

At the District Court in Jerusalem
Sitting as a Court for Administrative Affairs

AP 62855-07-19
AP 11831-08-19
AP 71670-07-19

1. _____ **Ziad, ID No.** _____
(Petitioner 1 in AP 62855-07-19)

_____ **Kabha, ID No.** _____
(Petitioner 1 in AP 11831-08-19)

_____ **Yichia, ID No.** _____
(Petitioner 1 in AP 71670-07-19)

2. **HaMoked - Center for the Defence of the Individual founded by
Dr. Lotte Salzberger, Registered Association No. 580163517**

Represented by counsel, Adv. Daniel Shenhar and/or Adv. Tehila Meir et al.
4 Abu Obeida St., Jerusalem, 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

v.

1. **Military Commander for the West Bank Area**
Represented by the District Attorney's Office, Jerusalem District – Civil,
7 Mahal Street, Jerusalem 9149301
P.O.Box 49333
Tel: 073-3920000; Fax: 02-6468053

The Respondent

Preliminary Response

The Respondent respectfully submits its preliminary response to the petitions according to the decision of the Honorable Court dated September 8, 2019.

The preliminary response to the separate petitions specified above is submitted jointly, with the consent of Petitioners' counsel. The submission of one response in the separate petitions is more efficient in view of the fact that the same response date was scheduled by the Honorable Court in all three petitions specified above, all of which concern the same matter and Respondent's position in Petitioners' matter is the same.

Preface

1. The petitions concern Petitioners' request that the Respondent shall issue to each one of the Petitioners a farmer entry permit into the seam zone "to maintain their proprietary

ties to their lands in the seam zone", despite the fact that none of the Petitioners has presented a confirmation issued by the land registration office concerning their rights in regulated lands, for the cultivation of which the entry permit is allegedly requested. The Petitioners request that the Respondent "**shall stop the refusal to issue seam zone farmer permits valid for two years to individuals having proprietary ties to lands in the seam zone, due to the fact that the lands are registered in the *Tabu* in the name of the testator rather than in the name of the inheritor**" (AP 71670-07-19) and due to the fact that "**they did not act to change the registration of the rights in the lands in the *Tabu***" (AP 62855-07-19, AP 11831-08-19).

2. It should already be noted at the outset that the Petitioners have requested in their petitions a farmer permit valid for two years. On September 9, 2019, the Seam Zone Standing Orders were amended and replaced with "**2019 Seam Zone Entry Guidelines and Procedures**". According to the amended procedures, farmer permits to owners of plots larger than 330 square meters and permits for "personal needs", issued due to proprietary ties to a plot for which permits for agricultural or commercial needs cannot be issued (for instance: if the size of the plot is smaller than 330 square meters), **shall be issued for up to three years (rather than for two years only as was the situation according to the 2017 Standing Orders). However, during the term of the permit a quota of entries would be set for each permit holder in which he/she shall be entitled to enter the seam zone (punch card permit) considering the size of the plot and the crops grown therein.**
3. It should be emphasized that the demand that a land registration extract be presented concerning proprietary rights, which was established in the Seam Zone Standing Orders has not been changed in the current amendment. Accordingly, the main issue discussed in the petitions at hand is whether the request of the Petitioners who did not present a *Tabu* extract in their application for a farmer permit with respect to regulated land was not made redundant as a result of the amendment to the Standing Orders, and whether the Respondent may demand that a land registration extract be presented to substantiate seam zone farmer permit applications. The Petitioners argue that according to the law which applies in the Area they are not obligated to present a *Tabu* extract to prove their rights in regulated lands.
4. Respondent's position is that there has been no flaw in its decision denying Petitioners' application for an agricultural entry permit into the seam zone in the absence of a land registration extract substantiating their rights in regulated lands, the above according to the Seam Zone Standing Orders.
5. According to the Seam Zone Standing Orders specifying the conditions for the issuance of an agricultural entry permit into the seam zone, the applicants are required to attach a *Tabu* extract to their permit application concerning regulated lands. Since there is no dispute between the parties that the Petitioners did not present a *Tabu* extract, and according to the Respondent no reason was given which can justify their failure to do so, they are not entitled to receive an agricultural entry permit into the seam zone as requested by them.
6. The long standing seam zone procedures and Respondent's position, whereby a person applying for a farmer permit with respect to regulated lands is required to attach to the application a land registration extract attesting to their proprietary rights, was presented before the Supreme Court in the "Permit Regime Judgment" (HCJ 9961/03, 639/04) and the Supreme Court found no reason to interfere with this policy. In view of the aforesaid, the Petitioners have no grounds for judicial interference with the demand that a land registration extract be presented to substantiate seam zone entry applications with respect to regulated lands.

7. Anyway, as specified below, to the extent the Petitioners wish to cancel or change the seam zone procedures, it is a remedy which is not within the authority of the Honorable Court.

Petitioners' Factual Background

The Petitioner in AP 62855-07-19: _____ Ziad, ID No. _____

8. According to the information in Respondent's possession, the Petitioner is a resident of Zabda, in the Jenin District. He is 62 years old, married and has seven children.
9. According to the Petitioner he has proprietary ties to regulated land in the village of Zabda, known as block 2 plot 6.
10. Between the years 2006 – 2010 farmer entry permits into the seam zone were granted to the Petitioner.
11. Commencing from April 20, 2011 a security preclusion was entered in Petitioner's matter. Subsequent permits which were given to him were issued despite the security preclusion, after a specific examination, based on Respondent's tendency to enable land owners in the seam zone to access their lands and cultivate them according to agricultural need.
12. From June 29, 2016 through June 28, 2018 the Petitioner held a farmer entry permit into the seam zone. It should be noted that when said permit was issued the 2017 Seam Zone Standing Orders had not yet entered into force. After the amendment of the Seam Zone Standing Orders in 2017, with the understanding that numerous permits were misused in the absence of an agricultural need, the Respondent started to **more strictly enforce** the demand established in the Standing Orders to present a *Tabu* extract for the purpose of substantiating proprietary rights. It should be clarified that the demand to present a *Tabu* extract for the purpose of substantiating proprietary ties to land, has been included in the seam zone entry procedures for more than a decade, from the time in which the fence had been built (as specified below).
13. Petitioner's application for a new farmer permit commencing from July 25, 2018 was denied due to the fact that he had attached an outdated *Tabu* extract to his application for the purpose of substantiating his proprietary rights in the land.
14. An additional application submitted by the Petitioner for an agricultural entry permit commencing from December 16, 2018 was denied due to the failure to prove an agricultural need, since Petitioner's plot consists of only about 260 square meters (Exhibit P/8 of the petition).
15. On January 30, 2019 an HDCO hearing was conducted in Petitioner's matter. The HDCO decided that the Petitioner had rights in a plot of land consisting of 260 square meters and therefore did not meet the criteria for receiving a farmer permit in the seam zone. However, it was explained to the Petitioner that he could submit a special purpose application for personal needs to access and cultivate his miniscule plot, namely, for plowing, farming, pruning purposes (Exhibit P/12 of the petition).
16. On March 11, 2019 a hearing was held before the seam zone appellate committee in Petitioner's matter (Exhibit P/16 of the petition), and on March 20, 2019 the decision of the committee was given (Exhibit P/19 of the petition. As it emerges from the committee's documents, the Petitioner presented documents substantiating proprietary

ties to a plot of a size of about 260 square meters (it should be noted that in the protocol and the decision the size of 226 square meters was specified based on Petitioner's statement but in the denial the size of about 263 square meters was mentioned). In addition, the Petitioner alleged that he purchased from his wife an additional piece of land of the size of 160 square meters, but he has not presented documents substantiating proprietary ties to said additional plot. The committee's decision stated, *inter alia*, that in view of the size of the plot with respect of which the Petitioner proved proprietary ties (263 square meters), according to the Standing Orders there is no "agricultural need" to cultivate it. In addition, it was noted that an examination conducted by the DCO revealed that Petitioner's plot was not cultivated at all, although over the years he received daily permits for agricultural needs to cultivate his plot, which he used to pass through the Reichan gate, almost every day.

17. Following the above, the Petitioner has allegedly purchased from his niece an additional parcel of land in the plot consisting of 180 square meters (according to the petition she is his wife but it was represented to the Respondent that she was his niece as specified in Exhibit P/35 of the petition) to increase the size of the plot such that it shall no longer be a miniscule plot. However, the Petitioner did not present a rights registration certificate issued by the *Tabu* either for himself or for his wife (it should be noted that different sizes of the purchased plot were specified in different documents but said differences are immaterial to the issue in dispute).
18. An additional application submitted by the Petitioner for an agricultural entry permit into the seam zone commencing from April 12, 2019 was denied since the Petitioner was required to register his rights with the *Tabu*.
19. On May 28, 2019 an HDCO hearing was held in Petitioner's matter (Exhibit P/30 of the petition). **In the framework of the hearing the Petitioner alleged that he had opened a *Tabu* transaction with the civil administration offices but no documents supporting his above allegation were presented.** The HDCO gave the Petitioner a permit for personal needs valid for three months from May 28, 2019 through August 25, 2019 to arrange the registration of his rights with the *Tabu*.
20. On June 19, 2019 a hearing was held before the appellate committee in Petitioner's matter (Exhibit P/35 of the petition) and on July 1, 2019 a decision was given in the appeal (Exhibit P/36 of the petition). In the hearing before the appellate committee, in response to the question why the Petitioner did not register the purchase transaction with the civil administration's *Tabu*, Petitioner's counsel said: **"He is not familiar with the civil administration registration proceedings, it is not customary"**. In its decision the appellate committee rejected Petitioner's arguments that he was not required to register his rights with the *Tabu* and it was determined that **"I found that the DCO's decision in Petitioner's matter which decided to give him permits for personal needs that would enable him to enter the seam zone until the inheritance is registered with the *Tabu* as required, is a reasonable decision and there is no room for our interference therewith."**
21. On August 5, 2019 at 09:00 in the morning, a tour was conducted in Petitioner's plot. It was found that the land was not cultivated at all, it was filled with rocks and bushes and appeared to have been neglected for a long time. Contrary to Petitioner's allegations there were no olive and carob trees in the plot, but only a few random trees and mainly bushes which grew therein over the years.

On the date on which the tour was conducted (August 5, 2019), the Petitioner and four other individuals holding permits for the cultivation of said plot, crossed the security fence with their permits to access the plot. The Petitioner passed through at 05:08 in the

morning. When the tour was conducted in the plot neither one of said individuals, including the Petitioner, was present in the plot. The plot was found vacant of any person and neglected, as described above.

22. On August 13, 2019, another tour was conducted in the plot. On that day too there was no one in the plot, which was not cultivated and neglected.

Photos of the plot being the subject matter of the petition which were taken in August 2019 during the tour of the DCO representatives are attached as **Exhibit 1**.

23. The Petitioner used the personal permit which was given to him to pass through the Reihan checkpoint almost every day during the three months in which his temporary permit was valid. The Petitioner almost always passed through the Reihan checkpoint around 05:00 in the morning. The nature of Petitioner's entries with an emphasis on the hours at which he had consistently entered, while his plot was in fact neglected, his failure to use the permit for its cultivation and the fact that he was not present in the plot when the tour was conducted, all raise a serious suspicion that the Petitioner misused and abused his permit for the purpose of entering Israel unlawfully.
24. An examination conducted on September 1, 2019 revealed that **12 residents hold permits by virtue of their ties to the plot being the subject matter of the petition**. Accordingly, Petitioner's allegation that "Olive and carob trees grow in the plot. In the past legumes and tobacco were also grown by the family members in the plot, but they stopped as a result of the difficulties involved in the renewal of the permits, which do not enable to grow crops that require continuous tending on a daily basis" should be dismissed.
25. It is obvious that the condition of the plot is not the result of the failure to grant permits but rather of the misuse of the permits which were given for the purpose of entering Israel.

AP 11831-08-19; Kabha, ID No.

26. As alleged in the petition, the Petitioner is an inheritor of rights in regulated lands located in Barta'a, known as block 20385, plot 1.
27. Over the years, prior to the 2017 amendment of the Seam Zone Standing Orders in the framework of which a rebuttable presumption was established whereby owners of miniscule plots smaller than 330 square meters do not have an agricultural need, as shall be specified below, the Petitioner and his family members received farmer permits to cultivate the plot.
28. Petitioner's application for a farmer permit was denied due to the fact that he holds a miniscule plot consisting of 238 square meters.
29. In a tour which was conducted on November 18, 2018 it was found that the plot was not cultivated at all, and it is highly doubtful whether it has been cultivated at any stage in the periods in which the Petitioner received farmer permits. Moreover, it was found that the plot was filled with rocks and had no olive trees whatsoever. The plot was neglected, filled with shrubbery and had no agricultural crops.

Photos of the plot dated November 18, 2018 is attached as **Exhibit 2**.

30. On May 28, 2019 an HDCO hearing was held in Petitioner's matter (Exhibit P/13 of the petition). The Petitioner reiterated his application to receive an entry permit into the seam

zone. It was decided to give the Petitioner a permit for personal needs valid for three months to enable him to initiate *Tabu* registration proceedings with respect to the plot. The HDCO noted further that it was a miniscule plot.

31. On June 19, 2019 a hearing was held before the appellate committee in Petitioner's matter (Exhibit P/19 of the petition).

The chairman of the committee was of the opinion that there was no room to interfere with the DCO's decision to issue a permit for personal needs until the registration proceedings of the inheritance with the *Tabu* are completed. *Ex gratia* and to enable the Petitioner to complete the registration of the plot in his name, it was decided to issue a permit for an additional period of three months noting that additional applications may be submitted by the Petitioner to the DCO to the extent additional permits are required (Exhibit P/21 of the petition).

32. It should be noted that an "Advanced Age" permit also exists in Petitioner's matter allowing him to enter the territory of the state of Israel commencing from 08:00 in the morning, through the crossings designated for the entry of the residents of the Area into Israel, according to the Order on Closed Areas (Judea and Samaria Area)(No. 34), 5727-1967.

Notwithstanding the aforesaid, the data in Respondents' possession raise a serious suspicion that the Petitioner does not use the "Advanced Age" permit given to him for the purpose of entering Israel, but rather uses the "seam zone" permits given to him to unlawfully enter Israel through the **agricultural gates** between 04:00 – 05:00 in the morning, very often. This detail together with the findings of the tour in the plot, substantiate the suspicion that the Petitioner did not use the permits given to him for agricultural needs, the purpose for which the permits were given to him and for which the Petitioner applies for a permit in the petition at hand, but rather for the purpose of staying and working in Israel unlawfully.

AP 71670-07-19: Yichia, ID No.

33. According to the information in Respondent's possession, the Petitioner resides in al-'Araqa in the Jenin District. He is 31 years old, married and has three children.
34. Commencing from 2014 the Petitioner was issued entry permits into the seam zone (agricultural worker permits).
35. Commencing from November 2015 until January 2019 farmer permits were issued to the Petitioner allowing him to enter the seam zone. It should be noted that said permits were valid for periods spanning between six months to 18 months each, and that a permit valid for two years was not issued to the Petitioner based on the recommendations of the security bodies.
36. In 2015 the Petitioner was apprehended in a vehicle with an Israeli license plate, and admitted that he was on his way to work in Israel. The Petitioner was warned that if apprehended again his permit would be taken from him.
37. On December 24, 2018 the Petitioner submitted an application for a seam zone farmer permit valid for two years. His application was denied. The denial of said application is the subject matter of the petition at hand.
38. The Petitioner attached to his application an agreement whereby the Petitioner leases the plot from his father-in-law who owns a plot in regulated lands of a relative size of 845

square meters in the seam zone. A *Tabu* extract attesting to lessor's rights in the plot was not attached to the application.

39. On December 24, 2018 the application was denied after it was found that the quota permit for agricultural workers for the plot was fully used and since according to section 9(b) of chapter C of the 2017 Seam Zone Standing Orders "a farmer **leasing a plot shall be included in the quota permit for workers**. However, in extraordinary circumstances and for reasons which shall be registered, **the HDCO may determine that a lessee shall not be included in the quota permit for workers**".
40. On April 2, 2019, following Petitioner 2's letter to the public liaison officer, an answer was given which stated that "**The resident's application was denied due to a faulty lease document. A new application should be submitted bearing the official stamps of the 'Palestinian Authority'**." According to the directive of the Coordinator of Government Activities in the Territories, the civil administration cannot accept any documents, including lease documents, purportedly executed by the "State of Palestine", and may only accept documents on behalf of the "Palestinian Authority".
41. On May 28, 2019 an HDCO hearing was held in Petitioner's matter (Exhibit P/19 of the petition). In the hearing the Petitioner argued that the lease agreement submitted by him together with his application was a standard agreement, which always includes the wording "Palestinian State". The Petitioner stated further that he was also holding an entry permit into Israel for work purposes, but that he also needed an entry permit into the seam zone in order to cultivate the plot.

The HDCO decided that due to the fact that the plot which was leased by the Petitioner was not registered in the name of the lessor, the Petitioner would receive a permit valid for three months, during which the land owner shall be able to arrange its *Tabu* registration (the permit which was given was valid from May 28, 2019 until August 25, 2019).

42. On June 19, 2019 a hearing was held before the appellate committee in Petitioner's matter (Exhibit P/22 of the petition).
43. On July 1, 2019 the decision of the appellate committee in Petitioner's matter was given. According to the decision of the committee, a permit for "personal needs" was given to the Petitioner *ex gratia*, valid for three months, until completion of the *Tabu* registration proceedings. It was noted that to the extent additional permits are required to complete the registration process, appropriate applications may be submitted to the DCO by the Petitioner. It should be noted that due to an administrative error, the committee used a decision format which was used in other cases in which the appellant was a land owner by virtue of inheritance, while in the case at hand the appellant alleged that he leased the plot from another person that the plot was not registered in his name. Notwithstanding the above, the legal issue and the substantial decision, is identical in all cases.
44. To complete the picture, it should be noted that from April 11, 2019 through October 11, 2019 the Petitioner holds an entry permit into Israel for work purposes with Samar Construction and Investments Company in Netanya.

The seam zone – factual and legal background

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

area, to prevent the free passage of Judea and Samaria residents to Israeli territories located west of the fence.

46. The route of the security fence was determined based on a wide array of considerations, primarily the security consideration which was accompanied by additional considerations, including topographic considerations. Considering the above, in several areas the security fence was built inside the Judea and Samaria area, in a manner which caused some Judea and Samaria areas to remain west of the fence, between the security fence and the border line of the Judea and Samaria area. These areas are referred to as the "seam zone".
47. Since there is no physical barrier preventing entry into Israel from the area located in the "seam zone", and in view of the security risk embedded in the passage of terrorists from the seam zone into the territory of the State of Israel, the military commander exercised the power vested in him according to section 318 of the Order concerning Security Directives [Consolidated Version] (Judea and Samaria)(No. 1651), 5770-2009, and declared the seam zone areas a closed military zone. Entry into and exit from this area are prohibited without a permit.
48. The assumption underlying the declaration of the seam zone as a closed military area is that allowing free entry and exit from the Judea and Samaria area into the seam zone and therefrom to Israel, with no further check, entails a security risk, since passage without a permit may be exploited for activity against the security of the State of Israel and its citizens.
49. To secure the preservation of the proper fabric of life of the Palestinian residents who are affected by the fence, the "permit regime" was established, in the framework of which various different permits are granted including "farmer permit in the seam zone", "agricultural worker permit in the seam zone", "commercial permit in the seam zone", "commercial worker permit in the seam zone", "personal needs permit" and the like. These permits enable Judea and Samaria residents to enter and stay in the seam zone for different purposes, according to their ties to the seam zone. The conditions established for granting the permits balance between the security considerations which led to the closure of the area, and the obligation of the military commander to maintain reasonable access to Judea and Samaria areas located in the seam zone and preserve, to the maximum extent possible, the proper fabric of life of the residents who have established a need to enter the seam zone.

The "Permit Regime" Judgment

50. The lawfulness and reasonableness of the seam zone declaration and the provisions concerning the "permit regime" were examined by the Supreme Court in H CJ 9961/03, 639/04 **HaMoked Center for the Defence of the Individual founded by Dr. Lotte Salzberger et al. v. Government of Israel et al.** (April 5, 2011) (above and below: the "permit regime judgment").
51. The permit regime judgment discussed in length the arrangements which were established in the permit regime with respect to the issue of agricultural entry permits into the seam zone. In this context, the state's response in that regard was described as follows:

It seems that the state is also aware of the fact that a significant decline has occurred in the issuance of farmer permits from the commencement of the permit regime. It is argued that this has occurred, due to the concern that the liberal policy which was

allegedly applied in the past to the issuance of entry permits into the zone would be abused. Therefore, as specified above, it was decided that in lieu of permanent farmer permits, the family members and the workers would be issued temporary worker or farmer permits, according to the specific needs of the farmer. The data attached by the state supported its above position, even if there is merit in petitioners' position according to which the decline in the number of permanent permits was not fully compensated by the temporary permits. In addition, the state has concisely referred to the gamut of agricultural-related arrangements, which, according to it, provide a reasonable solution to this section of the population. This applies both to the issuance of the permits themselves – with a distinction drawn between their issuance on a routine basis and their issuance during the olive harvest season, and to the opening of the different gates according to the needs of the population, as balanced against security needs. In this context the state has already pointed out in its response that a directive was issued according to which whenever an agricultural gate located near the relevant agricultural plots of a resident was not open all year round on a daily basis, an additional gate or crossing which was open all year round on a daily basis, would be specified on the permit, through which the resident would be able to enter the zone, provided that the crossing would not necessitate the entry of the resident into Israel. The state has also responded to petitioners' argument concerning the difficulties in proving ownership of land in the Area, as a condition for proving a connection which gives rise to a right to obtain a permanent farmer permit. According to the state – the requirements raised by it for the purpose of proving a connection to the land are reasonable – in regulated lands a land registration extract, and in unregulated lands other evidence, such as property tax registration extract etc. The state has also raised in its response possible solutions for the entry of vehicles and agricultural machinery into the seam zone as well as for the transfer of goods to the territories of the Area located outside the seam zone. (Paragraph 33 of the permit regime judgment)(The emphases in this response do not appear in the original).

The Supreme Court expressed its position on this matter as follows:

Under the circumstances at hand, *prima facie*, it indeed seems that the respondents acknowledge the residents' right to continue to farm their lands and seek to enable those who have a connection to lands in the seam zone to continue to farm them, by enabling family members and other workers to assist them with their work. In addition, special crossings exist the purpose of which is to regulate the entry into the zone – some of which are adapted to agricultural activity according to the seasonal needs. It seems to us that this arrangement gives reasonable solution which minimizes the violation of the rights of the farmers, and we assume in our said determination that respondents' declarations concerning the importance of giving proper solutions for the needs of the farmers in the Area are filled by them with real substance. However, and as specified above, we cannot deny the possibility that in specific cases severe injury is caused to the human right to livelihood and land of Palestinian residents who cannot adequately farm their lands or

who encounter other access difficulties, and the respondents, on their part do not take adequate measures to minimize said injury. As stated above, these cases may be reviewed within the framework of specific petitions, in which the court will be able to examine the gamut of relevant arrangements which apply to a certain area, and the specific balancing which takes place therein between the rights of the residents and other interests, as was previously done in similar petitions. (Paragraph 34 of the permit regime judgment).

52. The Supreme Court made no reservation with respect to the requirement that rights in regulated lands shall be proved by a *Tabu* extract. The Supreme Court has eventually dismissed the petition against the permit regime, subject to the court's comments concerning required changes in the relevant arrangements (without requiring any change in the manner by which proprietary rights are proved), holding, *inter alia*, as follows:

"46. In our judgment we have widely discussed the complex security situation which led to the erection of the security fence. This step severely injured the daily lives of many of the Palestinian residents of the Area. In its judgments, this court ruled many times that such injury was inevitable taking into consideration the clear security need upon which the erection of the security fence was founded [...] As aforesaid, the permit regime which was applied to the seam zone is a derivative product of the route of the fence. It also severely violates the rights of the Palestinian residents – those who live within and those who live without its boundaries [...] The petitioners in the petitions before us presented a harsh picture of the complex reality of life with which these residents cope from the commencement of the permit regime. We did not dispute the fact that such hardships existed, and it seems that the state is also very well aware of them. However, this time again, we could not ignore the essential security objective underlying the decision to close the seam zone, and therefore we examined, with the legal tools available to us, whether the military commander used his best efforts to minimize the injury inflicted on the residents under the permit regime. Under the circumstances of the matter, and given the factual basis which was presented to us, we came to the conclusion that subject to a number of changes which were widely discussed above, the decision to close the seam zone and apply the permit regime thereto satisfied the tests of legality and hence, there was no cause which justified our intervention therewith. Our above determination is based, as aforesaid, not only on the arrangements themselves, but also on the statements of the state concerning measures continuously taken by it, which are designed to improve the handling processes of the different applications and to ease the accessibility to the seam zone, and by so doing, to minimize the injury inflicted on the daily lives of the Palestinian residents."

53. As aforesaid, the security need requires, at this time, to prevent uncontrolled entry of Palestinian residents into the seam zone to protect the security of the area and the security of the state of Israel and its residents, and to protect the lives of the Israeli citizens in the settlements located in the seam zone. Therefore, the decision of whether to issue a permit to an individual allowing him/her to enter and stay in the seam zone, is based on criteria which were established and on specific factual data in the matter of said individual, and his/her need to be given a permit, as specified in the Seam Zone Standing Orders, as shall be explained below.

2017 Seam Zone Standing Orders

54. The procedures regulating the issuance of permits in the seam zone were specified until recently, in the Seam Zone Standing Orders. The Standing Orders entrenched and specified the rules concerning the residency, entry and presence in the seam zone, including the application submission procedures, the criteria pursuant to which they are examined, the terms of the permits, appeal procedures and the like. The Standing Orders were published on COGAT's website, in Hebrew and in Arabic. They are of a legislative nature and constitute an integral part of the military legislation in the Area.
55. The first sub-chapter of chapter C of the Seam Zone Standing Orders (hereinafter: the "**Sub-chapter**"), regulated the processing of farmer permit applications in the seam zone.
56. According to some of the Sub-chapter's definitions, the permits are issued "**for the purpose of cultivating agricultural lands in the seam zone**". The permits are divided into two types. The first type is a "farmer permit", issued to a Judea and Samaria resident "**having proprietary ties to agricultural lands in the seam zone, and is designed to maintain the ties to these lands**". The second type is an "agricultural work permit", which is "**issued to a Judea and Samaria resident employed by a farmer on his/her land, pursuant to the farmer's application who is the applicant submitting the application for the cultivation of said lands.**" It was further determined that in general, said permits shall be valid for two years.

Proving proprietary ties to agricultural land according to the Standing Orders

57. Section 12 of the Sub-chapter, specified the application submission procedure and the documents which should be attached thereto. It was *inter alia* established therein that **if the land is regulated**, a copy of a *Tabu* extract should be attached.
58. On the other hand, it was established that if the land **is not regulated**, the applicant should attach an original "*Maliya*", or any other document proving his/her ties to the land. In the event of an **inheritor of a plot**, inheritance orders proving the chain of the inheritance should be submitted, alongside all other documents proving the testator's ties to the agricultural land. A **purchaser of a plot**, on the other hand, should submit a contract and an irrevocable notarized power of attorney, alongside all other documents proving the seller's proprietary ties to the agricultural land.

Plot size

59. In the 2017 amendment of the Standing Orders, several definitions and changes were added to the Sub-chapter, the main purpose of which was to establish clear criteria and assist the DCOs in their work, *inter alia*, by introducing a clear definition of the agricultural need and a definition of a **rebuttable** presumption, of the minimal size of a plot for the purpose of agricultural cultivation.
60. Plot size – was defined as "**... the entire plot multiplied by the applicant's relative ownership in the plot.**"
61. Agricultural need – was defined as a "**need to cultivate land for sustainable production of agricultural produce.**"
62. In addition, a **rebuttable** presumption was established regarding the minimal plot size for agricultural cultivation: "As a general rule, there is no sustainable agricultural need when the size of the plot for which the permit is requested is minuscule, not exceeding 330 square meters. However, in extraordinary circumstances and for reasons that shall

be recorded, the **head of the DCO may issue a farmer permit for a miniscule plot, as aforesaid** (emphasis appears in the original) see section 13(a)(7)(b) of chapter C (Standing Orders, page 22).

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

A copy of the 2017 Seam Zone Standing Orders is attached as **Exhibit 3.**

The phenomenon of misuse of agricultural entry permits into the "seam zone"

64. Recently an examination was conducted by the civil administration which found that from the beginning of 2019 until August 6, 2019, 633 public servant certificates were issued for Israel Police specifying the types of permits held by Palestinian residents holding seam zone permits for agricultural purposes (farmer permit, permit for farmer's family members and agricultural worker permit) who were apprehended within the territory of the State of Israel.
65. Considering the total number of farmer permits issued for the seam zone (in 2018 until November 2018, 1,876 farmer permits were issued for the seam zone) we can see that there is a widespread and almost sweeping phenomenon of unlawful use of seam zone farmer permits for the purpose of entering Israel. In the case at hand, the Petitioners have also used the permits which had been issued to them for agricultural purposes in order to enter Israel.
66. The above data about the misuse of the permits are of great importance to the case at hand – first, when an entry permit into the seam zone is granted a balancing is made between the security considerations which led, as aforesaid, to the closure of the area, and the military commander's obligation to enable the Palestinian residents reasonable access to the lands of the area, **each one according to their needs**. Second, there is no physical barrier preventing entry into Israel from the seam zone with all the security risks embedded therein. Accordingly, for instance, a security preclusion was entered into the system in _____ Ziad's matter as of April 20, 2011 and the permit was given to him notwithstanding said preclusion, following a specific examination. There is no need to describe in length the meaning of the misuse of a permit by residents in whose matter a security preclusion exists and who received a permit notwithstanding said preclusion.
67. Moreover, there is no dispute that a proper solution should be provided for the needs of Palestinian farmers whose lands are located in the seam zone. However, it does not mean that the military commander should issue a farmer permit to a person who does not have a need to cultivate the plot with respect of which he/she requests a permit for agricultural needs or when the applicant refuses to present an updated *Tabu* extract in his/her name as required by the Seam Zone Standing Orders.

The amendment of the Standing Orders and the entering into force of the "2019 Seam Zone Entry Procedures and Guidelines"

68. On September 9, 2019 the Seam Zone Standing Orders were amended including their name which was changed to "2019 Seam Zone Entry Procedures and Guidelines" (hereinafter: the "**2019 Seam Zone Entry Procedures**").

The 2019 Seam Zone Entry Procedures are attached as **Exhibit 4**.

69. Article A of Chapter C of the 2019 Seam Zone Entry Procedures, which discusses different types of farmer permits, clarifies the definition of a seam zone "farmer permit". According to the revised definition thereof, a "**farmer permit**" is a permit which "**is issued to a resident of Judea and Samaria having proprietary ties to agricultural lands in the seam zone, whose purpose is to enable the cultivation of the agricultural land, according to the agricultural need arising from the size of the plot and the type of the crop, while preserving the ties to said lands. The number of permits and scope of entries shall be determined according to the provisions of these procedures.**"
70. The 2019 Seam Zone Entry Procedures also provide that farmer permits to land owners whose plots are larger than 330 square meters and permits for "personal needs" to access lands with respect of which agricultural or commercial permits cannot be obtained (for instance: miniscule plots smaller than 330 square meters), shall be given for a period of three years (compared to a farmer permit which could have been given up to a maximal period of two years according to the 2017 Standing Orders). At the same time, a quota of entries during the duration of the permit shall be established for each permit holder in which they shall be entitled to enter the seam zone ("punch card permit"), considering the size of the plot and the type of the crops grown thereon.
71. The 2019 Seam Zone Entry Procedures did not change the requirement to present a *Tabu* extract to prove rights in regulated lands while applying for an agricultural entry permit into the seam zone, as is also currently in force.

Respondent's Position

72. Respondent's position is that the petitions should be dismissed *in limine* and alternatively on their merits.
73. The Supreme Court, in the framework of the permit regime judgment which had been filed, *inter alia*, by Petitioner 2 (HaMoked), examined the entirety of procedures regulating the permit regime, and in the framework of said petition arguments were also raised before the Supreme Court with respect to the requirement to prove proprietary rights, which already included at that time the presentation of a *Tabu* extract to prove proprietary rights in regulated lands. The Supreme Court, which examined the entirety of the arrangements, did not find that there was room to interfere therewith, noting that the harm caused to the residents as a result of the permit regime, although not to be taken lightly, is not of the type that can be described as trumping the security advantages arising from the closure of the area. Consequently, the Supreme Court dismissed the petition.

Hence, Respondents' position is that *res judicata* was established preventing the raising of identical arguments in the same matter, again, with respect to the requirement to present a *Tabu* extract, and anyway the petitions show no cause for judicial interference with this matter.

Moreover, Respondents' position is that Petitioners' argument that the controversy with respect to this matter was "only mentioned but not clarified" in the permit regime judgment, should be dismissed. The court has already discussed in the permit regime judgment arguments whereby "**since numerous lands were transferred over the years**

by way of inheritance without any reference, many farmers will find it difficult to provide proof of ownership, which may lead to the loss of their property and livelihood" (the petition of the Association for Civil Rights in Israel). It was also argued that the residents do not know which documents should be presented by the farmers to prove their "ties" to the land. In response to said petitions it was stated that **"it is only obvious that in regulated lands a *Tabu* extract should be attached to the application, and that in lands which are not regulated other evidence suffices, such as a property tax extract (*Maliya*) and the like. In addition, it should be noted that the requirement to present pieces of evidence such as those specified above to prove the applicant's ties to seam zone lands, is a reasonable requirement which does not impose an unreasonable burden on the residents."**

The Supreme Court did not accept Petitioners' arguments in this regard and dismissed the petitions. Hence *res judicata* was established and the Petitioner is prevented from raising arguments in this regard before the honorable court.

74. Respondent's position is that the petitions should also be dismissed on their merits. The requirement to prove proprietary ties to land by a land registration extract is a reasonable requirement under the circumstances, which does not impose an unreasonable burden on the seam zone residents and with which there is no cause to interfere. Presenting a land registration extract issued by the land registration office is the ideal way to prove proprietary ties to land. There is no justification for renouncing said requirement as requested by the Petitioners. Said requirement was established to ensure that the applicants do indeed have real ties to the agricultural lands in the seam zone, thus reducing the inherent concern that the permit was requested for the purpose of entering the state of Israel without an authorization.
75. The above demand is also required in the matter of each one of the Petitioners alleging rights in a plot of many dunams while their relative rights in the plot amount to a few dozens of square meters, and in one case to only about 260 square meters. These are miniscule plots, which according to the opinion of civil administration professionals, do not enable sustainable agriculture. Only an orderly registration with the land registration office shall provide a clear and certain picture to both the Petitioners and the Respondent about the status and scope of the rights of each one of the applicants.
76. Indeed, with respect to **unregulated lands**, the 2019 Seam Zone Entry Procedures provide a certain relief, by enabling to present alternative documents such as: *Maliya* and an inheritance order *in lieu* of a *Tabu* extract. The relief was introduced considering the fact that an initial registration of unregulated land for the purpose of converting it into regulated land is a complex and long process, and considering the need to secure the proper fabric of life of the farmers in the seam zone. Conversely, with respect to regulated land, the registration process is relatively simple¹ and when the provisions of the 2019 Seam Zone Entry Procedures were formulated no justification was found to renounce the basic requirement for the presentation of a land registration extract to substantiate farmer permit applications. In addition, Respondents' conduct, agreeing to issue to the Petitioners temporary permits until the completion of the registration process, with the intent to prevent a possible harm to their fabric of life – is also proper and reasonable under the circumstances and there is no room for any interference therewith.

¹ The procedure for land registration updates as a result of inheritance with the land registration office in the area is specified here: https://www.gov.il/he/service/inheritance_registration_samaria
The procedure for the registration of the acquisition of rights with the land registration office is specified here: : https://www.gov.il/he/service/bill_of_sale_samaria

77. Furthermore, in the absence of registration, questions and difficulties may arise with respect to the rights of each applicant and particularly with respect to the scope of their rights. The absence of registration causes errors and ambiguities with respect to proprietary rights in land and the requirement to present a land registration extract is the only thing which can ensure that the person holding adequate rights in regulated lands is the only one who shall receive an agricultural entry permit. Moreover, the registration requirement assists to prevent different phenomena such as takeover of lands, land grabbing and conflicting permit applications submitted by different parties with respect to the same land. In addition, by this requirement the military commander exercises his obligation to prevent such phenomena by virtue of his capacity as the alternate sovereign of the area.
78. The Respondents wish to emphasize that the possibility to receive a farmer permit without proving proprietary rights in the land in the customary manner may increase the inappropriate phenomenon whereby entry permits into the seam zone are misused for an unlawful entry into Israel, with all the security and other implications arising therefrom. Petitioners' matters show, as was specified in length above, that there is a strong suspicion that they use the permits issued to them for the purpose of entering Israel unlawfully rather than for the purpose for which the permits are given.
79. A review of each one of Petitioners' specific cases also shows that there are additional good reasons to deny their applications.
80. The Petitioner in AP 62855-07-19 applied for a permit for agricultural needs and used it on a daily basis for long periods of time, but visits made in his plot showed that the plot was neglected and uncultivated. The Petitioner was not present in the plot in any one of the tours which were conducted in Petitioner's plot, although according to the official records he had entered the seam zone to access his plot.

The Petitioner did not provide any reason for his failure to regulate his alleged rights by their registration with the land registration office but only argued that "**this is not the custom**". Under the circumstances there is no justification to deviate from the rule established in the Standing Orders whereby the Petitioner is required to present a *Tabu* extract.

81. The Petitioner in AP 11831-08-19, although having in his possession an "Advanced Age" permit allowing entry into Israel at such times and through such crossings which are designated for that purpose, ostensibly misuses the permits designated for agricultural needs in the seam zone for the purpose of entering Israel more conveniently contrary to the law, through the agricultural gate, exceeding the entry hours in which the holders of an "Advanced Age" permit are permitted to enter Israel.
82. The Petitioner in AP 71670-07-19 was apprehended in the past while having violated the permit and even admitted that he had traveled to work in Israel. Under these circumstances there is a real concern that the Petitioner shall misuse the permit he applies for to enter Israel unlawfully. The Petitioner states in his petition that some of his rights arise from oral agreements and others from written agreements. The above circumstances, whereby residents of the area raise allegations concerning proprietary rights which are not substantiated by *Tabu* registration attest to the importance of said requirement. The above is reinforced by the fact that according to the 2019 Seam Zone Entry Procedures the size of the plot directly affects the number of seam zone entries that the permit applicants are entitled to receive.

Lack of subject matter jurisdiction to grant the remedy of cancelation or change of the Seam Zone Procedures

83. As was specified above there was no flaw in Respondent's specific decision concerning each one of the Petitioners according to the Seam Zone Standing Orders (and subsequently, the 2019 Seam Zone Entry Procedures) requiring the attachment of a land registration extract to substantiate their proprietary rights.
84. To the extent the Petitioners wish to change or cancel the provisions of the 2019 Seam Zone Entry Procedures with respect to this requirement, said remedy exceeds the authority of the honorable court which is vested with the authority to adjudicate **specific decisions** pertaining to entry into the seam zone, and not with a demand to change provisions deriving from security legislation.
85. According to section 5A of the Courts for Administrative Affairs Law, 5760-2000, this honorable court is vested with the authority to adjudicate specific decisions pertaining to entry into the "seam zone" according to the circumstances of each and every petitioner (for this purpose see the subjects specified in the fourth addendum of the above law). Said section 5A expressly excludes petitions requesting, as a main remedy, to enact or cancel security legislation, declare that it is void or grant an order to enact it. "Security legislation" is defined in this section as including, *inter alia*, manifest, order, regulation, declaration, notice, publication or any other document issued by the commander of the Israel Defence Forces in the area, a military commander or any other authority acting in their name, on their behalf or with their authorization. This is the place to note that according to the seam zone declaration orders, the Head of the Civil Administration was authorized by the commander of IDF forces in Judea and Samaria to establish the directives and arrangements concerning the permit regime in the seam zone.
86. Therefore, Petitioners' demand to change the procedures requiring the presentation of a *Tabu* extract, exceeds the scope of the specific decisions and constitutes a demand to change security legislation. Therefore, Respondent's position is that said demand is not within the authority of the honorable court and justifies, in and of itself, the dismissal of the petitions, *in limine*.

It should be noted in this context that the decision of Petitioner 2, which is a public petitioner requesting remedy for all land owners in the seam zone, to add itself as a party to the petition, shows and reinforces the conclusion that the petitioner wishes to veer in these petitions from Petitioners' specific cases and from the scope of the authority of the honorable court.

Conclusion

87. The Petitioners request the honorable court to order the Respondent not to obligate them to attach to farmer permit applications concerning regulated lands in the seam zone a land registration extract attesting to their rights.

There is no basis for this request, which is contrary to the Seam Zone Standing Orders and subsequently the 2019 Seam Zone Entry Procedures, in the examination of Petitioners' specific matters. The Supreme Court also found no reason to interfere in this requirement and the petitions do not reveal any reason for the cancelation of said requirement, which is a reasonable and proper requirement.

It seems that the Petitioners wish to revoke the provision included in the 2019 Seam Zone Entry Procedures obligating them to attach to their agricultural seam zone permit application a *Tabu* extract, a remedy which is not within the authority of the honorable court.

88. As aforesaid, the 2019 Seam Zone Entry Procedures have just recently been revised, after the filing of the petitions. According to the new procedures, various changes were introduced, including, inter alia, an extension of the term of the permits from two years to a maximum term of three years, and the introduction of "punch card" permits consisting of a pre-defined number of seam zone entries according to the size of the plot and the relevant agricultural need. Accordingly, to the extent the Petitioners present *Tabu* extracts concerning their proprietary rights in the plots, they will be able to submit an application for a suitable permit according to the size of their plot as set forth in the 2019 Seam Zone Entry Procedures.
89. In view of all of the above, the honorable court is requested to dismiss the petitions and obligate the Petitioners to pay Respondents' costs and attorneys' fees according to the law.

Yoel Vogelmann, Advocate
District Attorney's Office Jerusalem - Civil
Counsel for the State of Israel