

Preliminary Response on behalf of the Respondents

1. Respondents' preliminary response to the above captioned petition is hereby submitted according to the decision of the Honorable Justice Y. Elron dated November 20, 2018.

2. The petition concerns the request of Petitioner 2 (hereinafter: the **Petitioner**) to be issued "an entry permit into the seam zone, valid for two years, to enable him to cultivate the plot of his mother, Petitioner 1, in the seam zone in the West Bank". In addition, an *order nisi* was requested directed at the Respondents ordering them to show cause "why they should not cease to refuse issuing individuals entry permits to plots of land located in the seam zone on the grounds that the size of the plots they wish to cultivate does not exceed 330 square meters."

3. It emerges from the petition that Respondents' decision refusing to grant the Petitioner a farmer permit was appealed by the Petitioners. The Petitioners argued that although an appeal had been filed by them, they were not summoned for a hearing in the appeal. Under these circumstances, the Petitioners filed on October 4, 2018 the above captioned petition.

4. On October 31, 2018 notice was given by the Respondents whereby they had decided to review Petitioners' matter in the framework of the appellate committee supervising the DCO's actions and decisions on the issuance of seam zone entry and stay permits. The Petitioners were summoned to a hearing before the committee in their matter which was scheduled for November 21, 2018. Under these circumstances the Respondents argued that "at this stage there is no room for hearing the petition in its current form and therefore

it appears that the petition should be stricken *in limine* while reserving the arguments of the parties (attention is drawn to the fact that upon the entry into force of Amendment No. 117 of the Court for Administrative Affairs Law, 5760-2000, the authority to adjudicate the subject matter of the petition was transferred to the Court for Administrative Affairs. Therefore, after a decision is given by the committee and should the Petitioners wish to place the decision under judicial review, then, *prima facie*, it should be brought before the Court for Administrative Affairs – see and compare HCJ 2347/18 **Azliach v. Minister of Interior** given on October 8, 2018.) Alternatively only and should the honorable court decide that notwithstanding the above, the petition in its current form should not be stricken, the Respondents shall request to be allowed to file an updating notice on their behalf…".

5. On November 6, 2018 the honorable court held as follows: "In view of Respondents' notice it was decided to accept Petitioners' application and hear their matter in the framework of the appellate committee on November 21, 2018. Notice shall be given by the Petitioners as to whether they wish to proceed with their petition."

6. On November 12, 2018 the Petitioners notified that they wanted to proceed with their petition, *inter alia*, in view of the fact that the petition concerned "Respondents' general policy".

7. On November 20, 2018 the honorable court decided that the petition would be heard by a panel of three and that the Respondents would submit their response to the petition no later than 14 days before the date of the hearing.

Hence Respondents' response.

8. The Respondents will argue that the petition should be dismissed in the absence of cause for interfering with their decision, in which Petitioner's application for a seam zone permit for agricultural needs was denied since the Petitioner does not have an actual need to receive a permit for agricultural needs. However, the Petitioner received a permit for personal needs which enabled him to enter the "seam zone" and to maintain his ties to his mother's land.

The Respondents will argue further that the general remedy which was requested in the petition should be denied since there is no cause for interfering with Respondents' decision to revise the provisions of the 2017 Standing Orders whereby the criteria for farmer permits were established. The revisions which were included in the 2017 amendment of the Standing Orders in the matter being the subject matter of the petition are reasonable and are designed to establish clear criteria to assist the DCOs while examining applications for farmer permits with respect to "miniscule plots", thereby increasing the correlation between the permit which is issued and the need actually embedded in the application.

General relevant background

The seam zone and the permits allowing entry thereto

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

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

11. Since there is no physical barrier preventing entry into Israel from the area located in the "seam zone", and in view of the security risk embedded in the passage of terrorists from the seam zone into the territory of the State of Israel, the military commander exercised the power vested in him according to the Order on Closed Areas (Judea and Samaria Area)(No. 34), 5727-1967, and declared the seam zone areas a closed military zone. Entry into and exit from this area are prohibited without a permit.

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

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

14. Alongside permanent residency certificates in the seam zone, various different **permits** are granted: "Farmer permit in the seam zone", "Agricultural Worker permit in the seam zone", "Trade permit in the seam zone", "Personal Needs permit" and the like. These permits enable Judea and Samaria residents to enter and stay in the seam zone for different purposes, according to their ties to the seam zone. The conditions established for granting the different additional permits create a balance between **the security considerations** which led to the closure of the area, and the obligation of the military commander to maintain reasonable access to Judea and Samaria areas located on the west side of the security fence and to preserve, to the maximum extent possible, the proper fabric of life of the individuals residing in the seam zone and in the area adjacent thereto.

15. The lawfulness and reasonableness of the seam zone declaration and the provisions established as specified above, were examined by this Honorable Court in the framework of a principled petition which had been filed in that regard (HCJ 9961/03 **HaMoked Center for the Defence of the Individual founded by Dr. Lotte Salzberger v. Government of Israel** (reported in the Judicial Authority Website, April 5, 2011)) – one of whose Petitioners – HaMoked – is Petitioner 3 in the petition at hand.

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

> "46. In our judgment we have widely discussed the complex security situation which led to the erection of the security fence. This step severely injured the daily lives of many of the Palestinian inhabitants

> of the Area. **In its judgments, 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 exist, 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."

16. As aforesaid, the security need requires, at this time, to prevent the uncontrolled entry of Palestinian residents into the seam zone, to protect the security of the area and the security of the State of Israel and its residents, and to protect the lives of the Israeli citizens in settlements located in the seam zone. Therefore, the decision whether to issue to a specific individual a permit allowing him/her to enter and stay in the seam zone is a decision which is based on established criteria, as well as on the specific factual data of said individual.

    The procedures governing the issue of seam zone certificates and permits are specified in a collection of orders of the Civil Administration referred to as the "Seam Zone Standing Orders" (hereinafter: the "**Standing Orders**"). The Standing Orders entrench and specify the rules concerning the residence, entry and presence in the seam zone, including the criteria for receiving such certificates and permits, as well as the periods for which said certificates and permits are granted and the like.

The Seam Zone Standing Orders – The Seam Zone Entry Procedure

17. The Standing Orders have been in place for years and are amended from time to time according to need. The relevant versions of the Standing Orders applicable to the case at hand are those from 2014, and their amendment from 2017.

The 2014 Standing Orders

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

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

With respect to farmer permits, the Standing Orders stipulated that a farmer permit shall be granted to an applicant who proves 'proprietary ties' to agricultural lands in the "seam zone" and specifically noting in their application that they have an agricultural need to cultivate their lands (in the absence of security preclusion).

According to the 2014 Standing Orders, the chapter which regulated applications for farmer permits did not include an orderly procedure for examining the nature of the agricultural need, and whether the applicant does or does not in fact have an agricultural need to cultivate their land, **despite the fact that the permit is granted for agricultural needs**. A farmer permit would have been issued to any applicant, in the absence of security preclusion, who presented to the civil administration evidence of proprietary ties to the plot and nothing more than that, regardless of the size of the plot. As a result of the definitions of the 2014 Standing Orders, applicants who proved proprietary ties to a plot consisting of **a few single meters** have also received a farmer permit, while it was clear that in fact, they had no agricultural need to cultivate the plot. **It should be added that a farmer permit enables a daily entry into the seam zone for two years for regular agricultural cultivation of the plot**.

Consequently, there was no correlation between the permits that were issued by the civil administration and the need of the applicants, and the DCOs encountered difficulties in establishing clear criteria for the examination of the applications. Under these circumstances, in many cases a large and unreasonable number of permits were requested for the cultivation of miniscule plots in a manner significantly veering from the real agricultural needs and the door was widely opened for an uncontrolled entry of Palestinian residents into the seam zone, in a manner inconsistent with the security purposes for which the fence had been erected. Hence the need arose to amend the provisions of the Standing Orders, as was done in 2017.

A copy of the 2014 Standing Orders is attached and marked **RS/1**.

The 2017 Standing Orders

19. On February 15, 2017, the Standing Orders were amended again. This amendment also implements lessons which were learnt from the application of the previous version from 2014. In the framework of the 2017 amendment, several chapters of the Standing Orders were amended including the first sub-chapter of Chapter C, concerning "Permits to Residents of Judea and Samaria for the purpose of Entering and Staying in the Seam Zone - Seam Zone Permits for Farming Needs" (hereinafter: **Farmer permits**). Section 1 of said sub-chapter provides that the **nature of the permits** (issued according to the provisions of said sub-chapter) is: "permits issued to Judea and Samaria residents for the cultivation of agricultural lands in the seam zone"; thereafter the term "farmer permit" is defined as a permit "issued to a Judea and Samaria resident having proprietary **ties** to agricultural lands in the seam zone, the purpose of which is to maintain the ties to these lands" (emphasis appears in the 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).

20. The petition at hand concerns, in fact, amendments made in the above sub-chapter, as specified below. In the 2017 amendment several definitions and changes were added to

the sub chapter, the main purpose of which was to establish clear criteria and assist the DCOs in their work, *inter alia*, by introducing a clear definition of the "agricultural need" and a **rebuttable** presumption of the minimal size of a plot for the purpose of agricultural cultivation:

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

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

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

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

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

21. To understand the professional explanation underlying the (rebuttable) presumption of the "miniscule size" of a plot that, *prima facie*, does not require agricultural cultivation, we shall slightly elaborate on the seam zone as an agricultural area.

The Seam Zone as an Agricultural area

22. It should be explained that the 2017 amendment of the Standing Orders, being the subject matter of the petition, was based on a professional opinion of the Agriculture Staff Officer from 2016. After the filing of the petition, the above opinion was re-examined by the Respondents and updated by an opinion from 2019.

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

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

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

26. Olives grown in the seam zone are used for two purposes: for pickling and for producing olive oil. The vast majority of the olives are used to produce olive oil since only certain olives in each tree are suitable for pickling.

27. For the purpose of producing a small quantity of a single 16 kg olive oil tin at least 64 kg of olives are required. Each mature olive tree in the seam zone, in the last ten years, has produced about 16 kg of olives, in the average. Hence, in the average, at least 4 olive trees are required to produce one olive oil tin per annum. Given the planting method in the seam zone, 4 trees "occupy" at least 400 square meters of land.

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

29. In view of the above the assessment of the Civil Administration professionals is that there is no actual need for agricultural cultivation of a plot smaller than 330 square meters. However, said presumption may be rebutted by the applicant if he/she can prove that he/she does indeed have an agricultural need to cultivate his/her plot.

    A photocopy of the 2016 and 2019 opinions of the Agriculture Staff Officers is attached and marked **RS/3**.

Numerical Data concerning the Number of Farmer permits issued over the Years

30. To complete the entire picture, we shall present before the honorable court data regarding the scope of applications for a farmer permit which were received by the civil administration throughout the years (commencing from 2014) and the number of applications which were approved, all according to the relevant provisions of Chapter C of the Standing Orders. We shall specify:

    In 2014, 4,288 seam zone farmer permit applications were submitted, of which 3,221 applications were approved. **Namely, about 75% of the applications were approved**.

    In 2015, 4,347 seam zone farmer permit applications were submitted, of which 2,661 applications were approved. **Namely, about 61% of the applications were approved**.

    In 2016, 9,687 seam zone farmer permit applications were submitted, of which 4,311 applications were approved. **Namely, about 45% of the applications were approved**.

    In 2017, 5,460 seam zone farmer permit applications were submitted, of which 2,389 applications were approved. **Namely, about 44% of the applications were approved**.

    In 2018, 7,187 seam zone farmer permit applications were submitted, of which 1,876 applications were approved. **Namely, about 26% of the applications were approved**.

31. To present the full picture before the honorable court the Respondents shall attach to their response a detailed answer given on their behalf to a freedom of information request submitted by HaMoked (Petitioner 3 in the petition at hand) which specified information in Respondents' possession concerning the number of applications for different permits including the number of applications which were approved and denied and the reason for the denial.

A photocopy of the freedom of information request is attached and marked **RS/4**.

From the General to the Particular

32. According to the data in the Civil Administration computerized system, the Petitioner is a resident of Qaffin in the Tulkarm region. He is about 37 years old, married and a father of five children. In the past, as of 2007, the Petitioner was granted 13 seam zone entry permits: 10 permits were permits for personal needs (wedding, funeral, family visit and the like) and three permits for personal needs of agricultural cultivation. The last permit which was given to the Petitioners was a permit for personal needs of agricultural cultivation valid until May 1, 2018.

33. On August 3, 2017, Petitioner's application for a seam zone farmer permit was received in the Efraim Representative Office. The application relates to land allegedly inherited by Petitioner 1 (hereinafter: **Petitioner 1**), Petitioner's mother, from her father. According to the inheritance order and Petitioner 1's relative share which was calculated according to the provisions of the Standing Orders defining how the size of the plot should be calculated, Petitioner 1 had inherited 288 square meters of a 17.5 dunam plot which was divided by way of inheritance between Petitioner 1 and her siblings.

34. In October 2017, Petitioner's application for a farmer permit was denied after it had been established that in Petitioner's matter the presumption that there is no sustainable agricultural need to cultivate a plot smaller than 330 square meters, was not rebutted.

35. After Respondents' above decision had been appealed by the Petitioners, he was summoned for an HDCO hearing which was scheduled for January 21, 2018. According to the summary of the HDCO hearing, it was concluded that the Petitioner did not have an actual agricultural need to cultivate the plot, *inter alia*, considering the fact that the plot is smaller than 330 square meters. It was further explained to the Petitioner that he was entitled to receive a permit for personal needs *in lieu* of a farmer permit which did not suit his needs.

A photocopy of the Petitioner's appeal was attached to the petition as **Exhibit P/7**.
A photocopy of the summary of the HDCO hearing was attached to the petition as **Exhibit P/9**.

36. On February 5, 2018 the Petitioner was granted a permit for personal needs which was valid until May 1, 2018 (customarily, a permit for personal needs is given for a period of three months).

A photocopy of the summary of the permit for personal needs which was given to the Petitioner was attached to the petition as **Exhibit P/11**.

37. On February 21, 2018 the Petitioner appealed the HDCO decision.

A photocopy of Petitioner's appeal dated February 21, 2018 was attached to the petition as **Exhibit P/12**.

38. In the framework of the examination of Petitioner's appeal and after several postponements, on April 30, 2018, a tour of the plot being the subject matter of Petitioner's appeal was conducted with the participation of the Petitioner and Civil Administration representatives. It emerges from the summary of the tour, dated May 17, 2018, that the purpose of the tour was to examine whether there was an agricultural need with respect to the alleged plot, in view of the fact that it is smaller than 330 square meters and the rebuttable presumption established by the Standing Orders whereby there is no need for agricultural cultivation in plots smaller than 330 square meters.

The summary of the tour reads as follows:

> "… 4. The main points arising from the tour are as follows:
>
> a. Firstly, the resident said that he did not know which part was the exact part of his mother in the plot, and that he only knew what the general area of the entire plot had been before it was bequeathed to his mother by his grandfather, but also not accurately.
>
> b. The entire plot pointed at by the resident had about 35 large olive trees and is partly cultivated.
> 5. Considering the fact that the relative part of the mother in the entire plot consists of a limited number of trees (according to our estimate, about 10 trees) in view of the fact that he cannot point at its exact location, and since we are concerned with large trees, there is no need to cultivate the land all-year-round.
> Hence, it seems that the resident did not satisfy the required burden of proof to substantiate his claim that under the circumstances there was an agricultural need justifying the issue of an agricultural worker permit (issued to family members) for the plot at hand".

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

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

40. On October 4, 2018, the petition at hand was filed.

41. As aforesaid, on October 31, 2018 notice was filed by the Respondents whereby they had decided to accept Petitioners' application to have their matter discussed by the appellate committee. It was further notified that the Petitioners were summoned for a hearing before the committee on November 21, 2018.

42. On November 6, 2018 the honorable court held as follows: "In view of Respondents' notice that it was decided to accept Petitioners' application and discuss their matter on November 21, 2018 by the appellate committee, the Petitioners shall notify whether they still wish to proceed with their petition."

43. On November 12, 2018 the Petitioners notified that they wish to proceed with their petition, inter alia, in view of the fact that the petition concerned "Respondents' general policy".

44. On November 20, 2018 the honorable court decided that the petition would be heard by a panel of three and that the Respondents should file their response to the petition no later than 14 days prior to the date which would be scheduled for the hearing.

45. On November 21, 2018, the appellate committee heard Petitioner's application for a farmer permit. It emerged from the hearing before the committee that, in fact, notwithstanding Petitioner's argument in that regard, there was no agricultural need to cultivate the plot being the subject matter of Petitioner's application, let alone a need to cultivate the plot on a daily basis. It also emerged that another family member was cultivating the plot. In the hearing before the committee it also arose that the Petitioner misused the permit which had been issued to him for the purpose of a family visit, and used the permit to enter the seam zone and to work in Barta'a.

    A photocopy of the protocol of the hearing before the appellate committee dated November 21, 2018, is attached and marked as Exhibit **RS/5**.

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

    A photocopy of Respondents' letter dated November 28, 2018 to Petitioner 1 is attached and marked **RS/6**.

47. On December 5, 2018 Petitioner 1, through Petitioner 3, answered Respondents' letter and informed, *inter alia*, that "Mrs. Ta'meh [Petitioner 1 – my addition – the undersigned] requests that her son _____ receives a seam zone entry permit to maintain the family ties to her plot of land. Given her advanced age and her medical condition she is incapable of doing it…". Petitioner 1 also informed that she did not know who from the extended family was also granted an entry permit to cultivate the land and that she did not know what Petitioner meant in that regard and that neither one of her children had an entry permit for the purpose of cultivating the plot and maintaining the ties thereto.

    A photocopy of Petitioner 1's letter dated December 5, 2018 is attached and marked **RS/7**.

48. After having received the supplementary information from Petitioner 1, the decision of the appellate committee was given on December 10, 2018, which denied Petitioner's application for a farmer permit due to the failure to prove an 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 that there was no agricultural need to cultivate them on a daily basis. It was also found that the Petitioner entered the seam zone only once during the three months in which the permit was valid to cultivate the trees (according to the Petitioner, his mother was ill at that time and he took care of her and therefore did not visit the plot more often). The committee has also determined that the Petitioner could file an application for a personal needs permit according to his need to enter the seam zone.

    A photocopy of the decision of the appellate committee dated December 10, 2018, is attached marked **RS/8**.

49. On January 202, 2019, the Respondents filed an updating notice whereby they informed the honorable court of Respondents' above decision.

50. We shall now specify Respondents' position with respect to the allegations made in the petition and towards the hearing scheduled before this honorable court.

Respondents' Position

51. The Respondents will argue that the petition should be dismissed in the absence of cause to interfere with their decision to deny Petitioner's request to receive a seam zone permit for agricultural needs. The petition should also be dismissed on the "general level" since the revisions which were made in the 2017 amendment of the Standing Orders with respect to a farmer permit are reasonable and are designed to establish clear criteria to assist the DCOs while examining applications for farmer permits for "miniscule plots", thus creating a correlation between the permit granted and the actual need embedded in the application.

    We shall start our argument by generally referring to the amendment of the Standing Orders and the rationales underlying it. We shall thereafter discuss the manner by which the above is applied to the Petitioners.

52. According to the Petitioners, the presumption established in section 13(a)(7)(b) of the first sub-chapter of Chapter C of the Standing Orders whereby "As a general rule, there is no sustainable agricultural need when the size of the plot for which the permit is requested is minuscule, not exceeding 330 square meters. However, in extraordinary circumstances and for reasons that shall be recorded, the **head of the DCO may issue a farmer permit for a miniscule plot, as aforesaid**" (emphasis appears in the original) disproportionately harms the right of the land owners to property, harms their livelihood and is contrary to international law and Israeli case law. The above, according to the Petitioners, particularly in view of the term "plot size" which was defined in the 2017 Standing Orders.

    "Plot Size" was defined in section 5 of chapter C as: "… the entire plot multiplied by the applicant's relative ownership in the plot."

53. The Respondents shall argue that there is no basis for Petitioners' argument that the above amendments of the Standing Orders harm Petitioners' right to property, livelihood or other rights and that they do not reflect a policy the purpose of which is to limit the granting of permits.

54. First, it should be remembered that when a seam zone entry permit is granted, balancing is made between the security considerations which led, as specified above, to the closure of the area, and the obligation of the military commander to secure reasonable access of the Palestinian residents to the area, **each one according to their needs**. Second, it should be remembered that there is no physical barrier preventing entry into Israel from the "seam zone" with all the security implications arising therefrom. Moreover, the Respondents do not dispute the fact that a proper solution should be provided to the needs of the Palestinian farmers whose lands are located in the "seam zone". **However, it does not lead to the conclusion that the Respondents should grant a permit for agricultural cultivation to a person who does not have a need to cultivate the plot with respect of which he/she applies for a permit for agricultural needs**. As aforesaid, a plot located in the "seam zone" may be accessed and the applicant's ties to the plot may be maintained by other permits providing a solution to this need.

55. As specified above, in the past, the Standing Orders did not expressly define an "agricultural need" and no other provisions were established for this purpose. It was sufficient for the applicant to present before the civil administration proof of their proprietary rights in the plot and to check the proper box in the permit application form whereby they had an agricultural need, to receive a farmer permit (in the absence of security preclusion). And note well, a farmer permit is a long term permit allowing the permit holder to continuously enter the "seam zone" during a period of two years on a daily basis. Consequently, thousands of Palestinians held a permit for agricultural cultivation while in fact they did not cultivate their lands at all. It is therefore clear that they held a permit allowing daily access into the "seam zone" unlawfully and without need.

The misuse of permits can also be learnt from the case at hand, as the Petitioner told the appellate committee that despite the fact that he had received a permit to visit family members he, in fact, used the permit unlawfully for work purposes. It seems that the above speaks for itself. It should also be noted that according to Respondents' experience, permits are often used for the purpose of entering Israel unlawfully, alongside deviation from the conditions set forth in the permit.

56. Moreover. The provisions of the 2014 Standing Orders did not give the DCOs sufficient tools to examine the permit applications for agricultural needs. The Respondents sought to change this situation in 2017 by introducing clearer definitions of the terms plot size and agricultural need and by introducing a **rebuttable** presumption concerning the size of the plot requiring ***prima facie*** agricultural cultivation.

57. It should be further explained that the "miniscule" plot size was established on the basis of the opinion of the Civil Administration Agriculture Staff Officer. According to the opinion which was attached as RS/3 and which reviews the characteristics of the seam zone as an agricultural area, the vast majority (more than 95%) of the agricultural areas in the "seam zone" consist of olive groves of mature trees. According to the professional assessment of the Agriculture Staff Officer, in general, mature olive trees generally do not require regular tending. They do not need artificial irrigation and are nourished from the ground. However, occasionally, the trees require some "tending": pruning once annually, plowing once every two years and specific treatment in the event of disease or pests and obviously in the harvest season.

Accordingly and based on the civil administration's understanding that a "rigid" time frame for harvest permits is problematic, the amended provisions of the 2017 Standing Orders provide that the validity of the harvest permits shall be determined each year based on a seasonal assessment of the duration of harvest and the "rigid" time frame which previously existed was abolished (see Section 16 of Chapter C of the Standing Orders, Standing Orders page 23).

58. It further emerges from the opinion of the Agriculture Staff Officer that based on his examination of the products commonly produced from olives in the seam zone and the quantity of olives which are required for each use, the assumption is that sustainable agriculture is not feasible in an area smaller than 330 square meters. It does not mean that a person wishing to receive a farmer permit for a plot smaller than 330 square meters shall categorically not be able to receive it, but proof shall have to be brought substantiating an actual need to cultivate the plot. **Namely, the miniscule plot size as determined by the Agriculture Staff Officer is a rebuttable presumption**. As aforesaid, the presumption may be rebutted by proving that there is an actual need to cultivate the plot.

59. In addition to the fact that as aforesaid the miniscule plot size was determined based on a professional opinion which establishes a rebuttable presumption with respect to the size of the plot, these are reasonable decisions with which there is no room for the honorable court's interference, all according to the case law of this honorable court regarding the scope of judicial interference with the authority's field of expertise such as in the case at hand. Moreover, it cannot be said that the above presumption violates the Palestinians' proprietary rights or right to livelihood since to the extent the plot is used for livelihood purposes, namely, there is a need to cultivate the plot, the applicant shall receive a farmer permit. In addition, it should be emphasized that according to Respondents' policy, in the **harvest season**, which takes place each year in the fall, the permit policy is more lenient, and in said period the members of the extended family (including those who do not regularly receive farmer permits) are allowed to enter the seam zone.

Accordingly, the applicant can maintain his/her ties to the land, to the extent this is his/her need, by other permits (permit for personal needs) rather than by a permit which is designed to give a daily solution to a person cultivating his/her land. In that regard reference is made once again to the relevant chapter concerning permits for "personal needs" consisting of a **special category** for persons who proved proprietary ties to a plot of land for which, in the absence of need for agricultural cultivation, permit for agricultural or commercial needs may not be obtained.

60. To all of the above the Respondents shall add that in circumstances in which there are multiple owners of agricultural plots, there is no preclusion that all of the inheritors request that one or a small number of the inheritors, cultivate the entire plot for all of them. Under these circumstances, the inheritors who were "chosen" to cultivate the entire plot shall receive a permit for agricultural needs (in the absence of security preclusion) securing the cultivation of the plot, and the other inheritors wishing to maintain their ties to the plot will be able to receive a permit for personal needs, providing a solution to the above need as aforesaid.

61. The Respondents shall argue that this arrangement is consistent with the judgments of this honorable court and Respondents' declarations made before this honorable court. It shall be explained that Petitioners' reference to HCJ 5078/11 **Abu Zer v. Military Commander for the West Bank Area** (reported in the Judicial Authority Website, July 27, 2011) is irrelevant since in said case petitioner's access to his grandfather's plot was completely prevented, while in the case at hand the Petitioner was granted an entry permit for personal needs and he can access the plot. However, the Petitioner insists on receiving a farmer permit.

The Respondents shall argue that the discretion to determine the type of permit which shall be held by the applicant is vested with the military commander based on the balancing made at the DCO between the security aspects and the needs of the population. Since the Petitioner can realize the need declared by him and his mother, maintaining the ties to the land, by a permit for personal needs, there is no room for the interference of this honorable court with the **type** of the permit which is given to the Petitioner.

62. It should also be added that there is no connection between the miniscule plot size and the ability of Palestinians to cultivate their plots with the assistance of their children and other workers – the only thing which was added is a rebuttable presumption that there is an agricultural need justifying the granting of permits to workers to cultivate the plot and to the children to access the plot for cultivation purposes. As aforesaid, children can access the plot and maintain the ties thereto, ties which do not necessarily require cultivation, by other permits.

63. To complete the picture and the understanding it should be noted that an applicant proving proprietary ties to a plot larger than 330 square meters and checking the relevant box in the application form whereby he/she has an agricultural need to cultivate the plot, then, according to the relevant procedures currently in place, no additional "proof" is required by the Respondents for the purpose of issuing a farmer permit.

64. It should be further explained that the amended Standing Orders do not violate proprietary rights since, *ab initio*, the applicants were not entitled to receive a permit for agricultural cultivation as, in fact, they have no need to cultivate the plot. As aforesaid it does not prevent said applicants from submitting an application which shall provide a solution to their need to maintain their ties to the plot by a permit for personal needs.

65. With respect to the definition of the term "plot size": the Petitioners argue that according to the inheritance system applicable to many agricultural plots of land in the West Bank, the plot is not divided into specific parts when inherited but rather, the inheritors are co-owners of the entire plot. Said custom, according to the Petitioners, is inconsistent with the definition of the term "plot size" as it appears in the Standing Orders whereby the size of the plot is calculated as the relative part of the applicant in the plot. The Petitioners argue that said method of calculation increases the number of "miniscule" plots, to the point that in the future "all seam zone lands shall be deemed lands which do not require cultivation" (section 72 of the petition).

    The Respondents shall reiterate that the determination of the size of a "miniscule plot" does not mean that an applicant showing an agricultural need to cultivate their plot shall not receive a farmer permit, but rather, and contrary to an applicant who owns a plot larger than 330 square meters, they are required to show that they have an agricultural need. To the extent there is such a need, an applicant having proprietary rights with respect to a plot smaller than 330 square meters, shall also receive a farmer permit. The Respondents shall argue that it is a proportionate and balanced arrangement.

66. It shall also be explained that the inheritance orders determine the relevant part of each inheritor of the entire plot rather than the Respondents. According to the Petitioners it should be determined that all inheritors have proprietary rights with respect to the entire plot – namely, and for demonstration purposes, in a 20 dunam plot inherited by 10 siblings, each sibling has proprietary ties to all 20 dunams. Subsequently, and assuming that all siblings bequeath their parts to their children (30 children), now 30 children have proprietary ties to said 20 dunams and so forth with the progression of the generations. In fact it is neither sensible nor practical that all 30 children will cultivate the plot. Therefore, there is also no justification to give all said children a permit designed to provide a solution for an actual agricultural need to cultivate the plot.

67. It should be reiterated that the Respondents are aware of the importance of maintaining the ties of the Palestinians to their lands in "the seam zone", but alongside the above there are security considerations which justify a policy whereby permits are granted **according to needs**. Accordingly, granting a permit enabling long term and daily access for a specific need should not be allowed, if the applicant does not have that specific need. Maintaining ties is made possible by other permits issued by the Respondents which are more limited in scope and which enable closer control and supervision alongside the realization of the applicant's need.

68. As aforesaid, when there is no actual agricultural need to cultivate the plot, no harm is caused as a result of Respondents' refusal to grant a permit for a need which does not exist, the above according to the 2017 amendments of the Standing Orders. Moreover, the Respondents shall also argue that no harm is caused to the applicants' proprietary rights due to the fact that the Respondents do not sweepingly prevent their access to the

lands, but rather examine whether an agricultural need exists, and in the absence of such need they enable access to the land by another permit.

69. Given the above, there is also no basis to Petitioners' arguments concerning violation of freedom of movement. As aforesaid, the Respondents do not prevent Petitioner's access to his mother's plot. The Respondents enabled the Petitioner to access the plot by another permit which is not a farmer permit and have thus enabled him to realize his mother's ties to the plot.

70. From the general to the particular and with respect to Petitioners' specific case; First, the Respondents acted in Petitioners' matter according to the Standing Orders and enabled the Petitioners to prove that they do indeed have an actual need to cultivate their land, despite the fact that the plot consists of 280 square meters. However, a more thorough examination of the situation by a tour in the plot and by a hearing before the committee, showed that the Petitioners do not have an actual agricultural need and that they mainly wish to maintain their ties to the land. Second, the Petitioner stated in the hearing before the committee that he was misusing the permit which had already been given to him, a permit for a family visit that he uses for work purposes. It should be noted that according to the Standing Orders a suspicion that a permit is misused constitutes cause for its confiscation and/or for a refusal to issue a permit.

71. Given the above, Petitioners' desire to maintain their ties to their land may be realized by other permits, such as the permit which was granted to the Petitioner earlier and which was not used by him due to specific reasons relating to the medical condition of his mother.

72. Contrary to Petitioners' allegation that the Respondents do not enable the cultivation of the plot being the subject matter of the petition, in fact and as the Petitioner himself stated, the plot is cultivated by his cousin, while according to the assessment of the professional bodies who participated in the tour the most crowded part of the plot consists of about 10 mature olive trees which are cultivated. *Prima facie* and considering the fact that the Petitioner entered the plot only once by virtue of the permit which had been issued to him, it is clear that the Petitioner is not the one cultivating said trees.

73. It should also be explained that the Petitioner can apply for a specific entry permit for the harvest season to the extent the permit for personal needs does not provide a sufficient solution for this season.

74. With respect to Petitioners' arguments concerning delays in the processing of the applications. First, reference should be made to each application according to its circumstances, given that the Respondents make an effort to meet the time tables set forth in the Standing Orders. Second, in the case at hand as was informed by the Respondents in a notice filed on their behalf with the honorable court on October 31, 2018, a flaw indeed occurred at Respondents' relevant bodies with respect to the summoning of the petitioner to the hearing before the appellate committee.

75. Before we conclude, the Respondents wish to update that currently administrative work is performed towards another amendment of the Standing Orders which would enable obtaining a "punch card permit". A punch card permit shall allow a pre-defined quota of entries into the seam zone over a longer period than most permits currently enable. The Respondents are of the opinion that said permit shall improve the correlation between the defined need of the permit applicant and his/her entries into the seam zone. It should be clarified that we are concerned with administrative work which has not yet ripened and the entire terms and conditions thereof are not yet known.

76. In view of all of the above, Respondents' position is that their decision denying Petitioner's seam zone permit application is a reasonable decision and that there is no cause for the interference of the honorable court therewith. All of the above in view of the fact that the Petitioner has no actual agricultural need to cultivate the plot being the subject matter of the petition. The petition should also be dismissed on its general and principled level, in view of the fact that the amendments of Chapter C of the Standing Orders are proportionate and reasonable as they establish a rebuttable presumption by the applicant and clear criteria which shall improve the correlation between the applicant's need and the permit which is issued to him/her.

77. The Respondents emphasize again that they do not prevent the Petitioner from entering his mother's lands in the "seam zone", but according to the Respondents there should be a correlation between Petitioner's needs and the **type** of the permit given to him.

78. In view of all of the above, the honorable court is requested to dismiss the petition and obligate the Petitioners to pay costs.

79. The facts specified in this response will be supported by the affidavit of Major Elisha Hanocayev, Head of Crossings and Seam Zone Division at the Civil Administration. Major Hanocayev confirmed the content of this response, but due to technical difficulties his affidavit could not be attached to this response. Therefore the Respondents request to submit the affidavit supporting this response within the next few days.

Today, 26 Nisan, 5779
May 1, 2019

Sharon Hoash-Eiger, Advocate
Senior Deputy HCJ Department
State Attorney's Office