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At the Supreme Court
Sitting as the High Court of Justice

HCI 2517/21

In the matter of:

1. _____ **Raddad, ID No. _____**
Palestinian resident of the Occupied Territories
2. _____ **‘Amer, ID No. _____**
Palestinian resident of the Occupied Territories
3. _____ **Shaqeir, ID No. _____**
Palestinian resident of the Occupied Territories
4. **Head of Masha Village Council, Nidal Ahmad, ID No. _____**
Palestinian resident of the Occupied Territories
5. **Mayor of a-Zawiya, Mahmud Moqdi, ID No. _____**
Palestinian resident of the Occupied Territories
6. **HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger, Registered Association No. 580163517**

Represented by counsel, Adv. Tehila Meir (Lic. No. 71836) and/or Daniel Shenhar (Lic. No. 41065) and/or Benjamin Agsteribbe (Lic. No. 58088) and/or Nadia Daqqa (Lic. No. 66713) and/or Aaron Miles Kurman (Lic. No. 78484) and/or Maisa Abu Saleh-Abu Akar (Lic. No. 52763)

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.

Military Commander of 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 Respondent

Petition for Order Nisi

A petition for an *Order Nisi* is hereby filed, which is directed at the Respondent ordering him to appear and show cause:

- a. Why the Magen Dan gate in the separation fence should not be opened every day of the week at the scheduled times, as specified in the judgment delivered in HCJ 8084/19 **Raddad v. Military Commander of the West Bank**.
- b. Alternatively, why the section of the separation fence discussed in HCJ 6027/04 **Head of a-Zawiya Village Council v. Ministry of Defense** (reported in Nevo, August 17, 2006) should not be dismantled.

Preface

1. This petition concerns deficiencies in the opening of one of the separation fence gates in the west bank. The gate serves farmers holding entry permits into the Seam Zone to access their lands located in the Seam Zone.
2. In late 2019, a petition was filed with respect to the serial delays in the opening of this gate and with respect to the fact that the military repeatedly changed the gate opening times without notifying the farmers of same (HCJ 8084/19 **Raddad v. Military Commander of the West Bank** (hereinafter: **Raddad**). While the petition was pending, the situation deteriorated – the military stopped opening the gate throughout the week and did not open it at all on Fridays and Saturdays, leaving the farmers without any possibility of accessing their lands on these days, despite the fact that their permits allowed them to enter the Seam Zone any day of the week. The Petitioners filed an updating notice in that regard, and subsequently, a motion for cancellation of the hearing in the petition was filed by the Respondent, stating, *inter alia*, that a decision had been made that “... commencing on September 10, 2020, full responsibility for opening the Gate would be transferred to the Military Police ... In addition, a decision was made to open the Gate throughout the week, including Fridays and Saturdays, as follows: morning: 06:00 A.M. to 06:30 A.M.; midday: 12:00 P.M. to 1:00 P.M.; evening: 5:00 P.M. to 17:20 P.M.” The application also noted that: “an assessment will be made as to the need to keep the aforesaid agricultural gate as a permanent gate open year-round or convert it into a seasonal agricultural gate... taking into consideration the needs of the local population.”
3. In a decision dated September 10, 2020, the Petitioners and the Respondent were directed to give notice of their positions “concerning the possible dismissal of the petition at this stage without prejudice to the rights and arguments of the parties.” The Petitioners filed a notice which clarified that, in fact, there was no improvement in the situation and that the same problems due to which the petition had been filed persisted. The Petitioners also referred in their notice to the fact that the Respondent was considering converting the gate from an agricultural gate to a seasonal gate, namely, keeping it closed nearly all year, thus closing that part of the Seam Zone not only to the Palestinian public at large, but also to those with ties to the Seam Zone, including the owners of lands located therein holding entry permits into the Seam Zone. The Petitioners expressed concern that another petition on the same subject matter would have to be filed in the near future should the petition be dismissed. Therefore, the Petitioners requested that, should the petition be dismissed, the judgment would refer to Respondent’s obligation to establish crossing arrangements enabling reasonable access to lands located beyond the Magen Dan gate “in the hope that this would avert the need to file another petition on the same subject matter in the near future.”
4. On September 13, 2020, a judgment dismissing the petition without prejudice was rendered, specifying Respondent’s undertakings listed in the motion for cancellation of

the hearing, including Respondents' decision that the gate would be opened daily from 06:00 A.M. to 06:30 A.M., from 12:00 P.M. to - 1:00 P.M., and from 5:00 P.M. to 5:20 P.M. The judgment stated: "We are aware of Petitioners' notice dated September 13, 2020, arguing there were inconsistencies between the content of the Consent Motion for Cancellation of Hearing and what farmers were told on the ground," and that Petitioners' "retain their arguments in the event that future developments justify additional legal action."

5. A mere month after the judgment was given, the long and frequent delays in the opening of the gate returned. In January 2021, the military has even stopped opening the gate daily and started opening it on Mondays and Wednesdays only. Subsequently, notice was given on behalf of the Respondent that he had decided "to convert the gate into an 'agricultural gate' that would be opened regularly during the relevant agricultural seasons only," namely, for several weeks a year only, commencing from next May, and that until then the gate would only be opened on Mondays and Wednesdays, arguing that "the vast majority of residents passing through the Magen Dan gate, abuse their Seam Zone entry permits ... by entering the territory of the State of Israel unlawfully."
6. In other words, instead of taking the proper measures against those acting contrary to the law, on the basis of a real factual infrastructure in the manner prescribed by law or procedure, the Respondent argues that the matter applies to "the vast majority of the residents," and indiscriminately harms all land owners and farmers. In so doing, and through the constant delays in the opening of the Magen Dan gate, which resumed shortly after the judgment in the matter was given, the Respondent acts contrary to case law regarding the separation fence and the permit regime, according to which the Respondent is obligated to provide regular access to the Seam Zone to individuals with ties to thereto.

Factual Infrastructure

The Permit Regime

7. In 2002, the Government of Israel decided to build the separation fence. A number of petitions were filed regarding both the legality of building the fence as a whole and the legality of specific segments of its route. In the judgments given in these petitions, the court ruled that the legality of the route of the fence rests on whether it strikes a proper balance between the security considerations underlying it and respect for the human rights of the protected persons (see, for instance, H CJ 2056/04 **Beit Sourik Village Council v. Government of Israel**, IsrSC, 58(5) 807 (2004); H CJ 7957/04 **Mara'abe v. Prime Minister of Israel**, IsrSC 60(2) 477 (2005); H CJ 5488/04 **a-Ram Local Council v. Government of Israel**, (reported in Nevo, December 13, 2006); and H CJ 8414/05 **Yasin v. Government of Israel**, IsrSC 62(2) 822 (2007)).
8. The route chosen for the separation fence resulted in significant sections of it being built inside the West Bank. Once these sections were built, the Respondent declared the areas remaining between the fence and the Green Line closed zones, referred to jointly as the "Seam Zone." Entry into this area and presence therein are prohibited without a special permit for this purpose. The access ban does not apply to residents of the State of Israel or tourists, who may enter the Seam Zone as they please.
9. Shortly after the first closure declaration regarding the Seam Zone, which was signed on October 2, 2003, petitions were filed against the permit regime. These actions challenged the legality of closing the Seam Zone to Palestinians and requiring them to obtain special permits in order to enter it. The ruling in these petitions was delayed for more than seven years, until judgments were delivered in the petitions against the separation fence

pending before the court at the time. As a result, the judgment in HCJ 9961/03 **HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger v. Government of Israel** (reported in Nevo, April 5, 2011, hereinafter: the **permit regime judgment**) was penned while taking the separation fence for granted and looked at the harm the permit regime causes Palestinian residents distinctly from the harm caused by the fence itself.

10. The permit regime judgment examined the harm caused by the Seam Zone given the arrangements the Respondents had put in place for issuance of Seam Zone entry to Palestinians, including the “Seam Zone Standing Orders and Procedure for Addressing Misuse of Seam Zone Entry Permit,” and given Respondents’ contention that these arrangements would be applied permissively. The Honorable Court ruled that the harm caused to Palestinian residents was proportionate, barring several specific issues that were disqualified.
11. The judgment further clarified that the findings on the proportionality of the harm caused to Palestinians by the permit regime do not preclude the possibility that “in specific cases, severe injury is caused to the rights to property and livelihood of Palestinian residents who cannot adequately farm their lands or who encounter other access difficulties, and the Respondents, on their part, do not take adequate measures to minimize said injury,” and that, “these cases may be reviewed within the framework of specific petitions, in which the court will be able to examine the overall arrangements that apply to a certain area, and the specific balancing which takes place therein between the rights of the residents and other interests, as was previously done in similar petitions” (paragraph 34 of the permit regime judgment).
12. And indeed, after the permit regime judgment was given, based on the assumption that Palestinians with ties to the Seam Zone would not be denied access to it, more and more cases in which the Respondent denies Palestinians access to their lands, businesses and workplaces in the Seam Zone emerged.
13. In September 2019, a new and extremely injurious version of the Seam Zone Standing Orders was published, according to which Seam Zone entry permits for agricultural purposes would only be given for a limited number of days per year, including for land owners. Said procedures stand in sharp contrast to the prolific and consistent case law on the need to maintain the connection of the local Palestinian population to the Seam Zone, and Respondent’s undertakings before the Supreme Court, based on which the judgments confirming the route of the separation fence and the permit regime were given.
14. According to figures received from the Respondent, between 2014 and 2018, the rate by which Seam Zone entry applications submitted by land owners were denied increased from 24% to 72%, and in the first half of 2020, the denial rate exceeded 84%. The current implementation of the permit regime is wholly different from what was presented to the court when the legality of the permit regime was discussed. Those harmed by Respondent’s denial policy are forced to turn to the court and submit individual petitions in order to receive the permits they need.

A copy of Respondent’s letter dated November 26, 2018, is attached and marked **P/1**.

A copy of Respondent's letter dated June 28, 2020, is attached and marked **P/2**.

15. However, at times, even the approval of Seam Zone entry permit applications made by land owners does not resolve issues they have accessing their lands, and the few people to whom the Respondent decided to grant access to the Seam Zone have limited access options due to other accessibility issues arising from the military's conduct.
16. The matter at hand concerns a separation fence gate located inside the West Bank. The military chose to open the gate only three times a day, and only for 15 minutes each time. The farmers must plan their day according to the gate's short opening times and take care to arrive at the gate precisely between opening and closing times. And yet, the military does not arrive at the gate on time, and the farmers routinely wait for extended periods of time until it is opened, in the heat, in the cold and in the rain. Often, the soldiers arrive only after numerous requests are placed on behalf of the farmers. Wearing out land owners seeking to exercise their fundamental right to access their lands and continuing to do so after they complete the long, frustrating permit application process has no justification. A petition on this matter was filed by the Petitioners in late 2019, but since then, the situation has only deteriorated.
17. Currently, not only does the issue of delays persist, but on most days, the gate is not opened at all, and the Respondent intends to keep it closed on a regular basis, other than several weeks per year. Respondent's said conduct severely harms the farmers' ability to access their lands located in the Seam Zone, and in fact, closes the Seam Zone not only to the entire Palestinian population, but also to the few who are still entitled, according to the law, to enter it by virtue of their specific ties to the land. Closing the gate severely harms the agricultural work of the persons who received Seam Zone entry permits for purposes of cultivating lands, and violates the property rights of the land owners whose lands were trapped behind the separation fence. The Respondent is preventing these persons from accessing and cultivating their lands, despite his obligation, as prescribed in case law, to enable it, and despite permits issued for this purpose by the Respondent himself.

The Parties

18. **Petitioners 1-3** have proprietary ties to lands in the Seam Zone. They were given entry permits into the Seam Zone, allowing them to access the lands through the Magen Dan gate located in the separation fence every day of the week. However, on most days of the week, the gate is not opened at all, and on the days it is, it is often opened extremely late. The deficiencies in the opening of the gate severely harm Petitioners' agricultural work and the work of many others who are in the same predicament, interfere with their daily routine and undermine their well-being and fundamental rights to property, freedom of occupation and freedom of movement.
19. **Petitioners 4 and 5** are the Head of the Masha Village Council and the Mayor of a-Zawiya, communities whose lands in the Seam Zone are close to Magen Dan gate and whose residents are harmed by the deficiencies in the gate's opening.
20. **Petitioner 6** is a non-profit association working to promote the human rights of Palestinians in the Occupied Territories. Its work includes providing assistants to Palestinians with ties to the Seam Zone to exercise their right to enter it.
21. **The Respondent** is the Military Commander of the West Bank on behalf of the State of Israel.

Main Facts and Exhaustion of Remedies

22. Petitioner 1, born in 1957, is married and has 11 children. He had another son who passed away. He resides in a-Zawiya in the Tulkarm district. Petitioner 1 is one of the owners of six plots of land located in a-Zawiya's lands, in the Seam Zone. He inherited the land from his father, who inherited it from Petitioner 1's grandfather. The plots are located at a distance of about 3-4 kilometers from the Magen Dan gate in the separation fence. Petitioner 1 holds a "Seam Zone farmer permit" for entry into the Seam Zone, valid from February 28, 2021, to February 27, 2023, and enabling him to cross the separation fence through the Magen Dan gate.

A copy of Petitioner 1's ID card is attached and marked **P/3**.

A copy of Petitioner 1's permit is attached and marked **P/4**.

23. Petitioner 2, born in 1948, is married and has 13 children. He resides in Masha in the Tulkarm district. He owns two plots of land located in Masha's lands, in the Seam Zone. He inherited the lands from his father. One plot is located within a ten-minute walking distance from the Magen Dan gate and the other within a 30-minute walking distance from the gate. Petitioner 2 holds a "Seam Zone farmer permit" for entry into the Seam Zone, valid from November 12, 2020, to November 11, 2023, and enabling him to cross the separation fence through the Magen Dan gate.

A copy of Petitioner 2's ID card is attached and marked **P/5**.

A copy of Petitioner 2's permit is attached and marked **P/6**.

24. Petitioner 3, born in 1956, is married and has eight children. He resides in a-Zawiya in the Tulkarm district. Petitioner 3 leases lands located in a-Zawiya's lands in the Seam Zone. He holds an "agricultural work permit" granted to first-degree relatives, valid from September 12, 2019, to September 10, 2021, and enabling him to cross the separation fence through the Magen Dan gate.

A copy of Petitioner 3's ID card is attached and marked **P/7**.

A copy of Petitioner 3's permit is attached and marked **P/8**.

25. In July 2017, HaMoked began receiving complaints from farmers regarding serial and habitual delays of one hour, two hours and even more in the opening of the Magen Dan gate. The gate leads to the lands of the villages of a-Zawiya, Rafat and Masha. The farmers said that whenever the gate did not open on time, they called the DCO's operations room and complained and were told to wait, that the soldiers were on their way and that the gate would be opened shortly. However, the delays were long and recurred several times during the week, on a regular basis.

26. HaMoked intervened with the military regarding these delays for about two years, but the practice has not stopped, and the delays remained lengthy and persistent. The delays in the opening of the Magen Dan gate necessitated multiple calls to military officials on a daily basis, as the farmers waited near the gate in the heat, in the cold and in the rain, until the soldiers finally arrived to open it, often after more than an hour.

27. Eventually, on December 5, 2019, a petition was filed in the matter – **Raddad**. The petition described roughly **fifty incidents** in which HaMoked had stepped in due to

delays in the opening of the Magen Dan gate at the time, mostly commencing from August 30, 2018. While the petition addressed a large number of delays, they were a fraction of the delays that actually occurred, considering HaMoked only responded to delays that occurred during its own hours of operation – i.e., in the afternoon – and did not respond to delays occurring in the early morning hours or in the evening.

A copy of the factual section of the **Raddad** petition is attached and marked **P/9**.

28. Shortly after the petition was filed, on December 10, 2019, a letter was received from the Central Command Public Liaison Officer, responding to HaMoked's letter dated July 2019 regarding the delays in the opening of the gate. The military's response stated as follows:

These gates are opened and closed by military forces every day according to a schedule, and we attach a great deal of importance to the orderly opening of the gates on time and without delays.

The opening times of the gates are checked on a daily and weekly basis, and delays in the opening of the gates may occasionally occur as a result of technical difficulties or urgent operational needs. Nevertheless, we do whatever we can to reduce such delays to a minimum.

Due to the time that has elapsed from the date of the letter (July 2019), it was difficult to verify the details of the relevant incident with the forces, and we were unable to track the events described in your letter. However, and to limit the occurrence of similar events in the future, the importance of the timely opening of the gates will be reiterated to the forces on the ground.

A copy of Central Command's letter dated December 10, 2019, is attached and marked **P/10**.

29. Simultaneously, on December 10, 2019, and December 11, 2019, several days after the petition was filed, two incidents of mass confiscation of permits from farmers waiting for the gate to open occurred. In these mass confiscations, a total of about 50 – 70 permits were confiscated from farmers at the scene. The farmers reported they had arrived at the Magen Dan gate in the morning and waited, as usual, for it to open. Around 06:30 A.M., two DCO officers arrived at the gate – one by the name of Shadi Saleh and one by the name of 'Ali. Officer Shadi collected the permits from all the farmers and asked each of them where they were headed. All the farmers replied that they were going to their lands, and the officer confiscated the permits of all but one, who said that he was going to Israel. The officer told the latter he was telling the truth and would therefore be allowed through (just so!)
30. Officer Shadi spoke to the farmers in an aggressive and offensive manner, accusing them of lying and working in Israel rather than their lands and saying this was why he had decided to confiscate their permits. He did not give any one of the farmers a confiscation form specifying the reason for the confiscation, as required by Respondent's procedures (section 5.d. of the chapter "Misuse of Seam Zone Permit – Handling Procedures" in the collection of "Procedure for Addressing Misuse of Seam Zone Entry Permit" <http://www.hamoked.org.il/files/2021/1664800.pdf>, in Hebrew). The officer ordered all farmers to arrive at his office at the Eyal DCO on December 12, 2019, at 08:00 A.M. to show him the location of their plots on his map.
31. The farmers who reported the incident to HaMoked said that they arrived at the DCO at the appointed time and waited there for a long time. Officer Shadi did not begin admitting them until 12:00 P.M. The farmers entered his office in groups of ten at a time. He then

asked each of them to show him the location of their plot on the map. The officer took pictures of the farmers as they pointed at their plots. Many farmers could not read the map and were unable to locate their plots on it. The officer was short-tempered and irritable and had no patience to meet with all the farmers who were waiting for him outside. He left his office and ordered everyone to go home, telling them they would not get their permits back and demanding they produce survey maps or aerial photographs of their lands.

32. The farmers protested and said that they had already been issued permits on the basis of the documents they had provided and that the demand to submit survey maps or aerial photographs was disingenuous.
33. Some farmers did return to the DCO with survey maps of their plots, but were met with disregard. The officer refused to give them anything and sent them home, telling them that anyone who needed to make arrangements for a land surveyor to have access should contact him. He also told the farmers that they could make a complaint through a human rights organization or a private lawyer. The farmers emphasized the officer's degrading and offensive treatment towards them.
34. HaMoked received contact information for nineteen farmers who were harmed in this incident. They did not want their names revealed for fear of repeat harassment by the soldiers, similarly to the mass confiscation of permits from farmers waiting at the Magen Dan gate after the petition was filed regarding delays there.
35. Machsom Watch has said that according to reports received from farmers from Masha and a-Zawiya, another mass confiscation occurred on December 12, 2019, with permits taken from a total of about **one hundred farmers**.
36. The petitioners in **Raddad** filed an updating notice about this matter on December 24, 2019.

A copy of the Petitioners' Updating Notice dated December 24, 2019, is attached and marked **P/11**.

37. On February 9, 2020, a preliminary response to the petition was filed, stating as follows:

With respect to the first remedy, preventing the delays in the opening of the gate, Respondent notes that, as specified in the petition and above, Respondent has been aware of the issues in the opening hours of the gate for some time. Respondent has conducted a thorough investigation to determine the prevalence of the delays, their source and ways to prevent them in the future.

On January 12, 2020, a meeting was held on this matter, chaired by the head of the Rainbow administration, responsible for all aspects of the security fence project.

In view of the fact that the security forces operating the gate change every few months, it was not possible to obtain accurate information about the delays in the opening of the gate in recent years. Nevertheless, all senior officials recognize that the number of delays in the opening of the Magen Dan gate is high compared to other gates, partly due to the fact that the gate had been operated by changing forces tasked with routine security, which were occasionally required to respond to real-

time security events in the area, leaving insufficient forces to open the gate.

In view of the above, and in order to optimize gate operation, a decision was made at this time to make a substantial change in the matter, whereby responsibilities for the operation of the gate would be transferred from the forces performing routine security to the Military Police battalion whose main task is the operation of crossings in the area.

A directive was also issued that until the change is implemented, DCO representatives would make an effort to be present at the gate on a daily basis, to make sure that there are no delays in its opening...

To complete the picture, Respondent notes that comprehensive staff work is planned for the current work year, 2020, with the objective of mapping all gates along the security fence and reviewing their suitability for the evolving needs of residents in general and farmers in particular. Upon completion of the staff work, changes may be made to the number of gates and their opening hours.

In the circumstances, and considering the aforesaid regarding the identity of the gate operator, Respondent will argue that the petition in its current form has become moot with respect to this matter as well.

Parenthetically, Respondent notes that subsequent to the filing of the petition at hand, on December 16, 2019, Respondent received a letter from Petitioners' counsel concerning permits used to cross the gate, which had been denied. Notice on this matter was also filed by the Petitioners with the Honorable Court on December 24, 2019. On January 5, 2020, respondents sent Petitioners' counsel a response in the matter. According to the Respondent, as specified in Petitioners' Updating Notice, this issue deviates from the petition at hand.

A copy of Respondent's response dated January 5, 2020, is attached and marked **RS/1**.

A copy of Respondent's Preliminary Response, including the exhibit, is attached and marked **P/12**.

38. Respondent's letter, which was attached to the preliminary response, stated as follows:

The Eyal Office puts a great deal of effort into maintaining farmers' ability to exit and cultivate their lands (in this context, more than 10,000 Seam Zone permits were issued in 2019 by the office). At the same time, efforts are made to eradicate misuse of Seam Zone permits, and in this context, the DCO has taken a number of initiatives in the districts of Tulkarm, Qalqiliya and Salfit, which are under its responsibility. **In most cases, a Seam Zone permit is used to enter Israel by persons holding an Israeli work permit. These are cases of unlawful exit via crossings that are not designated for entry into Israel** using Seam Zone permits for a purpose other than the agricultural purpose for which they were given... In conclusion, we note that the initiatives were part of routine operations to address misuse of Seam Zone permits... It should be emphasized that the Civil Administration wholly rejects the argument that the

ostensible purpose of the initiatives is to “take revenge” on the inhabitants in retaliation for the petition, which is irrelevant to the case at hand.

39. In other words, what the Respondent refers to as “misuse of Seam Zone entry permits” is, in fact, entry into Israel through the Seam Zone by individuals who hold both Israeli entry permits and Seam Zone entry permits.
40. Section 1 of the Order regarding Security Provisions (Judea and Samaria)(No. 378) - 1970, “General Permit to Enter and Remain in the Seam Zone” provides as follows:

A permit to enter and remain in the Seam Zone, as defined in the declaration, is hereby granted to every person belonging to the class of persons specified in the appendix to this permit, subject to the terms specified in the appendix.

41. The appendix provides as follows:

Classes of Persons	Conditions
Any person who is not a resident of the Area who holds a valid foreign passport and a valid Israeli visa	Access to the Seam Zone for all purposes
Any person holding a valid work permit in an Israeli settlement located in the Seam Zone, according to the Order regarding Employment of Workers in Certain Areas (Judea and Samaria) (No. 967) - 1982	Access to the Seam Zone for the purpose of employment in the settlement specified in the work permit, subject to the terms enumerated in the work permit
Any person holding a valid permit to exit the Area into Israel	Passage through the Seam Zone for the purpose of exiting the area to Israel

A copy of the Order regarding Security Provisions (Judea and Samaria)(No. 378) -1970, General Permit to Enter and Remain in the Seam Zone, is attached and marked **P/13**.

42. Namely, the matter herein concerns entry into Israel by individuals who are entitled to enter both the Seam Zone and Israel and are entitled to pass through the Seam Zone to access Israel. Their only “transgression” is that they crossed through a gate leading into the Seam Zone rather than a checkpoint leading into Israel, but they are entitled to access both.
43. On September 9, 2020, an additional Updating Notice was filed on behalf of the Petitioners, stating as follows:

On June 8, 2020, HaMoked was informed by one of the farmers that opening days at the Magen Dan gate had been reduced. Until the gate was shut down in March 2020, it had been open every day of the week. However, after operations resumed, the gate remained closed on Fridays and Saturdays, leaving the farmers with no way of accessing their lands on these days. Reducing opening days at the gate harms all permit holders who are permitted to cross the separation fence exclusively through this gate. Seam Zone entry permits provide that farmers may enter the Seam Zone “on Sunday, Monday, Tuesday, Wednesday, Thursday, Friday and Saturday” (see P/3, P/5 and P/7). However, the decision to close the gate on some days of the week

prevents them from doing so. The decision is particularly harmful to farmers who have other jobs and are free to engage in agricultural work only on the weekends...

In view of the above, the Honorable Court is requested to direct the Respondent to ensure the Magen Dan gate is opened at reasonable hours, for reasonable durations, at times made known in advance to gate users, and without frequent changes; to return to opening the Magen Dan gate throughout the week, as done until recently, so that individuals holding permits for the Magen Dan gate are able to use their permits any day of the week, as noted on the permits; and to make the military unit responsible for opening the gate routinely available to receive calls from farmers regarding issues surrounding the opening of the gate in the Arabic language, and have it address issues promptly.

A copy of Petitioners' Updating Notice in **Raddad** dated September 9, 2020, is attached and marked **P/14**.

44. On September 10, 2020, a motion for cancellation of the hearing scheduled for September 14, 2020, was filed on behalf of the Respondent. Respondent's application stated as follows:

On September 9, 2020, the commander of the Efrayim Division held a meeting with the deputy commander of the Efrayim Division, the head of the Efrayim District Coordination Office, the commander of the Military Police battalion, the head of the Rainbow Administration and his deputy.

The meeting concluded with an agreement that commencing on September 10, 2020, full responsibility for opening the Gate would be transferred to the Military Police. Monitoring will be conducted in the coming days to assess whether the problem of delays has been resolved. In addition, a decision was made to open the Gate throughout the week, including Fridays and Saturdays, as follows: morning: 06:00 A.M. to 06:30 A.M.; midday: 12:00 P.M. to 1:00 P.M.; evening: 5:00 P.M. to 17:20 P.M.

Under the above circumstances, it seems that at this stage, a hearing before the Honorable Court is not required. Therefore, and to refrain from wasting the time of the Honorable Court, the Respondent requests, with Petitioners' consent, to cancel the hearing scheduled for September 14, 2020. The Respondent also requests to give Petitioners leave to file notice concerning the need to proceed with the hearing of the petition within three months, according to the circumstances at that time.

In addition, it should be noted that in the near future, an assessment will be made as to the need to keep the aforesaid agricultural gate as a permanent gate open year-round or convert it into a seasonal agricultural gate, according to mapping performed by the Civil Administration and the professional bodies on an ongoing basis, taking into consideration the needs of the local population.

A copy of Respondent's Motion for Cancellation of Hearing is attached and marked **P/15**.

45. A decision was rendered on the same day, stating follows:

Given the content of the Consent Motion for Cancellation of Hearing and the developments described therein, it appears the petition in its current form has become moot.

Therefore, Petitioners and Respondent shall submit their positions concerning the petition's dismissal without prejudice at this stage with parties retaining their arguments and rights by 1:00 P.M. on September 13, 2020. After the above is received, a decision will be given regarding further proceedings in the petition.

46. Notice was filed by the Petitioners on September 13, 2020, stating as follows:

On September 9, 2020, an updating notice was filed on behalf of the Petitioners regarding the reduced opening times at the Magen Dan gate.

On September 10, 2020, HaMoked was informed by one of the farmers that on that morning, a DCO officer by the name of 'Ali arrived at the gate. The officer asked each of the farmers where they were going. The farmers told him that they were going to their lands, and the officer confiscated their permits. About fifteen permits were confiscated in this incident. The officers instructed all farmers to go to the DCO today, September 13, 2020. Other farmers were taken to tour their lands with the officer.

As stated in Petitioners' updating notice dated December 24, 2019, the same happened after the filing of the petition...

In addition, on that day, September 10, 2020, the soldiers failed to arrive for the afternoon opening of the gate. According to Respondent's Motion for Cancellation of Hearing, the gate should have been opened from 12:00 P.M. to 1:00 P.M. ... At 2:41 P.M., a soldier by the name of Sanita called HaMoked and said she was told by the soldiers that the gate would open next two hours later. HaMoked's staff member told the soldier it was inconceivable to expect the farmers to wait for the gate to open for two more hours at 34°C, simply because the soldiers did not open the gate on time.

HaMoked's staff member contacted the battalion operations room at 3:28 P.M. and spoke to a soldier by the name of Tom, who said the gate would open at 4:00 P.M., **four hours after the scheduled opening time.**

At 3:35 P.M., one of the farmers reported that a military jeep had passed by and that the farmers approached it and complained that the soldiers did not open the gate for them. The soldiers in the jeep opened the gate for the farmers, and they passed through it.

At 3:36 P.M., the soldier Tom called HaMoked to say the gate's opening hours had changed and that **as of that week, it would open twice a day only - at 6:00 A.M. and 6:00 P.M.** She said that the DCO had publicized the change.

As a result of the above change in the gate's opening hours, anyone wishing to cultivate their land will be forced to remain there **for 12 hours**, unable to return home, without access to food and water, whatever the weather, and forgo any other activity on the same day, including work.

As stated, these changes to the opening hours of the gate were communicated to the farmers **on the same day** the Honorable Court was informed of different changes to its opening hours. As recalled, the second remedy sought in the petition concerns public notification of changes to the gate's opening hours in order to prevent a situation in which farmers arrive at the gate and wait in vain for it to open. The provision of two new and contradicting schedules on the same day causes greater confusion to the public than the failure to notify of changes to the opening hours. At this stage, it is unclear which of the two schedules will apply in practice.

Hence, at this point in time, the situation is at least as flawed as it was prior to the petition, and there is concern over further deterioration in the near future, as divulged by the soldier in charge of the matter on the practical level.

In addition, in the Motion for Cancellation of Hearing, Respondent stated that "in the near future, an assessment will be made as to the need to keep the aforesaid agricultural gate as a permanent gate open year-round or convert it into a seasonal agricultural gate" (paragraph 6). A seasonal gate is a gate that opens only two or three times per year for short durations. In other words, **the gate will be closed for almost the entire year**. The practical meaning of this is that **this part of the Seam Zone will be closed not only to the entire Palestinian population but also to those who have ties to the Seam Zone, including individuals who own land in it and have Seam Zone entry permits that grant them access to it despite the area's closure**.

Therefore, at this stage, there is a genuine concern that an additional petition on the same issue will have to be filed in the near future, should the petition be dismissed.

The above notwithstanding, if the Honorable Court is of the opinion that there is no room for further review of this petition, the Petitioners would consent to its dismissal without prejudice request that the judgment in the matter include reference to Respondent's obligation to establish crossing arrangements allowing reasonable access to lands located beyond the separation fence Magen Dan hate, in a manner that reduces to a minimum the harm caused to farmers and enabling the conservation of the fabric of life that existed in the area prior to its closure, in keeping with case law and in the hopes that this averts the need to file an additional petition regarding the same matter within a short period of time.

A copy of Petitioners' notice dated September 13, 2020, is attached and marked **P/16**.

47. On the same day, notice was filed on behalf of the Respondent, stating that "Under the circumstances, as specified in the application of the parties, the Respondent wishes to leave the deletion of the petition at this stage for the discretion of the Honorable Court."

48. On that day, September 13, 2020, judgment was given, stating as follows:

The Consent Motion for Cancellation of Hearing filed by the Respondent on September 10, 2020, indicates a meeting was held on September 9, 2020, with respect to the opening arrangements of the 'Magen Dan' Gate, the subject matter of the petition at hand, at the conclusion of which it was decided that commencing on September 9, 2020, full responsibility for the opening of the gate would be transferred to the Military Police. It was also decided that the gate would be opened on a daily basis, every day of the week, from 06:00 A.M. to 06:30 A.M., 12:00 P.M. to 1:00 P.M., and 5:00 P.M. to 5:20 P.M.

We are aware of Petitioners' notice dated September 13, 2020, arguing there were inconsistencies between the content of the Consent Motion for Cancellation of Hearing and what farmers were told on the ground. However, in the circumstances of the matter, in view of the change in the gate opening arrangement, notice of which was given by the Respondent in the above Consent Motion for Cancellation of Hearing, at this time, there is no room to further deliberate on the petition, since its underlying factual basis is no longer relevant.

Therefore, the petition, in its current form, has become moot without prejudice to Petitioners' arguments, which may retain their arguments in the event that future developments justify additional legal action.

The petition is therefore dismissed without prejudice. No costs order is made. The hearing scheduled for tomorrow, September 14, 2020, is canceled.

49. Roughly six weeks later, on October 27, 2020, Petitioner 3 arrived at the Magen Dan gate at 12:00 P.M., but the soldiers did not appear. He called the DCO repeatedly and was told each time that the soldiers would be sent over and that the gate would be opened within five minutes, but the soldiers did not arrive. The soldiers did not open the gate until 2:13 P.M. – **more than two and a half hours late.**
50. On November 2, 2020, Petitioner 3 arrived once again at the gate at 12:00 P.M., and the soldiers did not open the gate. HaMoked's staff member called the operations room of the Qalqiliya DCO at 12:16 P.M. and clarified that according to the judgment rendered in this matter, the gate should have been opened at 12:00 P.M. The soldier said he was not aware of the judgment and that the gate had always been scheduled to open at 12:50 P.M. At 12:20 P.M., HaMoked's staff member called the operations room again and spoke with a soldier named Yael, who referred her to an officer named Naomi. Officer Naomi also said she was not aware of the judgment. At 12:43 P.M., Officer Osama from the DCO's operations room called HaMoked and said that legal matters should not be discussed with the soldiers, adding he was in possession of the judgment. HaMoked's staff member asked why, then, the soldiers were not aware of the gate's opening hours. The officer replied: "We are the ones sitting in the meetings and making the decisions. They are only soldiers." HaMoked's staff member told the officer that the soldiers should be informed of the decisions made in the meetings. The officer said he would go to the gate and check what had happened there. HaMoked's staff member asked whether it was

possible to make sure the same thing did not happen again, and the officer replied: “With God’s help.” At 1:05 P.M., the gate had not yet been opened, although according to the soldiers, it should have been opened at 12:50 P.M. HaMoked’s staff member called the DCO’s operations room again and asked why the military had not opened the gate. The gate eventually opened at 1:12 P.M. – **nearly an hour and 15 minutes late.**

51. On the following day, November 3, 2020, the farmers called HaMoked at 6:45 A.M. and said the soldiers had not come to open the gate. According to the judgment, the gate should have been opened at 06:00 A.M. The farmers said they had called the DCO and were told that “there is a problem” but received no additional information. The gate finally opened at 08:00 A.M. – **two hours late.**
52. On that day, the gate opened for the last time at 4:15 P.M. instead of 5:00 P.M., such that anyone who arrived on time for the evening opening hours was unable to leave the Seam Zone through the gate.
53. HaMoked contacted Respondent’s legal counsel in **Raddad**, Advocate Roi Shweika, on November 4, 2020, and asked that he attend to the violation of the judgment in the hopes of avoiding an additional petition in the matter.
54. Respondent’s counsel said on the following day that he had been told that a response would be sent to the undersigned.

A copy of the correspondence regarding the violation of the judgment is attached and marked **P/17.**

55. On November 8, 2020, Petitioner 3 once again reported the gate did not open at 12:00 P.M. HaMoked’s staff member called DCO Officer Osama at 12:17 P.M., and he said he would resolve the issue. However, the farmers continued to wait, and the gate did not open. HaMoked’s staff member called Officer Osama again at 1:11 P.M., and he again said he would look into the matter. At 1:19 P.M., HaMoked was informed that the gate had opened – **about an hour and 15 minutes late.**
56. On November 17, 2020, at 12:05 P.M., another farmer called HaMoked and reported the gate had not opened. He added that when he arrived at the gate on the previous day, at 12:30 P.M., the gate was closed. HaMoked’s staff member called Officer Osama at 12:15 P.M., and he said he would attend to the matter. At 12:35 P.M., the farmers reported the gate was not open. At 12:50 P.M., the gate was still closed. HaMoked’s staff member called Officer Osama again several times, but her calls remained unanswered. At 12:59 P.M., she called Officer Naomi, who said she would look into the matter. At 1:30 P.M., HaMoked’s staff member called Officer Naomi again, and the officer said that she had spoken with the DCO and that she would check again. At 1:36 P.M., HaMoked was informed by the farmers that the gate opened a few minutes earlier – **almost an hour and a half late.** The soldiers who opened the gate told the farmers that the gate was scheduled to open at 1:00 P.M. – contrary to the judgment. As aforesaid, the soldiers did not arrive at 1:00 P.M., but almost half an hour later.
57. On November 23, 2020, the gate did not open on time again. One of the farmers called HaMoked at 1:20 P.M. – almost an hour and a half after the gate’s scheduled opening time – and reported the gate had not yet opened. HaMoked’s staff member called the Civil Administration Public Liaison Officer regarding the matter at 1:30 P.M., and he said he would look into the matter. At 2:30 P.M., an hour later, and after an additional call from HaMoked’s staff member, the Civil Administration Public Liaison Officer said that the Military Police vehicle had run into problems. He said he had been advised by the DCO that the problem was being dealt with and that they were hoping soldiers would

soon arrive at the gate to open it – more than two and a half hours after the scheduled opening. At 2:55 P.M., a message was received from the Civil Administration Public Liaison Officer to the effect that the soldiers had arrived to open the gate, but only one farmer was waiting there. At 2:58 P.M., the farmer who had called HaMoked earlier reported that the soldiers did not open the gate. He called the DCO again about five minutes earlier and was told by the soldier who answered the phone that **they would not open the gate for them and that they opened the gate in the morning and would not open it again.** The farmers lost hope and left after **having waited for almost three hours.**

58. On November 30, 2020, Petitioner 3 called HaMoked at 2:15 P.M., and reported he had been waiting near the Magen Dan gate since 12:00 P.M. and that the gate had yet to open. HaMoked's staff member called the Civil Administration Public Liaison Officer at 2:20 P.M., and he said he would see to the matter. At 3:00 P.M., the gate had not yet been opened. HaMoked's staff member called the Civil Administration Public Liaison Officer and complained about the delay. The officer replied: "Anyway, they arrived at 12:00 P.M. to open the gate and let anyone who needed to exit through. Any additional complaints about the opening of the gate, if any, should be sent in writing." HaMoked's staff member responded as follows: "He was there at 12:00 P.M., and they did not open, and if they opened at 12:00 P.M., they should have waited until 1:00 P.M. The opening hours were set in a judgment. We intend to file another petition regarding the failure to comply with the judgment. Please open the gate immediately." At 3:25 P.M., the Civil Administration Public Liaison Officer called and said he had read the judgment, and noticed that the affidavit on behalf of the Respondent was given by an officer from the Central Command rather than the Civil Administration, and, therefore, suggested HaMoked contact the Central Command Public Liaison Officer with respect to the matter, rather than him. With respect to the farmer who had been waiting at the gate since 12:00 P.M., the officer said he had spoken with the DCO again and that they were "making efforts" to go and open the gate. The gate eventually opened around 4:10 P.M., **more than four hours late.**

59. HaMoked contacted the Legal Advisor for the West Bank Area on December 1, 2020, regarding the violation of the **Raddad** judgment and clarified that it intended to file another petition with the High Court if the problem was not solved within two weeks.

A copy of HaMoked's letter to the Legal Advisor for the West Bank Area is attached and marked **P/18.**

60. Two days later, on December 3, 2020, the gate was not opened again in the afternoon. Petitioner 3 entered the Seam Zone at 6:00 P.M. and asked the soldiers when they would open the gate in the afternoon. They told him the gate would open at 12:00 P.M. Petitioner 3 arrived at the gate at 11:30 A.M., but the soldiers did not open the gate at 12:00 P.M. HaMoked's staff called the Civil Administration Public Liaison Officer at 12:14 P.M., but was advised he was not available and had nothing to say at that point and that HaMoked should send a complaint in writing. HaMoked's staff member called the DCO and was told by the soldier who answered the phone that she had been instructed not to speak with Israeli organizations. Petitioner 3 also called the DCO and was told that the matter was under examination. The gate eventually opened at 1:20 P.M. – **an hour and twenty minutes late.**
61. On December 14, 2020, at 12:30 P.M., HaMoked was informed again that the gate was not opened. HaMoked's staff member called the Military Police operations room at 12:40 P.M., and spoke with a soldier named Ya'ara. The soldier had no idea what she was talking about. She then spoke with a soldier named Avishai from the Taoz Battalion operation room. She explained the situation to him, and he said he would pass the

complaint to his superiors. The gate opened at 1:27 P.M. – **almost an hour and a half late.**

62. On December 27, 2020, HaMoked was informed by one of the farmers that a day earlier, Saturday, December 26, 2020, the soldiers did not open the gate in the morning. The gate should have been opened at 6:00 P.M., and the farmers waited near the gate until after 7:00 A.M. A jeep with soldiers passed by, and the farmers asked the soldiers when the gate would be opened. The soldiers told them the gate would only be opened at 1:30 P.M. (as aforesaid, this is not when the gate is scheduled to open in the afternoon according to the judgment). The farmers left and returned in the early afternoon, but again the gate was not opened. The farmers called the DCO and were told that the soldiers could not find the keys to the gate. **The gate was not opened that day, either in the morning or in the afternoon.**
63. In mid-January, the soldiers who open the Magen Dan gate informed the farmers that the gate's opening hours had changed and that from the following week (the week commencing on January 17, 2021), **the gate would only be opened twice a week – Mondays and Wednesdays only.** As the soldier had stated, that week, the gate was not opened on Sunday, January 17, 2021, or Tuesday, January 19, 2021.
64. On January 19, 2021, HaMoked wrote to the State Attorney's Office to notify of its intent to file a High Court petition, stating as follows:

Just one month after the petition was dismissed without prejudice, the habitual delays in the opening of the Magen Dan gate have recurred...

The undersigned contacted the Legal Advisor for the West Bank on this matter on December 1, 2020, listing a slew of similar incidents that occurred on November 8, 2020, November 17, 2020, November 23, 2020, and November 30, 2020, in which the gate was opened between 75 minutes and **more than four hours late.**...

The letter remained unanswered, and the delays have persisted...

Last week, soldiers informed the farmers that the Magen Dan gate would no longer be opened every day of the week as had been decided in HCJ 8084/19 and that beginning this week, the gate would open on Mondays and Wednesdays only... We request your urgent intervention in the serial violation of the undertakings given to the court in HCJ 8084/19 just several months ago, which did not last even six weeks. We request that the Magen Dan gate be opened "every day of the week, from 6:00 A.M. to 6:30 A.M., 12:00 P.M. to 1:00 P.M., and 5:00 P.M. to 5:20 P.M.," as stated in the judgment.

We clarify that we intend to file another petition with the High Court of Justice soon if the gate does not open:

- a. On time;
- b. Every day of the week.

A copy of HaMoked's letter of notification of intent to file a petition dated January 19, 2021, is attached and marked **P/19.**

65. On the following day, an employee of a-Zawiya municipality was informed by the Palestinian coordination that a DCO soldier said that “the reduction of opening days at the gate was in accordance with the court’s decision in the matter.” It is not at all clear to which decision this comment refers.
66. On the same day, January 20, 2021, a concrete barrier was installed, preventing farmers’ passage by tractor and other vehicles from the Magen Dan gate to their lands in the Seam Zone. The barrier consisted of four concrete slabs installed at the point where the asphalt road near the separation fence (referred to as the “fence road”) and the dirt road leading to the agricultural lands meet.

Photos of the barrier are attached and marked **P/20**.

67. On January 27, 2021, the undersigned called Respondent’s counsel in the previous proceeding, Advocate Roi Shweika, with respect to this matter. A few days later, the military moved the concrete slabs to the roadside.
68. One of the farmers informed HaMoked that on February 1, 2021, the soldiers did not open the Magen Dan gate until 2:00 P.M. – **two hours late**, and that the gate opened late on previous days as well. The same farmer had arrived at the gate again on February 10, 2021, and the soldiers confiscated his permit. They did not tell him why his permit was confiscated or give him a confiscation form.
69. On March 3, 2021, a letter was received from the Civil Administration Public Liaison Officer in response to the letter notifying of intent to take legal action dated January 19, 2021, stating as follows:

In your letter, you requested that the Magen Dan gate... be opened every day of the week from 6:00 A.M. to 6:30 A.M., 12:00 P.M. to 1:00 P.M., and 5:00 P.M. to 5:20 P.M., as you allege the State had undertaken in an Updating Notice given in HCJ 8084/19 on September 10, 2020...

In this context, I call your attention to paragraph 6 of the above notice on behalf of the State, which expressly provided as follows:

In addition, it should be noted that in the near future, an assessment will be made as to the need to keep the aforesaid agricultural gate as a permanent gate open year-round or convert it into a seasonal agricultural gate, according to mapping performed by the Civil Administration and the professional bodies on an ongoing basis, taking into consideration the needs of the local population.

A thorough assessment as aforesaid has been conducted over the last few months, as part of which the number of people exiting and returning through the gate was reviewed; Civil Administration and relevant military personnel toured the Seam Zone in the vicinity of the gate; individuals crossing the gate were questioned, and discussions and consultation on the matter were conducted.

The above assessment indicated clearly and unequivocally that **the vast majority of the residents passing through the Magen Dan gate misuse their Seam Zone entry permits for purposes that do not**

conform to the purpose of the permit, namely unlawfully entering the territory of the State of Israel. In fact, in a substantial proportion of the days, it was found that **not one of the individuals using through the gate** did so for the purpose of agricultural work in the Seam Zone, as required by the terms of the permit.

Therefore, **the Military Commander has recently decided to convert the gate into an “agricultural gate” that would open on a regular basis only during the relevant agricultural seasons.** However, in order to further improve on the staff work conducted, the Military Commander decided that for four months, beginning on January 7, 2021, the Magen Dan gate would operate two days a week – on Mondays and Wednesdays, from 6:00 A.M. to 7:00 A.M., 12:00 P.M. to 1:00 P.M., and 4:00 P.M. to 5:00 P.M. At the end of said period, the matter would be revisited, and the relevant findings and recommendations would be presented to the Military Commander who would formulate an up-to-date decision regarding the conversion of the gate into an “agricultural gate.”

In view of all of the above, we have not found any flaw in the above decision.

A copy of the letter of the Civil Administration Public Liaison Officer dated March 3, 2021, is attached and marked **P/21**.

70. On March 8, 2021, Petitioner 3 reported that in the morning, the gate opened half an hour late, at 6:30 A.M. instead of 6:00 A.M., and that it was not opened on time in the afternoon as well. HaMoked’s staff member called the Military Police operations room with respect to the matter at 12:15 P.M. and was told that the matter would be looked into. She called the operations room again at 12:30 P.M., and a soldier who refused to state her name said that a “unit” had arrived at the gate to open it. HaMoked’s staff member noted opening was 30 minutes late and that the gate should have been opened from 12:00 P.M. to 1:00 P.M. The soldier said that if this was the case, there was no problem since the gate opened at 12:30 P.M. HaMoked’s staff member said that this was not the intention.
71. Either way, the farmers reported the gate did **not** open at 12:30 P.M. HaMoked’s staff member called the Taoz Battalion operations room again at 12:45 P.M. and spoke with Company Deputy Commander Inbar. Officer Inbar also said that the gate should have been opened at 12:30 P.M. HaMoked’s staff member replied the gate should have been opened at 12:00 P.M. rather than at 12:30. The officer transferred the call to the Battalion Commander Matan, who told HaMoked’s staff member that during that particular week, the DCO was responsible for opening the gate due to the olive harvest, and therefore the complaint should be addressed to the DCO rather than him (his argument was unclear since the olive harvest takes place in the fall). HaMoked’s staff member asked why responsibility for opening the gate had been transferred to the DCO, and the battalion commander replied the decision had been made by the DCO and the brigade. HaMoked’s staff member called the DCO’s operations room at 12:53 P.M., and a soldier named Sahar said she would look into the matter. She did not know that the responsibility for opening the gate had been transferred to the DCO for that week. At 1:20 P.M., HaMoked was informed that the gate was opened – **more than an hour and 15 minutes late**.
72. On Monday, March 15, 2021, Petitioner 1 called at 08:08 A.M. and reported the gate had not opened, and the farmers were still waiting for it to open. As noted, morning opening time is 6:00 A.M., meaning opening was **more than two hours late**. Soldiers arrived at

the gate and told the farmers the gate would not be opened at all that day. HaMoked's staff member called the Military Police operations room at 8:18 A.M. At 8:22 A.M., she spoke with a soldier named Erel from the Military Police Operations Branch, who said that he would try to help. At 08:25 A.M., she called the Qalqiliya DCO operations room and spoke with a soldier named On. The soldier told HaMoked's staff member that **the commander of the brigade had issued a directive not to open the gate**. HaMoked's staff member called the Civil Administration Public Liaison Officer and asked him to call her urgently.

73. On the same day, March 15, 2021, HaMoked submitted once again wrote the State Attorney's Office notifying of intent to file a High Court petition and stating as follows:

This decision – both the gate's conversion into an "agricultural gate," meaning it would remain closed through nearly the entire year, and its opening twice a week only – run counter to the State's undertaking that forms the basis for the judgment. It runs counter to the Military Commander's obligation to enable persons who have ties to the Seam Zone to continue accessing their lands and to maintain the fabric of life in the area. It runs counter to the terms of the farmers' permits, whereby they are entitled to enter the Seam Zone any day of the week. Said decision essentially closes the Seam Zone not only to the Palestinian public at large, but also to the few persons who have received Seam Zone entry permits by virtue of their specific connection to the area, and hence it stands in complete contrast to case law.

Furthermore, today, Monday, one of the only two days on which the gate currently opens, the farmers arrived at the gate in the morning and waited for it to open. The gate should have been opened from 6:00 A.M. to 6:30 A.M. At 08:08 A.M., more than two hours after the gate's scheduled opening time – the farmers informed HaMoked that the gate had not yet been opened. The farmers said soldiers had come to the gate and said **the gate would not be opened at all on that day**. HaMoked's staff member first called the Military Police operations room, and then the Qalqiliya DCO operations room and was told that **the commander of the brigade had issued a directive not to open the gate**.

We request that you address the matter urgently and direct the Military Commander to act immediately to open the gate on the dates prescribed in the judgment given in HCJ 8084/19 **Raddad v. The Military Commander of the West Bank** – every day of the week and without delays.

As aforesaid, we intend to file another petition with the High Court of Justice in the near future if the gate is not opened on a daily basis and on time.

A copy of the letter notifying of intent to file a petition with the High Court of Justice dated March 15, 2021, is attached and marked **P/22**.

74. On March 24, 2021, Petitioner 3 reported the gate was not opened at 12:00 P.M. HaMoked's staff member called the Taoz Battalion operations room at 12:13 P.M. and spoke with a soldier named Nehorai, who told her to call back in ten minutes. She called again at 12:34 P.M. and was told that the soldiers were on their way to the gate and that the gate would be opened within ten minutes. The gate opened at 1:03 P.M. –**about one hour late**.

75. On March 31, 2021, the farmers reported the gate was not opened at 12:00 P.M. The farmers called the DCO several times and were told that the gate would not be opened until 4:00 P.M. HaMoked's staff member called the Military Police operations room at 12:55 P.M. and the Qalqiliya DCO operations room at 12:59 P.M., and was told by the soldier who answered her call that a decision was made based on "military considerations" to open the gate only at 4:00 P.M. HaMoked relayed the information to Petitioner 3, and he asked: "What will we do?! Where will we go?!" and said that **he was tired and had nothing to eat or drink**. He said: "We cannot be left like animals," and added: "This is irresponsible." He noted that when the gate was opened in the morning at 6:10 A.M., the farmers were not told it would not open in the afternoon, and they would not be able to exit the Seam Zone until 4:00 P.M. and that if they had been informed of this, they would have made the necessary arrangements. HaMoked's staff member called the Public Liaison Officer about the failure to open the gate, but he did not answer. The gate was not opened until 4:00 P.M. – **four hours late**.
76. On April 7, 2021, Petitioner 3 informed HaMoked that the gate was not opened at 12:00 P.M. HaMoked's staff member called the Military Police operations room at 12:07 P.M., but the telephone line was out of order. She called the Qalqiliya DCO operations room at 12:21 P.M. and spoke with a soldier named Yuval, who told her that the gate was scheduled to open between 12:50 P.M. and 1:00 P.M. and that "this is the current schedule and right now nothing can be done about it," though according to the judgment, the gate should be open between 12:00 P.M. and 1:00 P.M. The gate was opened around 12:20 P.M.
77. On that day, the farmers called and reported the gate did not open on time in the evening either. According to the letter of the Civil Administration Public Liaison Officer dated March 3, 2021, evening opening hours had changed, and the gate was now scheduled to open from 4:00 P.M. to 5:00 P.M. HaMoked's staff member called the Qalqiliya DCO operations room twice and spoke with a soldier named Yuval. On the first call, at 4:26 P.M., he said he would look into the matter. On the second call, at 4:40 P.M., he said, "there is a problem with the phones, and we do not know where the soldiers are" (!). Meanwhile, Petitioner 1 made several calls to the DCO. The soldiers either failed to pick up or said they were "looking into" the matter. HaMoked's staff member called the soldier Yuval again at 5:10 P.M., and he told her the gate would open at 5:00 P.M. She told him that it was already 5:10. At 5:30 P.M., Petitioner 1 reported the soldiers had not yet opened the gate and that he was there with his children. The gate was finally opened at 5:44 P.M. – **forty-four minutes after the time of which HaMoked was advised**.
78. Hence the petition.

The Legal Argument

79. The Petitioners will argue that the substantial and habitual delays in the opening of the Magen Dan gate in the separation fence, and Respondent's decision to stop opening the Magen Dan gate throughout the week and to close it for almost the entire year, are entirely contrary to the jurisprudence of this Honorable Court and the State's undertakings before it; that they disproportionately violate the fundamental rights of the local residents who are entitled to enter the Seam Zone; and that they constitute prohibited collective punishment.

The Normative Background

80. The petition herein concerns Respondent's actions within the occupied territory. The areas in which the Respondent is competent to take action in the occupied territory are

protecting the legitimate security interests of the administration and protecting the rights of the residents of the occupied territory:

Israel holds the territories of the Area under belligerent occupation. In the framework of the military administration, the Military Commander exercises powers in the Area that derive from the rules of international law and from principles of Israeli public law... The belligerent occupation in the area is governed by the major norms of customary international law, which are enshrined in the Hague Convention respecting the Laws and Customs of War on Land, 1907 [25], whilst the humanitarian principles of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949 (hereinafter: the Geneva Convention) are applied de facto by the State and the Military Commander (Iskan [1] *Ibid*, pages 793-794). **The Hague Convention grants the Commander of the Area powers to act in two major fields: – ensuring the legitimate security interests of the occupying power, and second – ensuring the needs and rights of the local population in the area under belligerent occupation.** The first is a military need; the second is a civilian-humanitarian need. The first focuses on maintaining the security of the military forces, as well as public order, safety and the rule of law in the Area; the second concerns responsibility for maintaining the safety and well-being of the local residents. **In securing their well-being as aforesaid, the Commander of the Area is not only obligated to ensure public order and safety for the local residents, but also to protect their rights, and particularly, their constitutional human rights.** “Concern for human rights lies at the heart of the humanitarian considerations which the Commander must take into account” (HCJ 10356/02 **Haas v. Commander of IDF Forces in the West Bank** (hereinafter: Haas [4]), page 456). In carrying out his duty, the Commander of the Area must, therefore, ensure the imperative security interests on the one hand and protect the interests of the civilian population on the other. A proper balance should be maintained between these two responsibility areas (Y. Dinstein, “Legislative Authority in the Occupied Territories” [23] page 509). In protecting the constitutional rights of the Area’s residents, the Military Commander is also subject to the principles of Israeli public law, including the fundamental principles of human rights (HCJ 7862/04 **Abu Daher v. Commander of IDF Forces in Judea and Samaria**, IsrSC 59 (5) 368, 375-376 (2005), hereinafter: **Abu Daher**, all emphases in the petition were added unless otherwise noted, T.M.).

81. The State of Israel decided to erect a large part of the separation fence within the West Bank and to deny Palestinians access to parts of the West Bank located between the separation fence and Israel’s border – the Seam Zone. This has impinged on the fundamental rights of the protected persons, particularly the rights of individuals who own land trapped in the Seam Zone. Against this backdrop, the court has held that the Respondent is obligated to reduce to a minimum the harm caused to landowners by the separation fence:

Having completed the examination of the proportionality of each order separately, it is appropriate that we lift our gaze and look out over the proportionality of the entire route of the part of the separation fence which is the subject of this petition. The length of the part of the separation fence to which these orders apply is approximately forty kilometers. It causes injury to the lives of 35,000 local inhabitants. 4000

dunams of their lands are taken up by the route of the fence itself, and thousands of olive trees growing along the route itself are uprooted. The fence separates the eight villages in which the local inhabitants live from more than 30,000 dunams of their lands. The great majority of these lands are cultivated, and they include tens of thousands of olive trees, fruit trees and other agricultural crops. The licensing regime which the military commander wishes to establish cannot prevent or substantially decrease the extent of the severe injury to the local farmers. Access to the lands depends upon the possibility of crossing the gates, which are very distant from each other and not always open. Security checks, which are likely to prevent the passage of vehicles and which will naturally cause long lines and many hours of waiting, will be performed at the gates. These do not go hand in hand with the farmer's ability to work his land. **There will inevitably be areas where the security fence will have to separate the local inhabitants from their lands. In these areas, the commander should allow passage which will reduce, to the extent possible, the injury to the farmers.** (HCJ 2056/04 Beit Sourik Village Council et al. v. Government of Israel, paragraph 82 (reported in Nevo, June 30, 2004)).

and:

The conclusion that it is impossible to establish an alternative, less injurious, geographic route for the fence does not satisfy, in and of itself, the second proportionality test. **When examining the proportionality of the injury caused by the fence, its geographic route and the regime of permits and crossings to the lands located west to the fence are inextricably linked.** Petitioners' orchards and grazing lands were cut off by the separation fence. In this state of affairs, **the Respondents must make sure to establish reasonable crossing arrangements and a reasonable access regime to Petitioners' lands, in a manner limiting to the greatest extent possible the harm caused to them** (HCJ 4825/04 Aliyan v. Prime Minister, paragraph 16 (reported in Nevo, March 16, 2006)).

and:

The arrangements put in place for the issuance of permits to persons with a permanent or occasional interest, as specified, also satisfy, in our judgment, the second proportionality test. As indicated above, we accept that the injury inflicted upon this group is severe. Individuals who have cultivated their lands in the Seam Zone, conducted their businesses there, and established family and social relations, are forced at the present time, in order to preserve their way of life, to apply for an entry permit based on several limited causes. The residents within the zone itself are also injured by the regime applied therein, since, against their will, the reality of their lives has become difficult and complex, as they are forced into isolation, socially and commercially, in their place of residence. **These injuries require the establishment of arrangements that preserve, to the greatest extent possible, the fabric of life which preceded the declaration, subject to the security needs necessitating same.** It would appear to us that, as a general rule, the arrangements that have been put in place do satisfy this requirement. We address the arrangements applicable to the various groups of interested parties (the permit regime judgment, paragraph 33).

82. In HCJ 6027/04 **Head of a-Zawiya Village Council v. Minister of Defence** (reported in Nevo, August 17, 2006), the court considered the route of the separation fence in the vicinity of a-Zawiya, the same area discussed in the petition at hand. The judgment contained the following remarks regarding fence crossing arrangements:

The conclusion that it is impossible to establish an alternative, less injurious, geographic route for the fence does not satisfy, in and of itself, the second proportionality test. In principle, when examining the proportionality of the injury caused by the fence, its geographic route and the regime of permits and crossings to the lands located west to the fence are inextricably linked... Petitioners' lands were cut off by the separation fence. In this state of affairs, **the Respondents must make sure to establish reasonable crossing arrangements and a reasonable access regime to Petitioners' lands, in a manner reducing to the greatest extent possible the harm caused to them.** Notification was given that an agricultural gate would be installed south of Elkana. The gate's opening hours would be determined in consultation with the local residents. Petitioners do not request the installation of additional crossings or a change in opening hours. Their petition does not concern crossing arrangements or the permit regime. In this state of affairs, considering the fact that the petition is not directed against the gate policy and crossing arrangements in the security fence, we express no position on that matter, which does not detract from the conclusion that the route of the fence does not violate the second proportionality sub-test. **This finding is based on the assumption that the Petitioners will have reasonable access to their lands through reasonable crossing arrangements in the fence. Inasmuch as this assumption does not stand the test of time, they may file another petition with the court...**

We have been persuaded that the third proportionality test is satisfied in the case at hand... the route of the fence includes an agricultural gate through which agricultural lands located on the "Israeli" side of the fence may be accessed. In view of the above, the immediate and direct harm caused to the property of the Palestinian residents and their fabric of life does not constitute disproportionate severe harm. In the circumstances, we have not found cause justifying our intervention in the planned route of the fence. Our above decision is based on the current format of the security fence. It is based on the assumption that no change will occur in the current situation with respect to the accessibility of the Samaria area and, particularly, the town of Salfit to Palestinian residents. **Our decision is also based on the assumption that the Petitioners will have reasonable access to their lands through reasonable crossing arrangements in the security fence. Inasmuch as these assumptions do not stand the test of time;** if any change occurs in the current situation; and if any orders are issued in the future confiscating land for the erection of an additional fence in west Samaria, **the Petitioners may file another petition to the court (HCJ 6027/04 Head of a-Zawiya Village Council v. Minister of Defence, paragraph 23 (reported in Nevo, August 17, 2006)).**

83. Hence, the finding that the route of the separation fence in the a-Zawiya area does not disproportionately harm local Palestinian residents was based on the assumption that the Petitioners would have reasonable access to their lands through reasonable crossing

arrangements in the fence. The court clarified that if this presumption proves not to stand, a petition may be filed with the court to dismantle the separation fence in the area (not a petition against the crossing arrangements only). The court clarified that it did not express a position on the gate policy and the arrangements for crossing the fence since it was not the subject of the petition, and the petitioners did not request the installation of additional gates or a change in the gate's opening hours. This implies there was room to request additional gates be installed and gate opening hours be changed and that such requests might have been accepted. The above arises more forcefully from the statement "we express no position on that matter, which **does not detract from the conclusion** that the route of the fence does not violate the second proportionality sub-test." According to this statement, the point of departure is that the issue of crossing arrangements **could have** detracted from the conclusion that the route of the fence satisfies the proportionality tests, had it been discussed; otherwise, there would have been no reason to discuss the theoretical argument that it did detract from the conclusion of the judgment. Usually, judgments make no reference whatsoever to matters that were not raised by the petitioners and regarding which no remedy was requested, particularly if the issue has no bearing on the judgment. The fact that the judgment did refer to crossing arrangements indicates the matter is relevant to the proportionality of the route of the fence and that there is room to argue that the arrangements put in place are not satisfactory. The same applies to the situation described at the time by the Respondents, whereby "the gate will be opened "on a schedule determined in consultation with the local residents." The current situation - whereby the gate is routinely opened extremely late; only on Mondays and Wednesdays, and remains closed all other days of the week, soon to stop opening even twice a week, but only for several weeks each year, with farmers having no possibility of accessing their lands other than during those weeks - would certainly not have been accepted by the court and would have most likely affected the finding on the proportionality of the route of the separation fence in the area.

Undertakings given by the Respondents in the permit regime petitions and their impact on the decision in said petitions

84. Arrangements for crossing separation fence gates were discussed in length in the permit regime judgment. The judgment states as follows:

With respect to arrangements for entry into the Seam Zone, **the State has specified in its response the existing gates along the route of the fence at the entrance to the Seam Zone, and the arrangements it employs, which are intended, as argued, to facilitate, to the greatest extent possible, convenient entry by local residents into the Seam Zone.** Accordingly, the State noted in its response that 53 gates are located in the Seam Zone declared in phases A and B, and 37 of them are agricultural gates used for the passage of Palestinians to their lands or homes. The State listed four types of gates in the Seam Zone: fabric of life gates, which are open daily for 12 to 24 hours straight; day gates – which open twice or three times a day, for variable durations of 30 minutes and two hours, depending on the number of individuals passing and agricultural needs; seasonal gates – which open during agricultural seasons with an emphasis on seasons relevant to olive cultivation; these gates are opened subject to advanced coordination all other times of the year; and operational gates – which serve the operational forces. **The State reiterated time and again in its responses that it constantly works to improve the crossing system implemented for every type of crossing. Thus, the State emphasized it puts a great deal of effort, financial and otherwise, into building high standard crossings, improving the quality of the service in them, and installing advanced**

security devices that enable better security checks and reduce wait times at the crossing. Similarly, **it was noted that significant amounts of money had been invested in improvements to the agricultural gates, that their opening hours had been extended and that various arrangements had been put in place for their opening when required. It was noted that various options were available to have agricultural gates open outside their regular opening hours, including, inter alia, by calling the humanitarian desk located at the Civil Administration headquarters in Beit-El. In addition, it was so argued, 22 Arabic-speaking officers and NCOs had been assigned to the main pedestrian crossings and tasked with ensuring reasonable fabric of life at the crossings and helping resolve issues that come up at the crossings.** In its Updating Notice, the State elaborated on additional changes that had taken place in this area, including an upgrade to Reihan Crossing – near eastern Barta’a, where most Seam Zone residents live, and its transfer to civilian responsibility. It was argued that this step had significantly improved security screening and crossing procedures at this crossing, where 2,500 Palestinians transit daily on average. Additionally, checks that had been performed indicated average crossing time per person was about ten minutes on average during busy hours and five minutes during slower hours. Security screening and crossing by four vehicles took about 15-20 minutes on average (paragraph 28).

85. The manner in which the State presents the situation is clearly distorted. It was the Military Commander who blocked residents’ access to their lands, and any difficulties they have accessing them are his doing. The Military Commander cannot be commended for efforts he makes to somewhat mitigate the harm he himself causes.
86. At any rate, the Respondent must now comply with the standard of conduct attributed to him in the judgment. The Respondent argued that the purpose of the gates and crossing arrangements he utilizes is “to facilitate, to the greatest extent possible, convenient entry by local residents into the Seam Zone” and that he is continually engaged in improving the crossing arrangements, resolving issues and preserving local residents’ fabric of life. The manner in which the Magen Dan gate is operated by the military is entirely contrary to the descriptions contained in the judgment, descriptions of assistance, of great efforts, high standards, service quality improvement, shorter wait times, extended opening hours, multiple options for having gates open outside their regular opening hours, preservation of a reasonable fabric of life and resolution of problems. These descriptions give the impression that the Respondent wishes to avoid creating unnecessary hardship for the farmers and acts vigorously and proactively to “help” them. As such, the Respondent must act accordingly and allow farmers convenient, continuous access their lands, unlike presently – only twice a week and only after many hours of waiting for tardy soldiers, and certainly not in the manner slated to begin in May – for a few weeks a year only.
87. In addition, a type of gate that opens only some days of the week, as is the case today, was not listed among the types of gates described in the permit regime judgment. The judgment mentions a type of gate that opens daily and continuously; a type of gate that opens twice or three times daily; a type of gate that opens only in certain seasons and in other seasons only subject to advance coordination; and a type of gate that only serves the military.
88. The advisory opinion of the International Court of Justice in The Hague regarding the construction of the separation fence in the Occupied Territories, also referred to a situation in which the gates are opened daily:

From the information submitted to the Court, particularly the report of the Secretary-General, it appears that the construction of the wall has led to the destruction or requisition of properties under conditions which contravene the requirements of Articles 46 and 52 of the Hague Regulations of 1907 and of Article 53 of the Fourth Geneva Convention. That construction, the establishment of a closed area between the Green Line and the wall itself and the creation of enclaves have moreover imposed substantial restrictions on the freedom of movement of the inhabitants of the Occupied Palestinian Territory (with the exception of Israeli citizens and those assimilated thereto). Such restrictions are most marked in urban areas, such as the Qalqiliya enclave or the City of Jerusalem and its suburbs. They are aggravated by the fact that the access gates are few in number in certain sectors and opening hours appear to be restricted and unpredictably applied. For example, according to the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967, “Qalqiliya, a city with a population of 40,000, is completely surrounded by the Wall and residents can only enter and leave through a single military checkpoint open from 7 a.m. to 7 p.m.” (**Advisory opinion of the International Court of Justice on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory**, para. 132, <https://www.un.org/unispal/document/auto-insert-178825/>).

89. The opinion of the International Court of Justice was based on a report of the Secretary-General of the United Nations. According to the Mara’abe judgment, “the Secretary-General’s report... describes the orders closing the area between the Green Line and the barrier, pursuant to which there is no entrance into the closed area, and no one is allowed to be present in it... The order introduces a new system of residency status in the closed area. Only upon issuance of a permit or ID card by IDF will residents of the closed area be able to remain in it. Israeli citizens and residents can remain in the closed area and move freely to the closed area, from it, and within it, with no need for a permit... **All those that have a permit enter and exit through gates which open for 15 minutes, three times a day. It is mentioned that if the Palestinian residents are denied regular access to their land, jobs and services, there is a concern that they will leave the area...** Farmers, separated from their land, and often also from their water sources, must cross the barrier via the controlled gates. Recent harvests have perished due to the irregular opening and closing times of the gates (paragraphs 39-40).
90. In other words, according to the factual state of affairs addressed by the advisory opinion as well - gates that open only three times a week should not exist, and farmers should be able to enter the Seam Zone every day of the week. On this issue, the advisory opinion states:

The wall, along the route chosen, and its associated régime gravely infringe a number of rights of Palestinians residing in the territory occupied by Israel, and the infringements resulting from that route cannot be justified by military exigencies or by the requirements of national security or public order. The construction of such a wall accordingly constitutes breaches by Israel of various of its obligations under the applicable international humanitarian law and human rights instruments (para. 137).

91. The permit regime judgment mentioned the position of the State with respect to situations in which the agricultural gate closest to the lands is not opened year-round, whereby and the State undertook that in such cases, the farmers would still be able to access their lands year-round, thanks to permission to enter the Seam Zone through an additional gate:

In addition, the State has briefly referred to the entire gamut of farmer related arrangements, which, according to the State, provide a reasonable solution to this segment 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 has been issued according to which whenever an agricultural gate located near the relevant agricultural plots of a resident is not open daily, year-round, an additional gate or crossing that is open daily, year-round, through which the resident would be able to enter the zone would be specified on the permit, provided that the crossing does not require the resident to enter Israel (paragraph 33).

92. Thus, it is inconceivable that the **sole** gate in the separation fence serving farmers in the a-Zawiya area will not open every day of the week and that **the farmers will not have access to their lands other than during the few days in which the gate is open.**
93. Even less inconceivable is that the sole gate in the a-Zawiya section would remain closed year-round with the exception of “agricultural seasons,” which, in practice, are not in fact seasons but rather a scant few weeks per year. The Respondent opens “seasonal gates” for only a scant few weeks during the olive harvest and occasionally for a short time in the plowing and pruning season. **These gates remain closed throughout the rest of the year.**
94. As aforesaid, the permit regime judgment dismissed the petitions filed against the route of the fence and the closure of the Seam Zone to Palestinians on the grounds that the harm caused to the Palestinians was proportionate given the State’s undertakings that Palestinians who have specific ties to the Seam Zone would be able to continue accessing and working their lands with the help of family members and agricultural workers, as they had done in the past. The closure of the sole gate in the a-Zawiya section **effectively cancels the permit regime** and leaves this section of the Seam Zone closed not only to the Palestinian population at large but also to Palestinians with specific ties to the Seam Zone, including the owners of lands therein. Such an arrangement undeniably contradicts case law on the separation fence and the permit regime. Not only are “crossing arrangements” that deny farmers entry into the Seam Zone through nearly the entire year unreasonable per se, but case law on the route of the separation fence expressly states that crossing arrangements and farmers’ ability to access lands in the Seam Zone directly affect the court’s findings on the proportionality of the route of the fence and justify a re-examination of the matter. In other words, the situation whereby farmers are denied routine access to their lands in the Seam Zone, under proper conditions, cannot stand. In these conditions, two options are available – the elimination of the flawed crossing arrangements or the elimination of the route of the fence in the area. According to the consistent and comprehensive case law on this matter, the finding that the route of the fence is not disproportionate cannot stand without the presumption that agricultural lands in the Seam Zone are accessible to the farmers and that the crossing arrangements in the gates are reasonable.

Violation of the rights to property, freedom of occupation and freedom of movement

95. The right to property is a fundamental right, enshrined in section 3 of Basic Law: Human Dignity and Liberty, which protects the rights of all human beings, as well as in the international conventions relevant to the occupied territories:

The right to property is one of the fundamental human rights. This right was recognized as a fundamental right worthy of protection in the jurisprudence of this court (see for instance: HCJ 390/79 **Dweikat v. Government of Israel**, IsrSC 34(1), 14-15; HCJFH 4466/94 **Nuseibeh v. Minister of Finance**, IsrSC 49(4) 68, 83-85). It has also been expressly constitutionally enshrined in Section 3 of Basic Law: Human Dignity and Liberty. This right is also recognized in international law, and with respect to territories held under belligerent occupation, it is entrenched, inter alia, in the Hague Convention and in the Fourth Geneva Convention (HCJ 1890/03 **Bethlehem Municipality v. State of Israel and Ministry of Defence**, paragraph 20 of the judgment of Honorable Justice (as then titled) Beinisch (February 3, 2005; hereinafter: **Bethlehem Municipality judgment**)).

96. Freedom of occupation has also been recognized as a fundamental right, which must not be violated by the authorities even when acting outside the territory of the State of Israel:

Additional grounds ... are found in the fundamental right to freedom of occupation, which was recognized in this court's case law even prior to the enactment of Basic Law: Freedom of Occupation... Israeli law may not directly apply to the Area, but this court applies its basic principles to the Military Commander of the Area and his subordinates by virtue of their personal powers as agents of state authorities acting in the Area on behalf of the State... in the same manner in which it applies the principles of administrative law to them. (HCJ 3940/92 **Jarar v. Commander of the Judea and Samaria Area**, PD 47(3) 298, 304 - 305 (1993)).

97. The right to freedom of movement is also recognized as a fundamental right, both in Israeli and international law. It was so held in paragraph 15 of the opinion of Honorable Justice Beinisch in the Bethlehem Municipality judgment:

Freedom of movement is one of the most basic human rights. We discussed how, in our legal system, freedom of movement has been recognized both as an independent basic right and as a right derived from the right to liberty, and how some authorities maintain that it is a right derived from human dignity (see para. 15 of the judgment and the references cited there). Freedom of movement is also recognized as a fundamental right in international law and is also enshrined in a host of international conventions.

98. In HCJ 9593/04 [**Morar v. Commander of IDF Forces in Judea and Samaria**](#), ISRsc 61(1) 844, 863 (2006), it was held that the weight of the right to freedom of movement is particularly great when restrictions are imposed on the access of land-owners to their lands:

It is important to emphasize that in our case we are not speaking of the movement of Palestinian residents in nonspecific areas throughout Judaea and Samaria but of the access of the residents to land that belongs to them. In such circumstances, where the movement is taking place in a private domain, especially great weight should be afforded to

the right to the freedom of movement and the restrictions imposed on it should be reduced to a minimum. It is clear that restrictions that are imposed on the freedom of movement in public areas should be examined differently from restrictions that are imposed on a person's freedom of movement within the area connected to his home and the former cannot be compared to the latter.

99. As noted in case law, the denial of farmers' access to their lands within the Seam due to the separation fence severely violated their fundamental rights. By the same token, denying farmers access to lands pursuant to the permits granted to them by failing to open the sole gate located in this section of the fence and making such access difficult violates the same rights.
100. According to case law, the finding made by the Honorable Court that the harm inflicted on Palestinians by the closure of the Seam Zone satisfies the proportionality tests hinges on how crossing arrangements in the separation fence are applied in actuality. The same holds true for the finding on the proportionality of the route of the fence in the a-Zawiya section. Accordingly, "crossing arrangements" that prevent farmers whose lands are located in the a-Zawiya area from entering the Seam Zone most days and make their access to their lands unnecessarily difficult disproportionately violate their fundamental rights to property, freedom of occupation and freedom of movement. They also shake the basis for the Honorable Court's finding that the closure of the Seam Zone, the subjection of Palestinians' entry thereto to the permit regime and the route of the separation fence in the a-Zawiya section, are valid.

Violation of the prohibition against collective punishment and harming the innocent

101. In its answers to HaMoked's complaints regarding the flaws in the opening of the Magen Dan gate, the Respondent explained his decision to stop opening the Magen Dan gate on Sunday, Tuesday, Thursday, Friday and Saturday and its decision to convert the gate into a "seasonal gate" in the near future using the sweeping and unfounded argument that "the vast majority of the residents passing through the Magen Dan gate misuse their Seam Zone entry permits for purposes that do not conform to the purpose of the permit, namely unlawfully entering the territory of the State of Israel." In other words, since the Respondent believes the "vast majority" of farmers use the Magen Dan gate in a manner contrary to the law, the Respondent has opted to forego proper proceedings against the persons who have allegedly acted in this manner, and instead of following his own procedures, which allow for the confiscation and cancellation of permits held by individuals suspected of misusing them, as well as withholding future permits for up to a year (see chapter E – "Misuse of Seam Zone Entry Permit – Handling Procedures" of the Seam Zone Entry Procedures), the Respondent decided to **deny all persons holding a permit to enter the Seam Zone through this gate regular access to their land, regardless of whether or not they are suspected of unlawful entry into the territory of the State of Israel.**

The chapter "Misuse of Seam Zone Entry Permit – Handling Procedures" of Respondent's Procedures is attached and marked **P/23**.

102. The prohibition against collective punishment is one of the fundamental tenets of the law. Collective punishment has long been identified as immoral, illegal and contrary to basic principles of justice:

Far be it from You to do such a thing as this, to slay the righteous with the wicked, so that the righteous should be as the wicked; far be it from You! Shall not the Judge of all the earth do right? (Genesis 18: 25).

103. The prohibition against collective punishment has also been articulated in customary international law. Article 50 of the Hague Convention provides as follows:

No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.

104. Article 33 of the Fourth Geneva Convention provides as follows:

No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited... Reprisals against protected persons and their property are prohibited

105. The Red Cross commentary clarifies that the difference between the provisions of the Hague Regulations and the provisions of the Fourth Geneva Convention relates, inter alia, to the following:

The Provision is very clear. If it is compared with Article 50 of the Hague Regulations, it will be noted that that Article could be interpreted as not expressly ruling out the idea that the community might bear at least a passive responsibility.

Thus, a great step forward has been taken. **Responsibility is personal and it will no longer be possible to inflict penalties on persons who have themselves not committed the acts complained of** (J.S. Pictet, Commentary: IV Geneva Convention – Relative to the Protection of Civilian Persons in Time of War, p. 225 (Geneva, 1958)).

106. Article 75(2)(d) of the first protocol of the Geneva Convention provides that:

(2) The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents...

(d) collective punishments

107. The Red Cross commentary to this Article clarifies that:

3055. The concept of collective punishment must be understood in the broadest sense: **it covers not only legal sentences but sanctions and harassment of any sort, administrative, by police action or otherwise** (Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949. p. 874 (Yves Sandoz, Christophe Swinarski, Bruno Zimmermann, Eds. ICRC, Geneva, 1987)).

108. Hence, there is no doubt that a protected person should not be punished for an act they did not commit, simply on the basis of their membership in a group. This prohibition includes sanctions and administrative decisions.

109. The Honorable Court has recently referred to this matter, in precisely the same context of blanket restrictions imposed on Palestinians' entry into the Seam Zone allegedly over prevalent misuse of Seam Zone entry permits.

110. Accordingly, for instance, HCJ 6896/18 **Ta'meh v. Military Commander of the West Bank** (hereinafter: **Ta'meh**) examines the restrictions introduced in recent years into Respondent's procedures governing entry by Palestinian farmers and landowners into the Seam Zone, including provisions whereby Seam Zone entry permits were subjected to quotas of several dozen entries per annum (in fact forty). In a hearing held in **Ta'meh** on July 1, 2020, the following exchange took place:

Honorable Justice D. Barak-Erez: One more question, maybe to really get to the root of the matter. Why do you limit the number of entries? If there is a dangerous person, they would not receive a permit, not even for personal purposes. Is this correct?

Adv. Hoash: Security-wise? If there is a preclusion, certainly.

Honorable Justice D. Barak-Erez: If we speak of persons against whom there is no security preclusion, why is it important to limit the number of entries?

Adv. Hoash: From what the Respondents have seen, what has been taking place in recent years was actually the result of a very liberal policy that enabled daily entry, if we take agricultural permits, for two years. So what happened in actual fact was that people, in very substantial numbers, misused [the permits] and entered Israel to work, and we are talking about a situation the entire idea of which is to enable control by the Military Commander.

Honorable Justice D. Barak-Erez: Not necessarily security prevention but rather monitoring entry into Israel...

111. Later in the discussion, the following was said:

Honorable Justice G. Karra: **Why is it necessary to change the policy? Assuming there are fifty, they should be punished. Why should a person who did nothing wrong be punished? It is collective punishment.**

Adv. Eiger: The background and the basis which brought about the change - we presented the data received from the Israel Police concerning certified official documents* I refer the court to page 10 of our response to the amended petition – paragraph 31...

Honorable Justice G. Karra: **Why should this drastic “five-kilogram sledgehammer” measure be taken when other measures may be used? Where is the proportionality here?...** No one receives a permit without a security screening ... in the permit regime judgment in 2011, the court was told: “We will not harm people. The court said, we allow the policy”. What has happened, I do not see such a statement here, is - because some people enter, we will punish everybody in the Seam Zone.

A copy of the transcripts in the **Ta'meh** hearing dated July 1, 2020, is attached and marked **P/24**.

* 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.

112. In HCJ 3066/20 and nine additional petitions concerning Respondent's refusal to grant agricultural permits to individuals who inherited land in the Seam Zone over the fact that the inheritance of the land was proven through *Tabu* (land registry) extracts coupled with inheritance orders rather than by *Tabu* extracts listing the heirs' names, the Respondent defended this policy by arguing research and staff work conducted on his behalf had indicated that "the scope of agriculture in the Seam Zone did not match the number of permits issued for these areas in a manner giving rise to concern that a considerable number of permits were being misused to enter Israel" (paragraph 25 of the State's Response in HCJ 3066/20 et al.). In a hearing held in the matter on September 21, 2020, the Honorable President commented, inter alia, on the incompatibility of the measure of *Tabu* registration for this purpose, and Honorable Justice Karra said: **"Those who received permits but do not cultivate their land should be dealt with specifically, but you don't go punishing everybody."**
113. The same applies to the case at hand – every case of suspected Seam Zone entry permit misuse can be individually handled by the Respondent according to his procedures. The State may also address unlawful entry into Israel using penal measures. **There is absolutely no room to deny innocent people access to their lands in the West Bank based on suspicions against a non-specific portion of the group to which they belong.** Violating a person's fundamental human rights due to alleged misuse of a permit requires a factual infrastructure substantiating the allegation that that specific person misused their permit. Harming all persons with ties to lands in the Seam Zone in the a-Zawiya area without making a distinction between those who have misused their permits and those who have not, let alone without proving the allegation that all persons harmed by the opening arrangements of the Magen Dan gate have, in fact, misused their permits (or even proving that most of them have), is clearly prohibited under international law.

Respondent's argument regarding thorough assessment

114. The Civil Administration Public Liaison Officer stated in his letter dated March 3, 2021, that "A thorough assessment as aforesaid has been conducted over the last few months," which "indicated clearly and unequivocally that the vast majority of the locals passing through the Magen Dan gate misuse their Seam Zone entry permits for purposes that do not conform to the purpose of the permit, namely unlawfully entering the territory of the State of Israel."
115. However, Respondent's argument regarding a thorough assessment resulting in the conclusion that the vast majority of Seam Zone permit holders misuse their permits and enter Israel unlawfully and that the Respondent made his decision after said thorough assessment is not new. The same argument has recently been made by the Respondent with respect to many of his decisions on different issues, always without providing any details, without presenting data collected as part of the alleged assessment, without enclosing documents attesting to the purported assessment, without describing the decision-making process that relied on the data collected in the assessment and without attaching the decision itself. The Respondent even claimed that this assessment was conducted for the purpose of formulating its position in **Raddad**, where it was decided, as aforesaid, to return to opening the gate throughout the entire week.
116. Initially, in its response to the amended petition in **Ta'meh**, and in its responses to dozens of administrative petitions concerning entry into the Seam Zone, the State wrote as follows: "according to 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... considering the total number of agricultural Seam Zone permits issued ... misuse of Seam Zone agricultural permits for the purpose of entering and working in Israel is widespread" (paragraph 99).

117. During a hearing in the **Ta'meh** case held on July 1, 2020, the Honorable Court criticized Respondent's reliance on these data, which it found unsatisfactory, and in a decision given that day, the Respondents were required to submit an updating notice clarifying, *inter alia*, "the factual data concerning misuse of Seam Zone entry permits for the purpose of entering Israel unlawfully, and what data in that regard were considered by the Respondents when making the decision regarding the new policy."
118. Subsequently, in the responses the Respondent filed on September 14, 2020, to petitions concerning his refusal to issue agricultural permits to persons who had proven their ties to lands in the Seam Zone using a *Tabu* extract in conjunction with an inheritance order, rather than a *Tabu* extract listing their names, the Respondent stated as follows:

... [T]he requirement was only partially enforced prior to 2018, but 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.

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 and had worked in construction in the Harish Regional Council ... 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.

A copy of the relevant part of the response is attached and marked **P/25**.

119. The above arguments were made after the Respondent presented contradictory factual arguments in five administrative petitions filed earlier regarding the exact same subject and on behalf of some of the same petitioners. On September 15, 2020, the Petitioners

filed a response to Respondent's response dated September 14, 2020, which stated as follows:

... Despite the above arguments, the State's responses included **not a single document** verifying that the alleged investigation, staff work, meetings, tours or mapping sessions had actually taken place. No date of any meeting, tour, mapping or decision has been specified. No transcripts or minutes from any of the above have been presented, and no mention has been made of the persons who attended any of these, with the exception of one tour allegedly conducted by the Head of the Jenin DCO (which had allegedly "led" the administrative work). In the same vein, the date of the decision allegedly made by the Head of the Civil Administration to conduct the investigation has not been mentioned, other than to state that it occurred "in the first half of 2018," and no written document in that regard has been produced. No clarification was provided as to who conducted the investigation that allegedly preceded the above staff work, and no document has been presented with respect to said investigation, its conclusions and how they were formulated. No document has been presented explaining how the information obtained from all the meetings, tours and mapping sessions alluded to by the Respondent was processed and analyzed, and how Respondent's conclusion was formulated based on all of the above, who "decided" to enforce the *Tabu* registration requirement (it is unclear whether it is argued that the decision was made by the Head of the Civil Administration or that it was deduced from his decision to "clarify the procedures"), and on what date – and most importantly – it has not been clarified **where the decision to enforce the *Tabu* land registration requirement was published and what it said** – and for good reason.

The petitions include a chapter entitled "Explanations given by the Respondent for his policy" and a sub-chapter entitled "Explanations given in 2017". The chapter concerns a letter from the Head of Crossings and Seam Zone Department, Major Amos Zuaretz, sent to HaMoked: Center for the Defence of the Individual on October 17, 2017. The letter attempted to respond to HaMoked's arguments regarding the impropriety of the policy challenged in said petitions. The arguments listed in the letter dated **October 17, 2017**, were also made in the responses filed by the Respondent yesterday – the same responses which attempt to attribute the policy to the conclusions of comprehensive and complex staff work carried out after an investigation conducted in the **first half of 2018**, following an attack that occurred in **December 2017**.

In other words, **all actions and events the Respondent now alleges led to the formulation of his policy occurred after this policy was challenged by HaMoked and after the Respondent responded to the arguments raised by HaMoked in that regard.**

With respect to the staff work and mapping alleged by the Respondent, HaMoked submitted an application under the Freedom of Information Act to the Civil Administration Public Liaison Officer on **November 2, 2017**, stating as follows:

We hereby appeal to you under the Freedom of Information Act – 1998 with a request for information regarding Seam Zone mapping as specified below.

A number of responses recently received from the Civil Administration noted that mapping of the Seam Zone had been carried out recently.

A copy of an example of such a response dated July 27, 2016, is attached hereto and marked A.

In view of the above, we wish to clarify the following:

What Seam Zone areas were mapped? Please specify the names of the villages whose lands were mapped.

What were the elements according to which the area was mapped? Please provide us with a list of the elements addressed in the mapping.

Your prompt response is appreciated (emphasis added, T.M.)

A copy of the Freedom of Information Application dated November 2, 2017, is attached and marked **R/1**.

The response of the Civil Administration Public Liaison Officer was received on January 2, 2018, stating as follows:

I hereby confirm receipt of your letter regarding the matter in reference. The following is the response of the Judea and Samaria Civil Administration thereto:

No new mapping of Seam Zone lands has been conducted in connection with the division of the blocks.

It is a wording error. The commander of the representative office referred to data he received from the Custodianship Staff Officer **listing several mawaqat (locations) in some of the lands belonging to villages in his sector**, broken down by blocks and plots, **based on documents in the possession of the Civil Administration.**

A copy of the Civil Administration Public Liaison Officer's letter dated January 2, 2018, is attached and marked **R/2**.

In addition, the undersigned has filed roughly seventy petitions regarding Seam Zone entry permits over the last two years, the vast majority of which are administrative petitions, most of which were heard by Honorable Judge Moshe Sobel. All of the petitions, perhaps barring a handful, refer to detrimental changes in Respondent's policy governing the issuance of Seam Zone entry permits in recent years. In all of these cases and in cases HaMoked has handled without taking legal action, HaMoked has **never** come across the argument that the tougher policy employed by the Respondent was connected to the attack committed in December 2017, the permit regime investigation or the alleged staff work.

All of the responses filed by the Respondent in the scores petitions mentioned above, other than brief responses devoid of legal content, explain the Respondent's stiffer policy as follows:

The Civil Administration has recently undertaken a review, which indicated 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.

Considering the total number of agricultural Seam Zone permits... there are indications that agricultural Seam Zone permits are widely, perhaps ubiquitously, unlawfully used for the purpose of entering Israel.

The same explanation was given for the policy impugned in the petition herein in the preliminary response to the administrative petitions filed in the matter. This response was attached to the petitions, and this explanation, rather than the explanation relating to the 2017 attack, the investigation and the staff work, was discussed in the hearings held in them.

The preliminary response to the administrative petitions argued, following on the argument regarding the assessment recently conducted by the Civil Administration regarding the number of certified public documents issued, that:

The data presented above regarding the misuse of the permits are of importance in the case at hand – Firstly, when a Seam Zone entry permit is granted, the security considerations that prompted the closure of the area, are balanced against the Military Commander's duty to maintain reasonable access by Palestinian

residents to the Seam Zone, each according to their needs. There is no physical barrier preventing entry into Israel from Seam Zone areas and the resulting security implications thereof” (see paragraphs 64-67 of the preliminary response to the administrative petitions).

In a hearing held in the administrative petitions on March 3, 2020, Respondent’s counsel argued as follows:

In 2017 the Respondent began enforcing the requirement to produce all documents when submitting applications to him more assiduously. The requirement had been in place earlier, but in practice, at that time, permits were granted to individuals who did not have a genuine need and did submit applications properly. **Upon the realization that the permits had been misused for the purpose of entering Israel... the Respondent began applying all procedures more assiduously, including the requirement to enclose all necessary documents with Seam Zone entry applications** (page 1 of the transcripts, attached to the petitions as P/1).

And thereafter:

Stricter enforcement of this condition began in 2017... compliance had not been strictly enforced prior to the 2017 Collection of Standing Orders (*Ibid.*, page 5).

Petitions filed subsequently – HCJ 5329/20; HCJ 5131/20; HCJ 5133/20 and HCJ 5816/20 – clarified that this argument, made by the Respondent during the hearing in HCJ 6896/18 **Ta’meh v. Military Commander Of the West Bank** on July 1, 2020, was criticized and that in a decision given that day the Court instructed the Respondent to file an updating notice by August 31, 2020, specifying “the factual data concerning misuse of Seam Zone entry permits for the purpose of entering Israel unlawfully, and what data in that regard were considered by the Respondents when making the decision regarding the new policy” (the Respondent requested an extension and is now required to file the updating notice by September 30, 2020 [*sic*]).

In other words, the argument concerning the staff work and investigation conducted following an attack in 2017 is nothing but an attempt to provide an alternative explanation for a policy previously explained using another argument which the Honorable Court had criticized. Neither this argument nor the previous one have any merit.

A copy of Petitioners’ response in the ten petitions is attached and marked **P/26**.

120. Subsequently, on October 26, 2020, an updating notice was filed in **Ta’meh**, following the decision directing the Respondent to clarify, *inter alia*, “the factual data concerning misuse of Seam Zone entry permits for the purpose of entering Israel unlawfully, and

what data in that regard were considered by the Respondents when making the decision regarding the new policy.” The updating notice stated as follows:

The Respondents learned about misuse of permits primarily from their staff who are physically present at each of the Seam Zone gates on a daily basis. According to the experience gained and reported by officials in the field, while thousands of permit holders cross the gates in the morning, a patrol of the Seam Zone conducted a few hours later reveals that only a small number of individuals are present in their lands and cultivate them... **Naturally, the Respondents do not have complete data regarding the prevalence of illegal entry into Israel by Seam Zone permit holders.** Nevertheless, given all of the above, the Respondents do estimate that a considerable proportion of permit holders who use their Seam Zone permits to enter the Seam Zone, misuse the permits to illegally enter Israel for work purposes.

This estimate has recently starkly manifested during **inspections conducted by the Respondents following H CJ 8084/19 Raddad et al. v. Military Commander et al.** The petition was filed by Petitioner 4 in the petition at hand, in relation to alleged serial delays in the opening times of the Magen Dan gate in the Seam Zone. **In the process of formulating their Response to said petition** and examining the need to continue operating the agricultural gate, the Respondents performed various inspections concerning permit holders who use the gate. These inspections have unequivocally shown that all individuals who crossed this gate **in the month of September and in the first half of October 2020** said, across the board, that they were on their way to Israel to work. In most cases, they did not have work permits in their possession. Some said they were going to cultivate their lands in the Seam Zone, but a real-time check revealed they had, in fact, crossed the Seam Zone and entered the State of Israel for work purposes.

A copy of the updating notice was filed in **Ta'meh** is attached and marked **P/27**.

121. In other words, first, clarification was given that the Respondents did not have “complete data” regarding unlawful entry into Israel by permit holders. Second, the argument was made that the inspections the Respondent claims unequivocally indicated “all individuals who crossed this gate... across the board” entered Israel to work, **had been conducted as part of work done to formulate the response to Raddad** – the previous petition regarding the flaws in the opening of the Magen Dan gate. The State, however, simultaneously argued that the alleged inspections were conducted in September and in the first half of October 2020. The **Raddad** judgment was given on September 13, 2020, following the motion filed by the Respondent on September 10, 2020 to cancel the hearing scheduled for September 14, 2020.
122. In other words, the above inspections were conducted **exactly when the Respondent notified the Honorable Court he would return to opening the gate throughout the week, and immediately after the judgment in the matter was handed down** based on Respondent’s said undertaking. While the Respondent did also argue in the previous proceedings that “in the near future, an assessment will be made as to the need to keep the aforesaid agricultural gate as a permanent gate open year-round or convert it into a seasonal agricultural gate... taking into consideration the needs of the local population,” it was not stated that this assessment had already taken place, while when the petition was still pending and expected to remain pending for just several weeks, such that within

a short period of time a different decision would be made. If the inspections the Respondent conducted in the process of formulating his position on the petition indeed “unequivocally” indicated that “all individuals who crossed this gate... across the board” entered Israel for work purposes, and if the Respondent is of the opinion that a factual situation such as this (if any such situation exists) justifies the decision not to open the gate throughout the week, it is entirely unclear why he gave notice in **Raddad** that the gate would return to opening throughout the week and on time, and why he did not give notice at that time regarding the purportedly unequivocal findings and his intention to make another decision within a short period of time. In any event, these findings did not keep the Respondent from making a decision to return to opening the gate throughout the week until after the petition was deleted.

123. In their Affidavit of Response to the *Order Nisi* issued in **Ta'meh**, the Respondents also noted that their claim that the “permits are widely misused” was based on site visits conducted at the Magen Dan gate in September 2020:

The Respondents will explain that the opening of the gates and field visits are made as a matter of routine, and senior Civil Administration and [Central] Command officials often join these visits. For instance, **during the month of September**, several routine site visits occurred at the Magen Dan gate alone, including an opening of the gate in the presence of senior Civil Administration and [Central] Command officials, among them the Head of the regional DCO and the Deputy Head of Public Relations of the Command. It should be noted that the above were conducted in addition to other frequent visits and patrols by additional officials, including the commander of the Military Police company in the region. In addition, many visits and patrols are conducted by field officials in the region on a daily basis, **and clearly, not every visit is documented.**

Put together, the aforesaid visits and patrols paint a clear – thousands of permit holders enter in the morning, and, as noted, several hours later, precious few can be found cultivating their lands.

124. In other words, even if all the factual claims made by the Respondent regarding the field visits and what they revealed are accepted, this information, at least in part, with the same conclusions, was available to the Respondent at the time he notified the Honorable Court of his decision to return to opening the gate throughout the entire week.
125. With respect to the argument to the effect that “clearly, not every visit is documented” - First, this, in fact, is not at all clear. Field visits should be documented, especially if they serve as the basis for decisions that dramatically impact every single farmer’s access to their lands in the Seam Zone. Second, not only did the Affidavit of Response fail to enclose **all** records of these purported field visits, in fact, it did not enclose **any** record of **any** field visit, nor did it mention any specific date of any such field visit. Moreover, no data allegedly gathered in any of said visits were presented. No mention was made, with respect to any specific visit, let alone numerous visits so as to reflect consistent patterns, of the number of individuals who crossed the Magen Dan gate using Seam Zone entry permits on that date, how many of them entered Israel, how many of them had Israeli entry permits in addition to their Seam Zone entry permits, how many were found on their lands, and the like. This is no more than a general impression, based on the collective memory of various soldiers and officers, which is not supported by factual data and which was not documented in real-time. The fact that Respondent’s descriptions are one-dimensional and his conclusions are all-inclusive and extreme, bereft of nuance or reservations, reinforces the impression that this is the general position held by the

Respondent either way, rather than conclusions that emerged from the analysis of findings made during one field visit or another.

126. With respect to the argument that “thousands of permit holders enter in the morning,” according to the Affidavit of Response itself, in 2019, a **total** of 2,741 farmer permits, 1,467 agricultural worker permits and 4,481 agricultural worker permits for family members were issued. In 2020 only 1,581 farmer permits, 513 agricultural worker permits and 3,385 agricultural worker permits for family members were issued. From September 2019 until January 30, 2021, these permits were subject to quotas of forty entries per year, and holders were unable to use them most days. According to a letter received from the IDF Spokesperson on August 7, 2017, in response to a request for information sent from HaMoked, the separation fence has 29 gates leading into the Seam Zone. In other words, 28 gates in addition to Magen Dan. Hence, the probability that “thousands of permit holders” passed through the Magen Dan gate in one morning is **extremely low**, if not null. In most cases in which HaMoked handled delays in the opening of the Magen Dan gate, a small number of farmers waited at the gate (between five and fifteen), such that, if even “only a scant few” could “be found cultivating their lands” on any specific day, this serves as no indication that most permit holders enter Israel.

IDF Spokesperson’s response to HaMoked’s request for information regarding Seam Zone gates is attached and marked **P/28**.

127. Other than the responses specified above, Respondents’ claim of a thorough assessment that revealed pervasive misuse of permits for the purpose of entering Israel has also been recently made in another context – in response to HaMoked’s inquiries regarding Seam Zone entry permit holders being denied access their lands on electric bicycles. In his response dated December 21, 2020, to HaMoked’s letter in that regard, the Civil Administration Public Liaison Officer cited factual arguments that were very similar to those made in the letter of the Civil Administration Public Liaison Officer dated March 3, 2021 (see P/21). The Civil Administration Public Liaison Officer’s letter concerning entry into the Seam Zone with electric bicycles stated as follows:

Over the last few months, and after inspections carried out over the past two years revealed that the option of entering the Seam Zone with electric bicycles is being misused by many residents for the purpose of entering the State of Israel unlawfully, the relevant officials conducted a thorough assessment concerning the use of electric bicycles in the Seam Zone. The assessment included field visits, questioning of residents wishing to enter the Seam Zone with electric bicycles, registration of exits by residents who entered with an electric bicycle through the gate from which they entered, and additional measures.

The conclusions that emerged from this thorough assessment clearly and unequivocally show that the vast majority of residents who enter the Seam Zone through the agricultural gates using electric bicycles **violate the conditions of the permit and misuse their entry into the Seam Zone with electric bicycles to unlawfully enter Israel with greater ease**, rather than fulfill the purpose of the Seam Zone entry permits.

The findings of the thorough assessment were brought before the Military Commander, who, after taking into account all the relevant considerations and performing a security assessment, decided to cancel,

at this time, the general permit he issued two years prior, allowing free entry into the Seam Zone with electric bicycles.

At the same time, the Military Commander decided that residents who wish to submit an individual application for a permit to enter the Seam Zone with an electric bicycle may do so, and such applications would be considered on their merits by the Head of the regional DCO.

A copy of the Civil Administration Public Liaison Officer's letter dated December 21, 2020, is attached and marked **P/29**.

128. Below is a comparison to the letter of the Civil Administration Public Liaison Officer regarding the decision to stop opening the Magen Dan gate throughout the entire week:

	Magen Dan Gate	Electric bicycles
Examination date	“over the last few months”	“Over the last few months”
Description of the examination	“the number of people exiting and returning through the gate daily was reviewed; Civil Administration and relevant military personnel toured the Seam Zone in the vicinity of the gate; individuals crossing the gate were questioned, and discussions and consultation on the matter were conducted.	“The assessment included field visits, questioning of residents wishing to enter the Seam Zone with electric bicycles, registration of exits by residents who entered with an electric bicycle through the gate from which they entered, and additional measures.”
Nature of findings	“The above assessment indicated clearly and unequivocally that...”	“The conclusions that emerged from this thorough assessment clearly and unequivocally show...”
The findings	“the vast majority of the residents passing through the Magen Dan gate misuse their Seam Zone entry permits for purposes that do not conform to the purpose of the permit, namely unlawfully entering the territory of the State of Israel.”	“the vast majority of the residents passing through the Magen Dan gate misuse their Seam Zone entry permits for purposes that do not conform to the purpose of the permit, namely unlawfully entering the territory of the State of Israel.”

129. On January 25, 2021, HaMoked replied to the letter regarding electric bicycles. HaMoked argued, *inter alia*, that the Seam Zone entry procedures prescribe how cases suspected misuse of Seam Zone entry permits, including unlawful entry into Israel, are to be addressed and that harming persons who are not suspected of any wrongdoing constitutes prohibited collective punishment. In addition, with respect to the arguments regarding the thorough assessment and its conclusions, HaMoked requested answers to 21 factual questions, for instance, on what dates was the thorough assessment conducted, where did the field tours take place, how many field tours were conducted, who conducted the field tours, how many Seam Zone entry permit holders were apprehended in Israel with electric bicycles during the last year, whether there are records of the number of individuals entering the Seam Zone with electric bicycles by virtue of their

Seam Zone entry permits, and if such records exist, what is the number of said individuals, etc.

A copy of HaMoked's letter dated January 25, 2021, is attached and marked **P/30**.

130. A response to said letter was received on February 15, 2021, the content of which was almost identical to the content of the previous letter:

Over the past two years in general and the last few months in particular, security and Civil Administration officials performed various inspections in the Seam Zone. These inspections included regular field visits to the Seam Zone by senior officials; questioning of residents wishing to enter the Seam Zone with electric bicycles; registration of exits by residents who entered with an electric bicycle through the gate from which they entered; and additional measures. During said activities, it became evident, as aforesaid, that the option of entering the Seam Zone with electric bicycles was ubiquitously misused by many residents for the purpose of entering the State of Israel unlawfully.

The conclusions that emerged from this thorough assessment clearly and unequivocally show that the vast majority of residents who enter the Seam Zone through the agricultural gates using electric bicycles violate the conditions of the permit and misuse their entry into the Seam Zone with electric bicycles to unlawfully enter Israel with greater ease, rather than fulfill the purpose of the Seam Zone entry permits.

Accordingly, for instance, during the (numerous) patrols and inspections carried out over the last few months, after the time residents enter through agricultural gates on different hours, no residents were located in the Seam Zone with electric bicycles, despite the fact that on those days a significant number of entries into the Seam Zone with electric bicycles were made. Moreover, no exits were made through the agricultural gates by residents who had passed through them with electric bicycles. The conclusion arising from these data seems clear.

The documents summarizing the results of the inspections are internal, classified documents, and we are unable to forward them to you...

The number and identity of individuals who entered the Seam Zone with electric bicycles were not recorded (consistently or inconsistently). Consequently, we do not have the requested information.

A copy of the Civil Administration Public Liaison Officer's letter dated February 15, 2021, is attached and marked **P/31**.

131. On March 25, 2021, HaMoked replied as follows:

As aforesaid, almost all questions included in our previous letter remain unanswered. The facts alleged in your letter dated February 15, 2021, are almost identical to the facts alleged in the previous letter to which our questions referred. We can only conclude from the above that you have no information regarding the thorough assessment, field visits, questionings and additional actions and inspections to which you

alluded, or the decision making processes that relied on same; that you do not know how many people are concerned – neither how many individuals entered the Seam Zone with electric bicycles, nor how many of said individuals entered Israel unlawfully, as you allege; that you do not know what considerations were taken into account by the Military Commander when making the decision to revoke the “general permit” and how the Military Commander decided between the different considerations; and that no written decision was made, let alone a reasoned and substantiated decision to cancel the general permit which you allege had been given.

The only responses provided to questions included in our letter, albeit partial and problematic, referred to questions 11, 20 and 21.

In response to question 11, you stated in paragraph 7 that “The number and identity of individuals who entered the Seam Zone with electric bicycles **were not recorded** (consistently or inconsistently). Consequently, we do not have the requested information”. Nevertheless, you stated in paragraph 5 that “on those days a significant number of entries into the Seam Zone with electric bicycles were made” and that “no exits were made through the agricultural gates by residents who had passed through them with electric bicycles.” **Without recording entry into the Seam Zone with electric bicycles, you could not have possibly known how many individuals entered the Seam Zone with electric bicycles on the days on which the patrols were conducted, and there is no basis for your allegation that the individuals who had entered the Seam Zone with electric bicycles did not cross the agricultural gates on their way back.**

A copy of HaMoked’s letter dated March 25, 2021, is attached and marked **P/32**.

132. It is difficult to ignore the striking similarity between Respondent’s factual allegations concerning the “thorough assessment” that allegedly indicated “clearly and unequivocally” that “the vast majority of residents who enter the Seam Zone through the agricultural gates using electric bicycles violate the conditions of the permit and misuse their entry into the Seam Zone with electric bicycles to unlawfully enter Israel with greater ease, rather than fulfill the purpose of the Seam Zone entry permits,” and Respondent’s allegations concerning the “thorough assessment” that, again, “clearly and unequivocally” indicated that “the vast majority of the residents passing through the Magen Dan gate misuse their Seam Zone entry permits for purposes that do not conform to the purpose of the permit, namely unlawfully entering the territory of the State of Israel.” In both cases, no records of field visits, including transcripts and decisions, were presented, nor were filed visit dates and names of parties in attendance mentioned. On one occasion, it was argued that “clearly, not every tour is documented” (in the response affidavit to the *Order Nisi* in **Ta’meh**), and on another, it was argued that the documents were classified. Other than Respondent’s statements, there is no evidence that a thorough assessment was conducted as alleged, and there is no evidence that if a thorough assessment was conducted, these were indeed its empiric factual findings. It, therefore, seems, as aforesaid, that it is no more than a general impression, which is not supported by any data.
133. At any rate, even if a thorough assessment was, in fact, conducted, and even if there is a basis for Respondent’s factual allegations regarding the use of permits to enter Israel for work purposes, Respondent’s decision to keep the Magen Dan gate closed other than twice a week, and to subsequently convert it into a “seasonal gate,” thereby keeping it

closed throughout the rest of the year, and the habitual delays in the opening of the gate on the days on which it is opened, are contrary to the law, as specified above.

134. In addition, as alleged by the Respondent in **Ta'meh**, the same thorough assessment was conducted for the purpose of formulating Respondent's position in **Raddad**, and therefore, was certainly taken into account when making the decision to open the Magen Dan gate throughout the week, of which he notified the Honorable Court in said proceedings.
135. The Respondent must act according to case law, and return to opening the Magen Dan gate throughout the week, on time and without delays, and must not deny individuals who did not act contrary to the law access to their lands in the West Bank in keeping with the permits issued to them.

Conclusion

136. The erection of the separation fence within the West Bank has severely harmed local farmers. The closure of the Seam Zone to Palestinians was upheld by the Honorable Court based on the assumption that the Respondent does everything in his power to reduce the harm to local residents and that the arrangements he put in place are applied liberally.
137. However, the arrangements currently in place for crossing the separation fence through the Magen Dan gate are applied in an extremely injurious manner, including constant, substantial delays in the opening of the gate, its complete closure on most days of the week, and a plan to shut it down completely in the near future, other than several weeks a year. People who have already received Seam Zone entry permits from the Respondent are denied access to their lands located therein most of the time, and in the few days when access is possible, they are forced to wait for extended periods of time for soldiers to arrive and open the gate, and this too, after multiple calls to military officials. All of the above is taking place just a short time after the Respondent undertook, in **Raddad**, to open the gate on time, every day of the week.
138. In view of all of the aforesaid, the Honorable Court is requested to issue an *Order Nisi* as requested in the petition. The Honorable Court is also requested to issue a costs order against the Respondent for expenses and legal fees.
139. This petition is supported by affidavits signed before a lawyer in the West Bank and forwarded to HaMoked by facsimile following telephone coordination, as well as affidavits signed before the undersigned during a video conference and sent by e-mail. The Honorable Court is requested to accept these affidavits and the powers of attorney also provided by facsimile and e-mail, considering the objective difficulties in arranging a meeting between the Petitioners and their counsel.

April 13, 2021.

Tehila Meir, Advocate
Counsel for the Petitioners