



CREEPING DISPOSSESSION

Israeli Restrictions on Palestinian Farming Beyond the Barrier

OCTOBER 2021



CREEPING DISPOSSESSION

Israeli Restrictions on Palestinian Farming
Beyond the Separation Barrier

OCTOBER 2021

CREEPING DISPOSSESSION

Israeli Restrictions on Palestinian Farming
Beyond the Separation Barrier

Research and writing: Jessica Montell

Data coordination: Irit Eshet,
Nehaia Magdoub

Legal advice: Adv. Tehila Meir

Translation: MJ Translations

Copy editing: Shelly Cohen

Production: Andrea Szlecsan

Graphic design: Sofi Cooperative

Typesetting and layout: Debora Pollak

On the cover: agricultural gate 623 in the
Separation Barrier, Deir Al Ghusun, West
Bank, 2017. Photo by Ahmad Al-Bazz/
ActiveStills

October 2021

HaMoked wishes to thank the hundreds of individuals and institutions in Israel and around the world that support its activities. Over half of our funding is provided by foreign government entities. A full list of donors appears on the website of the Israeli Registrar of Non-Profit Organizations and HaMoked's website.

ISBN 978-965-7625-07-1



CONTENTS

- 6 Introduction**
- 9 The Original Sin: The Barrier’s Route**
- 14 The Via Dolorosa of Permits and Gates**
 - The Permits
 - The Gates
- 18 Steady Deterioration in Access: The Regulations**
 - The Regulations of 2014: Family Members Denied Permits
 - The Regulations of 2017: Permits Denied Over Plot Size
 - The Regulations of 2019: Permit No Longer Grants Unlimited Entry
 - “No Guarantee We Can Reach Our Land”
 - Denial of Permits for “Security Reasons”
 - “You Make Extremist Statements”
 - New Restriction: No Permit Without Ownership
 - Re-Registration With the Israeli Military
- 30 Steady Deterioration in Access: The Data**
- 31 Access Limited and Denied for Reasons Unrelated to Security**
 - “The Right to Make Coffee on My Land”
 - Revolving Door of Permit Rejections
- 37 Case Study: Qaffin**
- 42 A Violation of Basic Rights**
 - “The Olive Harvest Used to Be a Big Festival”
- 45 Long-Term Implications of Denial of Farmers’ Access**
- 47 Conclusion**
- 49 Recommendations**



Introduction

In 2002, against the backdrop of the violence of the second intifada, the Government of Israel decided to erect a physical barrier between the West Bank and the State of Israel. In most parts of the West Bank, the Barrier is composed of an electronic fence with barbed wire, ditches, intrusion detection roads and patrol roads on either side of it – with an average width of some 60 meters. The rural areas of the West Bank discussed in this report feature this type of barrier. In urban areas such as Jerusalem, Bethlehem, Qalqiliya and Tulkarm, the Barrier is a roughly nine-meter-tall concrete wall.

Despite Israel's assurances that the Barrier was meant to stop potential terrorists from entering the country from the West Bank, most of the Barrier (some 85% of its route) was built inside the West Bank rather than on the Green Line. As such, the Barrier does not separate between the West Bank and Israel, but rather between different parts of the West Bank. The areas trapped between the Barrier's route and the Green Line constitute 9.4% of the occupied West Bank, including East Jerusalem. Israel refers to these areas as the "Seam Zone" and declared them a closed military zone that Palestinians are barred from entering without a special permit. Permits are issued only to individuals Israel considers as having a legitimate interest in accessing these areas: individuals who own land there, residents of villages there and those providing them with professional services such as teachers and physicians. Anyone else, whether wishing to visit relatives, help landowners with farming or other pursuits, have great difficulties obtaining a permit.

About two decades ago, the construction of the Separation Barrier was at the forefront of Israeli, Palestinian and

international public and diplomatic discussions. Criticism centered on the route chosen for the Barrier, deep inside the West Bank, creating dozens of enclaves isolated from the rest of the West Bank and raising serious concerns regarding the dispossession of tens of thousands of people from their lands, and the disruption of daily life for hundreds of communities along the Barrier's route. Criticism by the international community culminated in a referral of the matter to the International Court of Justice in The Hague (the ICJ).

Responding to the criticism, Israel argued that the Barrier was motivated solely by the need to prevent the penetration of potential terrorists from the West Bank into Israel, and that security considerations were the primary factor dictating the Barrier's route. Nevertheless, in several places, it modified the route to reduce harm to Palestinian communities. It also modified the procedures governing Palestinian access to areas behind the Barrier, opening dozens of gates in the Barrier and setting opening days and hours for each of them.

Most of these declarations and modifications were made as part of litigation in dozens of petitions to Israel's High Court of Justice (HCJ) filed by HaMoked, other human rights organizations, private attorneys and Palestinian communities. These petitions challenged the construction of the Barrier inside the occupied territory per se, specific segments of its route, and the regime that denies Palestinian access to the Seam Zone. In all of these High Court proceedings, the State repeatedly promised that, barring security concerns, Palestinians would have virtually unfettered access to the lands on the other side of the Barrier. The State also promised that "Palestinians with links to lands in the Seam Zone would continue to cultivate them, while enabling relatives and other workers to assist them."¹ Now, nearly two decades later, the Barrier has disappeared from the public and diplomatic agenda, but it remains a fixture of the West Bank landscape, disrupting the lives of hundreds of thousands of people.

The Barrier surrounds and separates some 32 Palestinian villages from the rest of the West Bank. Their residents, some 11,000 people, can only stay in their homes with a "permanent resident

¹ HCJ 9961/03, 639/04, HaMoked Center for the Defence of the Individual et al. v. Government of Israel et al. (2011), [judgment dated April 5, 2011](#), para. 34.

of the Seam Zone” permit. The Barrier also separates East Jerusalem and its 340,000 Palestinian residents from the rest of the West Bank. In addition, several thousand Palestinians who seek entry to areas beyond the Barrier, including farmers, merchants, teachers, students, medical staff, international organization employees and Palestinian Authority employees, must obtain a permit, according to categories set by the military.

This report focuses on the largest group requiring access to these areas – tens of thousands of Palestinians who own plots of land there, as well as their families and other agricultural workers – and examines the military bureaucracy governing Palestinian access to farmlands in the Seam Zone.

The report builds on HaMoked’s 2013 report that detailed the development of the Seam Zone permit regime’s bureaucracy over the years.² That report concluded that:

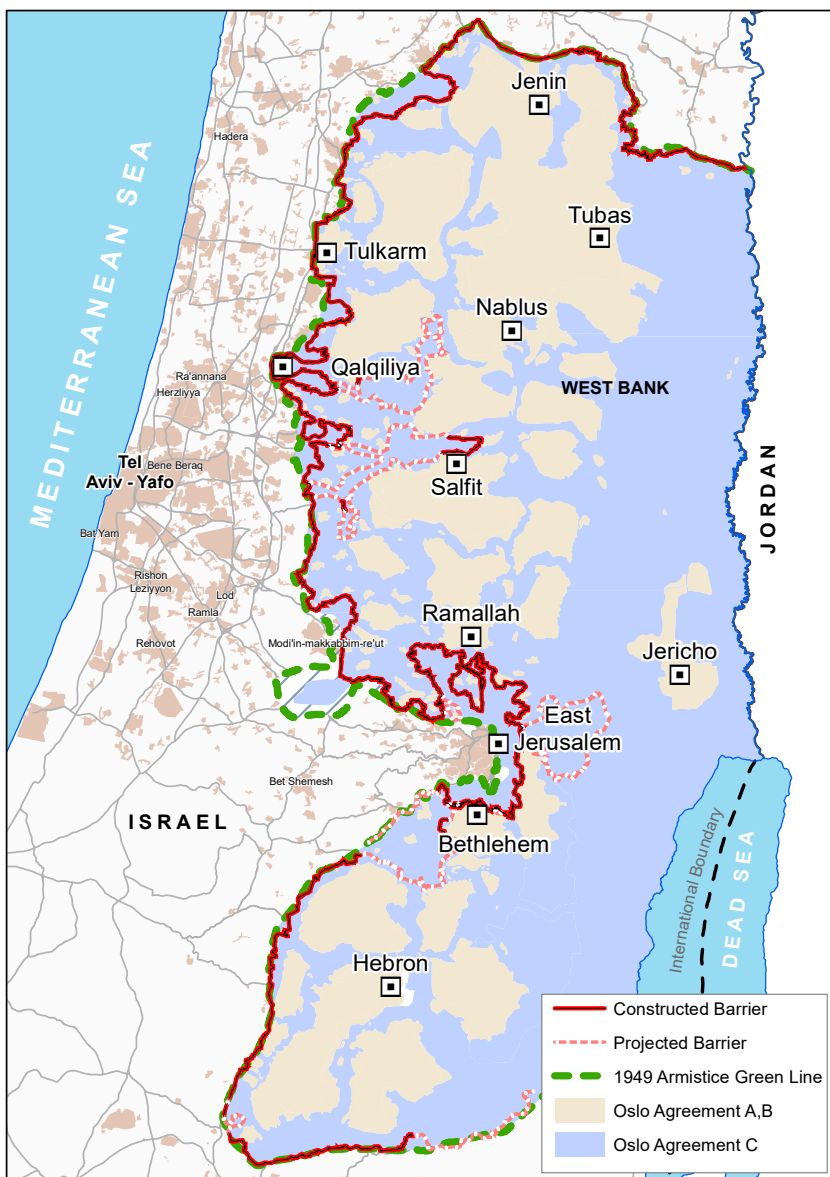
The human rights violations caused by the permit regime have a destructive effect. It is, in effect, a situation of creeping dispossession of West Bank lands under the cover of a bureaucracy that operates pursuant to military law with the Israeli Supreme Court’s seal of approval.³

The human rights violations against Palestinians living on both sides of the Barrier have only grown worse in the eight years since the publication of HaMoked’s previous report.

2 [The Permit Regime: Human Rights Violations in West Bank Areas Known as the “Seam Zone”](#), HaMoked, March 2013.

3 Ibid., p. 97.

The Original Sin: The Barrier's Route



Only a fraction of the Separation Barrier is built on the Green Line (the 1949 armistice line between Israel and the West Bank). The majority of the Barrier is constructed inside the West Bank. Due to its serpentine twists, the total route of the Separation Barrier is 712 kilometers long, over twice the length of the Green Line. So far, construction has been completed on 65% of the Barrier's approved route, with construction uncompleted in segments encircling the Kedumim and Ariel settlements in the northern West Bank and Ma'ale Adumim in the center.

Responding to petitions filed with the High Court of Justice following government approval for the Barrier's route, the State has claimed the route was dictated primarily by security concerns: "The route of the Fence [i.e., the Barrier] was set based on a range of considerations. First and foremost of these considerations is the security consideration, and this was accompanied by additional considerations, such as topographical considerations."⁴ Here it is important to distinguish between the motivation for constructing a physical barrier and the specific route of that barrier. The decision to construct a barrier was motivated, at least according to the State's declarations, by the desire to prevent violent attacks inside Israel. The route, however, was dictated by other considerations. In most of the places where the Barrier extends deep into the West Bank, it encircles settlements. Furthermore, often the Barrier not only encircles the settlement itself but also large tracts of land around the settlement. It is, therefore, safe to say that the perpetuation of settlements and their possible future expansion was a crucial factor in determining the route along which the Barrier would be built.

The Barrier adjacent to Azzun and Nabi Elyas, near the settlement of Zufin (Tzofim), is one such example, and illustrates the motivation underlying the route. Construction of this segment of the Barrier involved the confiscation and isolation of hundreds of dunams of farmland belonging to residents of the two villages. In 2002, the two villages petitioned the High Court of Justice against the Barrier's route. In response to the petition, the State claimed the construction of the Barrier and the route chosen for it were needed as a buffer zone:

⁴ See, e.g., HCJ 6896/18, Ta'meh et al. v. Military Commander in the West Bank et al., [Response on Behalf of the State, June 9, 2020](#), para. 20.

According to the view of the security and military officials in charge of the matter, creating a Seam Zone is a central component of the fight against terror originating in Judea and Samaria. Given that no barrier is a total block against infiltration of terrorists, the purpose of the Barrier is to delay infiltration to Israel for a time to enable forces to reach the site of the infiltration, and thus to create a geographic security space to enable fighting forces to conduct a chase after the terrorists before they enter Israel.⁵

The Court rejected the petition, accepting the State's contention that security considerations dictated the choice of the route in this area.

In March 2005, HaMoked petitioned the Court again on behalf of the two villages. HaMoked argued that this segment of the route was not in fact determined by security considerations, but was rather intended to enable the eastward expansion of the Zufin settlement. HaMoked presented a map showing clearly that the route of the Barrier ran along the municipal borders of the settlement, encircling dozens of dunams of land far from the built-up area of the settlement and intended for its future development. The correlation between the Barrier route and the future expansion plans of the settlement could not be accidental, HaMoked argued, which proved that the Barrier's route was not set according to security needs but according to annexation and settlement needs.

In response, the State admitted that the area isolated by the Barrier was indeed designated for an industrial zone for Zufin and that the outline plan of the settlement was a central component in determining the route of the Barrier in this area. This was the first time that the State acknowledged that settlement expansion was a factor in setting the route. The State eventually announced it would change the Barrier's route in this area. The Court, therefore, accepted HaMoked's petition, ruling that the Barrier to the east of Zufin was illegal and must be changed. In the judgment, Supreme Court President Aharon Barak highlighted the fact that the security establishment had intentionally misled the

5 HCJ 8172/02, Ibrahim et al. v. Commander of IDF Forces in the West Bank et al. (2002), [judgment dated October 14, 2002](#) (Hebrew).

Court in its response to the 2002 petition, and reprimanded them for their misconduct:

A severe phenomenon was revealed in the petition at hand. In the initial petition, the Supreme Court was not presented with the full picture. The Court dismissed the initial petition based on information which was only partially grounded in fact. The State Attorney's Office acted properly, for when it was informed about the consideration given to Plan 149/5 [Zufin's expansion plan], it so notified the Court, and the Respondents acted properly when, on this background – and in light of our decision in Alfe Menashe – they changed the route of the Barrier on their own initiative. However, the petition before us points out an event that cannot be tolerated, whereby information given to the Court does not reflect all the considerations taken into account by the decision-makers. As a result, a petition was rejected, which even the Respondent now agrees, should have been accepted. Explanation was provided to us regarding the special circumstances in which the security officials operated, and which led to the failure. We hope that it does not recur.⁶

Zufin is only one of several places where the Barrier route was determined to enable future settlement expansion. In a 2005 report, Bimkom and B'Tselem examined twelve different segments of the route where the Barrier encircles Israeli settlements. In all of these cases, the Barrier's route was set hundreds, and even thousands of meters from the houses at the edge of the nearby settlement. The route of the Separation Barrier running near each of the twelve settlements follows the borders of the outline development plan for the particular settlement. It is hard to avoid the conclusion that these plans played a crucial role in determining the Barrier's route.⁷

Israel's High Court of Justice ruled on principled petitions against the construction of the Barrier inside the West Bank, as well as specific segments of the Barrier. Unlike the ICJ, the Israeli Court did not reject all construction of the Barrier within the West Bank.⁸ Instead, the Court's approval of the Barrier

6 HCJ 2732/05, *Head of Azzun City Council et al. v. Government of Israel et al.* (2006), [judgment dated June 15, 2006](#), para. 7.

7 [Under the Guise of Security: Routing the Separation Barrier to Enable the Expansion of Israeli Settlements in the West Bank](#), Bimkom and B'Tselem, 2005.

8 For more on the ICJ's Advisory Opinion on the Separation Barrier, see p. 43 below.

rested on maintaining an appropriate balance between Israel's security needs and protecting the rights of the Palestinian population. As we shall see, in reality, no such balance is maintained.

The Via Dolorosa of Permits and Gates

By military order, the areas of the Seam Zone, trapped between the Barrier and the Green Line, are a closed military zone; however, they are closed for Palestinians only. It is only Palestinians, including those with the strongest connection to these areas, i.e., people who actually own land there and those living in nearby communities, who must obtain a special permit to access these parts of the West Bank. Israelis and foreign nationals may enter the Seam Zone freely.

THE PERMITS

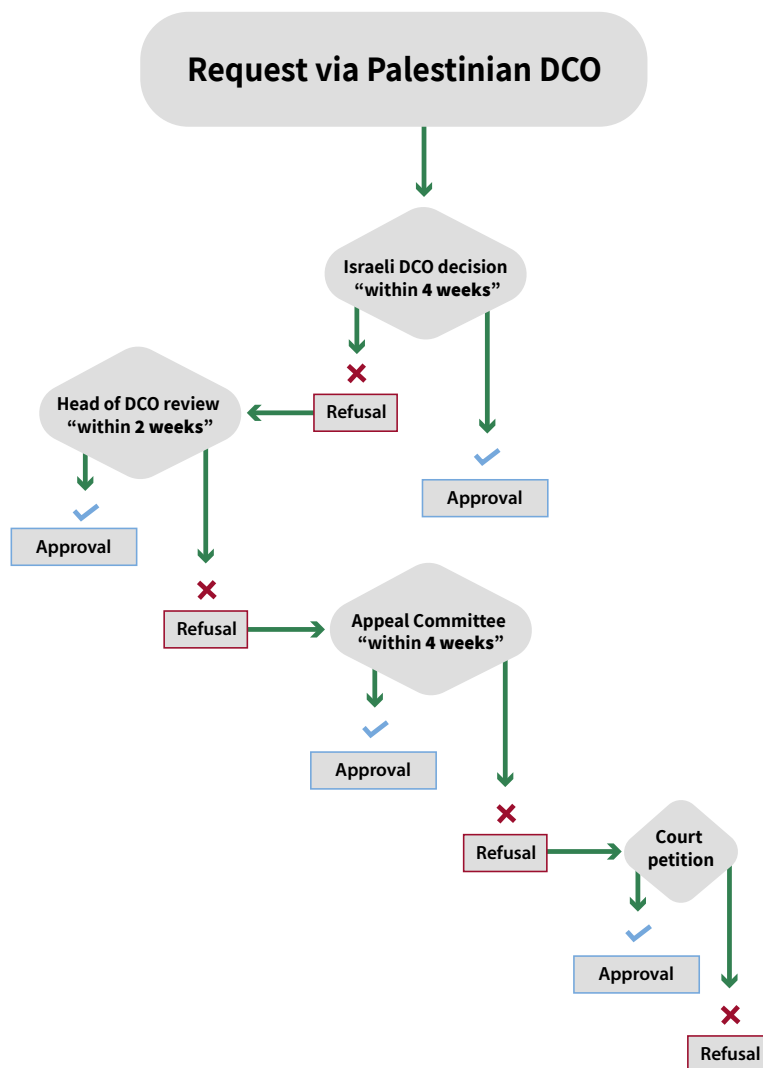
Following the construction of the Separation Barrier, the military developed a labyrinth bureaucracy that stands in the way of tens of thousands of Palestinians who must apply for permits to enter the Seam Zone every year. According to a voluminous document entitled “Regulations and Procedures for Entry to the Seam Zone” (hereafter: the Regulations),⁹ permit applications must be submitted via the Palestinian District Coordination Office (DCO) in the applicant’s area. The Palestinian DCO has no substantive role in deciding on the permit application. It functions merely as a conduit, transferring requests to the local Israeli DCO and communicating the response back to the applicant. Applicants receive no written confirmation of submission.¹⁰

According to the current Regulations, applicants should receive a response to their application within four weeks, but many receive no response within this time frame, if at all. Often in response to inquiries, the Israeli DCO says that the request was never received, and since applicants do not have written confirmation

9 Until 2019, the document was entitled Standing Orders for the Seam Zone (or Standing Orders).

10 Between May and November 2020, the Palestinian Authority halted coordination with Israeli authorities in protest of Israel’s intention to annex parts of the West Bank. During this time, the Israeli DCOs processed permit requests submitted to them directly.

of submission, they must resubmit the application to the Palestinian DCO. In the event that a permit is denied for reasons unrelated to security, the Regulations lay out a two-stage appeal process: first to the head of the local Israeli DCO, who holds a hearing, then, if the decision is not reversed, an appeal can be filed with the Appeal Committee at the military’s Civil Administration. The Regulations set out a timetable for each stage, but the military rarely conducts these appeals on schedule. If both of these instances fail to reverse the permit denial, the only recourse is a petition to the Israeli Court. Since the Knesset passed the 2018 amendment to the Administrative Courts Law, petitions regarding access to the Seam Zone are generally filed to the Jerusalem District Court rather than the High Court of Justice. Where permit applications are denied on security grounds, the appeal is filed directly with the Appeal Committee, and there is no hearing before the head of the DCO.¹¹



11 For more on the denial of permits for “security reasons”, see p. 24 below.

HaMoked assists hundreds of Palestinians every year to navigate this complex bureaucracy, inquiring on behalf of people whose applications were denied and those who received no response at all, assisting them with the Head of DCO Review, representing them before the Appeal Committee and filing court petitions on their behalf. A majority of these interventions are ultimately successful – of the 166 HaMoked cases concluded in 2020, 132 concluded with permits granted – but often applicants are left for long months and even years without a valid permit.

THE GATES

In response to legal challenges filed by HaMoked and the Association for Civil Rights in Israel at the inception of the permit regime, Israel promised that:

All those holding farmer permits will be able to pass through crossings that are open 24 hours a day, seven days a week, in case they wish to enter or leave the Seam Zone in order to cultivate their land.¹²

Contrary to this commitment, however, even those who manage to obtain permits cannot access their lands freely.

Each permit specifies one or two gates through which the permit holder can cross. Most of these gates are not open all day, or even every day. Of the 79 Barrier gates, five are open all day; 11 gates used for access to farmlands are open daily (“daily gates”); ten are open a few times a week (“weekly gates”); and 53 are “seasonal gates,” open only for short durations each year, most importantly during the olive harvest.¹³

Soldiers usually open the daily and weekly gates two to three times each day for ten to 45 minutes each time: in the morning (sometime between 6:00 A.M. to 7:00 A.M.) and in the late afternoon (4:00 P.M. to 5:00 P.M.). Some gates open in the early afternoon as well (noon to 1:00 P.M.). These opening hours compel farming during the heat of the day, rather than early morning or early evening, as is traditional and sensible for the hot

12 HCJ 639/04, *The Association for Civil Rights in Israel v. IDF Commander in the Judea and Samaria Area* (2011), [Response on Behalf of the State, February 4, 2004](#), para. 36 (Hebrew).

13 Data provided to HaMoked by UN OCHA based on October 2019 mapping.

climate. The gates are not opened on weekends, preventing people with day jobs from cultivating their land on their days off.

If a farmer misses the opening time stated on their permit, he or she will have to wait hours for the next opening of the gate. A farmer who misses the late afternoon opening will have to spend the night out in the open, until the soldiers open the gate the next morning.

The soldiers on duty do not always respect the opening hours. They are often late, or may skip the mid-day opening hour altogether. For four years, for example, HaMoked has been waging a battle on behalf of farmers from the communities of a-Zawiya and Mas-ha who on a regular basis must wait hours for soldiers to open the Magen Dan gate. In September 2020, in response to HaMoked's High Court petition on this matter, the State announced that the military police had taken over responsibility for opening the gate, which would solve the problem of delays. The State also announced that the gate would now be open seven days a week, and for slightly longer periods each time.¹⁴ While initially farmers reported that these promises had been implemented, recently problems have re-emerged. The gate is sometimes opened late and sometimes not at all. HaMoked has also learned of a plan to make the gate seasonal, meaning it would be open only during the olive harvest. Given these developments, HaMoked has filed another petition with the Court regarding the functioning of the Magen Dan gate.

In addition to the failure to adhere to opening times, soldiers prohibit passage through the gates with agricultural and other vehicles, fertilizers and other farming equipment without a special permit. HaMoked has also dealt with cases where soldiers prevented passage of farm animals or electric bicycles, even though the Regulations do not prohibit these.¹⁵

14 HCJ 8084/19, Radad et al. v. Military Commander of the West Bank (2020), Joint Motion, September 10, 2020; see <http://www.hamoked.org/Document.aspx?dID=Updates2194>.

15 In 2019, following HaMoked's intervention, the military again allowed Palestinian farmers to bring [horses](#), [donkeys](#), [wagons](#) and [electric bicycles](#) into the Seam Zone in order to reach their lands trapped inside the Seam Zone.

Steady Deterioration in Access: The Regulations

The first version of the Regulations and Procedures for Entry to the Seam Zone, released in 2009, required proof of a connection to the land to receive a permit. Those who showed a connection to agricultural land in the Seam Zone were usually issued a permit for two years. These permits, known as “farmer permits,” were not restricted solely to landowners, but family members and other workers were also entitled to receive permits, in keeping with traditional agricultural practices in this area.

The military has since updated the Regulations several times, further restricting Palestinians’ access with each update.

THE REGULATIONS OF 2014: FAMILY MEMBERS DENIED PERMITS

The Standing Orders of 2014 (as the Regulations were then called) limited farmer permits to registered landowners¹⁶ by requiring ownership of the land rather than a connection to it. Spouses and children, even if they are future inheritors, were no longer eligible to receive a farmer permit. At most, the landowner could apply for an “agricultural work permit,” subject to a predetermined quota of workers. As a result, the burden of tending to the land fell primarily on registered landowners, who are generally elderly people unable to engage in the hard physical labor of agriculture without assistance.

¹⁶ [Standing Orders 2014](#), pp. 18-20 (Hebrew).

THE REGULATIONS OF 2017: PERMITS DENIED OVER PLOT SIZE

The Standing Orders of 2017 further limited farmer permits. Applicants were now required to prove “agricultural need,” as defined by the military. The 2017 Standing Orders state that “as a rule, there will be no sustainable agriculture need when the size of the plot for which a permit is requested is tiny, not more than 330 square meters.”¹⁷ In response to a petition filed by HaMoked in 2018, the State Attorney’s Office confirmed that in the past, “[a] farming permit was granted to any applicant, in the absence of a security preclusion, who had presented to the Civil Administration evidence regarding proprietary ties to the plot, regardless of the size of the plot.”¹⁸

This new rule concerning plot size has profound implications, and it is the basis for the rejection of many permits. How did the military determine the minimum plot size of 330 m² as a condition for receiving a permit? An opinion written in January 2019 by Samir Moaadi, the military’s West Bank Agriculture Coordination Officer, explains that this figure was arrived at through the following calculation: Producing a 16-kilogram canister of olive oil requires at least 64 kg of olives. The average olive tree in the Seam Zone produces 16 kg of olives. So, four trees are required to produce 64 kg. On average, given the agricultural practices in this area, four trees will take up an area of 400 square meters. The conclusion of this calculation: “on a small area of 330 square meters in the Seam Zone, it is not possible to conduct sustainable agriculture.”¹⁹

The calculation rests on some perplexing presuppositions. For instance, 400 square-meter plots usually contain many more than four trees. Additionally, how was production of 16 kilograms of olive oil set as the standard for sustainable agriculture? Why could not production of 15 kg of olive oil be considered sustainable? This is not explained.

In fact, the whole idea of what constitutes “sustainable agriculture” must be challenged. The value of agriculture for Palestinian families and communities cannot be reduced to the total yield or its market value. Farming has social and cultural significance

¹⁷ [Standing Orders 2017](#), p. 22 (Hebrew).

¹⁸ HCJ 6896/18, Ta’meh et al. v. Military Commander in the West Bank et al., [Response on Behalf of the State, June 9, 2020](#), para. 28.

¹⁹ [Advisory Opinion on Agricultural Needs in the Seam Zone](#), Agriculture Coordination Officer, Civil Administration, January 24, 2019 (Hebrew).

beyond its economic value. Even the economic value cannot be reduced to market value, as many Palestinian farmers grow food for their own use, not necessarily to market commercially.

Perhaps the best response to this ludicrous calculation comes from the very same Samir Moaadi, Agriculture Coordination Officer, who, a few years earlier, in 2016, wrote a different opinion on the “minimum plot size that can support sustainable agriculture” for purposes of eligibility for Seam Zone farmer permits. In that opinion, Moaadi admits he had been unable to find literature to answer the question and that it concerns not just agriculture, but also has “security, political, legal and other” aspects as well. He follows this with an unequivocal finding that “Agriculture in the Seam Zone is considered traditional and family agriculture, and most of the agricultural yields are for personal use.” In the closing paragraphs of this opinion, he writes: “agriculture constitutes an important component in the Palestinian economy nowadays, and a primary source of livelihood for very many families, lacking other sources of livelihood. Therefore, it is vital to enable proper agricultural activity in the Seam Zone.”²⁰

So the military’s own agricultural expert acknowledged three aspects of agriculture in the Seam Zone:

- Defining “sustainable agriculture” is also a political, rather than just an agricultural question;
- Farmlands require attention year round;
- Most Palestinian farmers are not concerned about the commercial value of their yield as their crops are primarily for personal consumption.

Some two years later, this opinion did not prevent the military from setting an arbitrary minimum standard of 330 m² for sustainable agriculture, based on a calculation pertaining to one final product – olive oil – and using it as a basis to deny permits to hundreds of farmers.

Very few, if any, 330 m² plots exist in the Seam Zone. Most of the plots that are defined as “tiny plots” are much larger, but the

²⁰ [Definitions of Agricultural Needs in the Seam Zone](#), Agriculture Coordinator Officer, Civil Administration, September 28, 2016 (Hebrew).

military treats these larger plots as a composite of multiple “tiny plots” thanks to another section of the 2017 Standing Orders. According to this section, plot size is calculated as “a multiple of the entire plot by the relative portion of the ownership of the person requesting.”²¹

Traditionally, Palestinians do not subdivide between them farmland they inherit from their parents, but continue to cultivate the land jointly. Some of the siblings may have moved elsewhere. Others may have full-time jobs that preclude them from working the land throughout the year. However, all the heirs have joint ownership of the property, and most take part in the olive harvest. The new regulations ignore this practice.

Thus, for example, if a three dunam plot of land is owned jointly by ten cousins, the military will calculate each cousin as owning 300 m² – and no one will be entitled to a permit to tend this land. The “tiny plots” policy makes no allowances for how many permits, if any, have been given to cultivate a plot. This is not a hypothetical scenario. Rasmiya Ta’meh from Qaffin village owns 17.5 dunams of farmland in the Seam Zone, collectively with other inheritors. Yet, her son was denied a permit as the military calculated the size of her portion of the plot as 212 m². This although none of the other joint owners had been given a permit.

According to the 2017 Standing Orders, “landowners who are not entitled to a permit for agricultural or commercial needs” can apply for a personal needs permit. These permits are given only if there are special reasons or humanitarian grounds requiring their entry into the Seam Zone, such as a family or social event, an illness, a professional conference or proprietary ties to a plot that does not entitle the owner to a farming or commercial permit.²² While farmer permits were, at the time, granted for a period of two years, personal needs permits are given for a single entry or for a short period of up to a few months. Once the permit expires, the landowner has to request another personal needs permit.

In 2018, HaMoked petitioned the High Court of Justice against the plot size restriction based on the calculation used by the military. In December 2020, the Court issued an order nisi

²¹ [Standing Orders 2017](#), p.21.

²² *Ibid.*, p. 28.

directing the State to explain “why [the “tiny plot” article] of the Seam Zone Regulations should not be cancelled [...] and/or replaced by another arrangement which provides for the joint owners of rights in plots.”²³ In a response submitted in March 2021, the State refused to back down from its position and cancel this restriction.²⁴

THE REGULATIONS OF 2019: PERMIT NO LONGER GRANTS UNLIMITED ENTRY

The Regulations published in 2019 imposed much stricter conditions for permits to access the Seam Zone.²⁵ This reduced access is not a by-product, but rather the intention of the new Regulations. This is clear from the Regulations’ description of the purpose of access: while the previous Regulations stated the purpose of farmer permits is to “preserve connection to the land,” the 2019 Regulations state that the purpose is “to enable agricultural cultivation, according to the agricultural need based on the size of the plot and the type of crop, while preserving connection to the land.” These new Regulations therefore reflect the view that permits are not a function of property rights – implicit in which is the idea that an owner can access and use his or her property for any purpose they choose – but rather a utilitarian consideration dependent on “agricultural need” as defined by the Israeli military.

The policy translation of this change in conception was dramatic: even those to whom the military grants permits would no longer have unlimited access to their land. For the first time, the Regulations specified a “number of yearly entries” according to the “agricultural need”. Farmers with olive groves, for example, were allowed access for a maximum of 40 days a year. Over 95% of the farmland in the Seam Zone is currently cultivated with olive groves, so these restrictions threatened to empty the area of Palestinian farmers for most of the year.

²³ HCJ 6896/18, Ta’meh et al. v. Military Commander in the West Bank et al., [Amended Petition, February 27, 2020](#).

²⁴ Ibid., [Affidavit of Response on Behalf of the State](#), March 25, 2020.

²⁵ [Regulations 2019](#), p.21 (Hebrew).

“No Guarantee We Can Reach Our Land”

Hiam Ghanemah from the village of al-‘Araqah near Jenin inherited a 25-dunam plot of land from her grandfather, which she owns together with her siblings and cousins. In 2016, she had a two-year permit, but when this expired in 2018, she only received a permit for the two months of the olive harvest. She requested a new permit and was denied in December 2018 on the grounds that she owned a “tiny plot,” calculated as 137 m². Over the next year, HaMoked contested this rejection: first requesting a Head of DCO Review, which was rejected, then repeatedly requesting that Ms. Ghanemah be granted a hearing by the Appeal Committee. When no response was received to these requests, in September 2019 HaMoked petitioned the District Court. As a result of the petition, Ms. Ghanemah received a permit, once again, restricted to the olive harvest.²⁶

The military said that Ms. Ghanemah had to file a new permit request to the Palestinian DCO, as the new Regulations had entered into force on the very day the petition was filed. Ms. Ghanemah refused to start the entire process all over again. Judge Moshe Sobel stated, “I take note of the chronology in this file – an appeal was filed March 31, 2019, and no decision was made before September 9, 2019, when the petition was filed; the petitioner was summoned to the Appeal Committee only on September 18, 2019, after the petition was filed and after the new Regulations went into effect [...]” Judge Sobel therefore instructed the military to accept the new request filed via the Court.²⁷ However, even with this expedited procedure, it was not until March 2020 that the military decided to grant her a new three-year permit, under the terms of the new regulations – limited to 40 entries per year.

It’s not easy to get a permit to our land. It’s a long and exhausting process. I almost gave up, and there are so many farmers like me. Thanks to HaMoked, I got the three-year permit – but it’s limited to 120 entries. That sounds like a lot, but it’s actually only four months of entries. That’s nothing. It’s not enough and it’s

²⁶ AP 18868-09-19, [Ghanemah et al. v. Military Commander of the West Bank](#) (2020) (Hebrew).

²⁷ *Ibid.*, decision dated February 10, 2020.

unacceptable to me. With 120 entries for the next three years, I have to carefully calculate entries to my land. Because each time I go is one less from the total. Once, we would go to our land whenever we felt like it. Now that's impossible.

My grandfather, of blessed memory, used to grow winter produce on our land – wheat, alfalfa, and barley, in addition to the olive groves. But we don't grow vegetables anymore, because of the Barrier and all the rules and regulations of the military. There's no guarantee we'll be able to get to our land. If we cannot get uninterrupted permits, we can't take the risk of growing vegetables.

I'm the mother of a four-month old infant. I would like my husband to help me on the land, to rehabilitate it and plant it with something that will bring us a bit of income. But my husband doesn't get permits for my plot. We are a family, but in the eyes of the military we're not. That's a harsh judgement.

In February 2020, HaMoked amended its “tiny plot” petition to include the demand to cancel the new restriction on the annual number of entries to the Seam Zone. In October 2020, the State notified the court that the limited-entries permit would be cancelled. In February 2021, the military published the latest set of Regulations. The quota on number of entries to the Seam Zone has been removed.²⁸

DENIAL OF PERMITS FOR “SECURITY REASONS”

The 2019 Regulations also downgrade Palestinians' right to due process in the event that the permit is denied for security reasons. According to the previous Regulations, the military had to provide a brief explanation (referred to by the military as an “open paraphrase”), regarding the “security” grounds for refusal, and as a rule, if the person appealed this decision, a dedicated

28 [Regulations 2021](#) (Hebrew).

committee was to hold a hearing and decide the case within six weeks from the date of the appeal. However, the new procedures dictate the opposite: “as a rule, in case of a security refusal [...] the committee will not convene and no hearing is to be scheduled”; no justification for the refusal is to be provided unless the person files an appeal. Once the person receives the justification, they may submit a response. If they do so, the committee may hold a hearing, but the person is no longer allowed to be present at this hearing and the committee is no longer obligated to provide its final decision within a defined timeframe and can stall endlessly. In this context, it is worth noting that the committee is sometimes composed of a single person, as, according to the new Regulations, “in cases in which an appeal was filed over a security-based permit denial, or where a permit was approved for a shorter duration than set forth in the Regulations herein for reasons of security, the committee may be comprised of a chairperson only.”

“You Make Extremist Statements”

Mr. I. owns four agricultural plots of land inside the Seam Zone. He had a permit to reach his farmlands that expired in December 2017, but all his requests to renew the permit were rejected by the military, on various pretexts.

In June 2019, Mr. I. was notified that his request had again been refused, this time on the grounds that his plot was “tiny” and therefore did not warrant a farmer permit. After HaMoked intervened in an effort to have the decision reversed, in November 2019, the military suddenly announced that a “security” entry ban had been imposed on Mr. I. After HaMoked filed another appeal, the military responded that Mr. I.’s permit application was rejected because he “makes extremist statements”. HaMoked submitted written arguments against this absurd justification that same month, November. In January, as two months had elapsed with no response, HaMoked petitioned the Jerusalem District Court.

In its petition, HaMoked argued that the military's refusal to allow the petitioner regular access to his plots disproportionately violated his basic rights to property, freedom of occupation and freedom of movement. HaMoked also claimed that it was clear from the disclosed grounds for refusal – extremist statements – that there was no real security danger arising from his entry to the Seam Zone. HaMoked demanded in its petition that the man be given a two-year farmer permit, and also the cancellation of the new procedures regarding security rejections, which established a multi-phased procedure without a binding deadline for issuing a final decision in such appeals. HaMoked clarified that providing an explanation for a refusal only if and after the person appealed it violated the obligation to give reasons for an administrative decision, and extended the appeal process needlessly and by many months.

On February 19, 2020, the military appeal committee reinstated Mr. I's farmer permit. The decision stated that as a result of HaMoked's petition, security officials re-examined his case and lifted their objection to his request. However, the decision stated that the permit would be issued according to the regulations then in force limiting the number of entries.

NEW RESTRICTION: NO PERMIT WITHOUT OWNERSHIP RE-REGISTRATION WITH THE ISRAELI MILITARY

In 2017, the military imposed another obstacle to farmers seeking Seam Zone permits. Previously, inheritors of registered lands proved their ownership by presenting the *tabu* document (the deed from the Palestinian Authority land registrar) together with the inheritance order.²⁹ Over the past three years, however, the military has increasingly denied permits to inheritors, demanding that they register the land in their own name as a condition to receive new farmer permits. The military also demands re-registration be carried out by the Civil Administration (which is the agency in charge of land registration in Area C, as opposed to the Palestinian Authority). In some cases, the military will issue a

²⁹ This procedure applies only to registered lands, i.e., lands in those portions of the West Bank for which there is a land registry. In those portions of the West Bank for which there is no land registry, Palestinians prove ownership by showing the property tax receipt.

three-month personal needs permit until inheritors register the land in their name.

Joint landownership is a prevalent and acceptable practice in Palestinian society, and most Palestinian landowners avoid registering inheritors as owners in the Civil Administration land registry. In 2020, HaMoked petitioned the High Court of Justice in ten cases against the military's demand that Palestinians re-register their land as a condition to receive Seam Zone permits. All of the petitioners in these cases had previously received Seam Zone permits for years based on the original deed and inheritance documents, until the military suddenly imposed the demand to register the land in the inheritors' names. As the petitions argue, this requirement is completely inappropriate. A person with "a proprietary connection" to Seam Zone lands is entitled to a permit, and individuals who inherit lands in the area are entitled to a permit based on the documents in their possession. The petitions note that the permit regime is justified solely as a security measure, so security concerns should be the only reason to deny permits. The permit regime should not be a vehicle to force farmers to register their land with the Civil Administration.

The demand to re-register land compounds the policy of denying permits to West Bank residents considered as owning "tiny plots" in the Seam Zone. The State explicitly acknowledged this in its response to court petitions filed by HaMoked the previous year:

The demand [for inheritors to re-register land] is required of each of the petitioners who claim rights to a plot on an area of many dunams while their relative rights to the plot are a few dozen square meters, and in one case just 260 square meters. We are discussing tiny plots, which according to the opinion of experts in the Civil Administration, do not enable sustainable agriculture. Only organized registration in the land registry department will enable a clear and definitive picture both for the petitioners and for the respondent regarding the state and scope of the rights of each one of the applicants.³⁰

30 AP 62855-07-19, Zeid et al. v. Military Commander of the West Bank (2020), [Preliminary Response, October 7, 2019](#) (Hebrew).

However, contrary to the State’s response, the military has no need for re-registration in order to calculate the inheritors’ relative share of the plot, since, as noted above, dozens of permit applications have been denied after the military determined the applicants own “tiny plots”, based on the original title deed and inheritance documents. It is, therefore, clear that the intention behind the re-registration demand is to subdivide the plot among the heirs, rather than preserve the traditional Palestinian conception of joint landownership.

In HaMoked’s initial petition challenging the permit regime, filed in 2003, the High Court of Justice accepted the closure of the Seam Zone and the permit regime there, only after noting that the harm caused “necessitates arrangements to preserve as much as possible the fabric of life which existed prior to the declaration [of the Seam Zone], subject to the security needs necessitating this [regime].” The Court stated in that judgement that its pronouncement of the permit regime as legal rested on the presumption that the State had implemented “various measures intended to limit as much as possible the harm caused by closing the area [...] in order not to unnecessarily burden the lives of the residents beyond what is necessary for security needs.”³¹

HaMoked’s petitions argue that the demand to re-register land does not preserve the fabric of life and in fact constitutes an unnecessary burden. “Naturally, before the closure of the Seam Zone, no one prevented a person who inherited land from reaching their land [...], simply because they had not registered their rights in the *tabu*, so this new policy severely harms the fabric of life that was in place prior to the declaration.”³² HaMoked also addressed the drastic change in the military’s view of its own role:

The new policy of the [Military Commander] shows a drastic and unfortunate change in the Military Commander’s understanding of his role in maintaining the possibility that landowners and their families will continue to reach their lands and cultivate them. According to court judgements, in the past, the [Military Commander] saw himself as authorized to only determine the passage arrangements for landowners through the Separation Barrier. In contrast,

31 HCJ 9961/03, HaMoked Center for the Defence of the Individual et al. v. Government of Israel et al. (2011), [judgment dated April 5, 2011](#), paras. 33, 29 respectively.

32 HCJ 5131/20, Zeid et al. v. West Bank Military Commander, [Petition for Order Nisi](#), para. 151 (Hebrew).

today, the [Military Commander] is called upon, in the course of issuing permits, also to assess ownership of the land, and he also requires changes to [land] ownership registration in order for it to be recognized, even when ownership has not changed hands since the Barrier was constructed. In fact, this represents a severe deterioration in the recognition of the rights of local residents to continue, as much as possible, to conduct their daily life as they did before construction of the Separation Barrier and not to neglect their lands.³³

In July 2021, the High Court of Justice rejected the petitions, ruling that the demand to re-register lands did not cause disproportionate harm to the farmers. This, following the military's clarification that a farmer who applied to update the landownership registration would be entitled to a permit until the request was decided upon.

³³ Ibid., para. 146.

Steady Deterioration in Access: The Data

Given the increasingly restrictive regulations, it is no surprise that fewer Palestinians have been receiving permits to access the Seam Zone in recent years, particularly farmers. This is manifest in data provided to HaMoked through applications filed under the Freedom of Information Act and in the framework of High Court petitions:³⁴

Year	Farmer Permit Requests Submitted	Requests Approved	Requests Refused	Percent of Refusals
2014	4,504	3,180	1,324	29%
2015	4,476	2,694	1,782	40%
2016	9,501	4,286	5,215	55%
2017	5,363	2,409	2,954	55%
2018	7,954	2,161	5,793	73%
2019	7,400	2,741	4,659	63%
2020	8,015	2,184	5,831	73%

³⁴ The military also provided data on other agricultural permits for entry into the Seam Zone, such as “agricultural work permits” and “farmer relative permits”, however inconsistencies in the data prevented a comparison between years.

Access Limited and Denied for Reasons Unrelated to Security

Since 2003, the Israeli military and government representatives have repeatedly reiterated that security is the rationale for the Separation Barrier and the Seam Zone permit regime, and the relevant criteria for granting permits:

The assumption underlying the declaration of the Seam Zone as a closed military zone is that granting free entry and exit from [the West Bank] to the Seam Zone [sic] and from it to Israel, with no additional check, entails a security risk. Passage without a permit is liable to be exploited for activity against the security of the State of Israel and its citizens.

The conditions set for granting the various additional permits balance between the security considerations that led to closing the area and the obligation of the military commander to maintain reasonable access to the areas of Judea and Samaria [i.e., the West Bank] that lie on the western side of the Security Fence and to safeguard as much as possible a functioning fabric of life for those living in the Seam Zone or in areas near it.³⁵

While security considerations should be the only reason to deny permits, in fact these account for a tiny fraction of permit denials. According to the Civil Administration data, denials stemming from an objection from the Israel Security Agency range from 0-3% of denials of farmer permits and 1-6% of denials for agricultural

³⁵ HCJ 6896/18, Ta'meh et al. v. Military Commander in the West Bank et al., [Preliminary Response, May 1, 2019](#), paras. 12, 14 (Hebrew).

workers. Instead, according to this data, the primary reason for permit denials is “failure to meet the policy criteria.” In 2018, for instance, 4,304 people were denied farmer permits for this reason. Other reasons for denial of a farmer permit in that year:

- Request lacking documents (378 permits)
- No connection to the land (149 permits)
- The land is in the territory of Judea and Samaria (139 permits). While the entire Seam Zone is located in the West Bank (referred to by the military as Judea and Samaria), the intention here is that the land is on the other side of the Barrier and not in the Seam Zone. Even farmers who received Seam Zone permits for years can suddenly receive a permit denial based on the inexplicable claim that their land is suddenly no longer in the Seam Zone
- Faulty document (92 permits)
- Request lacking details (75 permits)
- Relevant documents missing (31 permits)
- Failure to prove landownership (25 permits)
- There are enough permits for the plot (7 permits)
- The land is uncultivated (3 permits)

Difficulties navigating the military bureaucracy are, therefore, the reason for most permit denials.

The Israeli military explains the high rate of permit denials by claiming that many Palestinians exploit the Seam Zone permit and use it to enter Israel to work without the necessary permit. Nevertheless, even if some people do use the Seam Zone permit to enter Israel, this in no way can serve as a justification to deny permits. It is the height of irony that Israel complains that it cannot give everyone permits “because there is no buffer between the Seam Zone and Israel” – when Israel itself set the route of the Barrier inside the West Bank creating this Seam Zone. By the same token, Israel is free to construct a physical barrier between the Seam Zone and Israel, but its failure to do so cannot justify denial of permits to Palestinians who have a right to access lands in the Seam Zone.

“The Right to Make Coffee on My Land”

Ahmad Abadi, together with his six siblings, owns a 42-dunam plot of land (42,000 m²) in the Seam Zone, around the village of Barta'a, near Jenin in the northern West Bank. The siblings have olive trees and grow tobacco. For years, Mr. Abadi regularly received two-year permits to access his land in the Seam Zone.

In September 2019, he requested a new permit and received no response. In October, HaMoked filed a request that Mr. Abadi be granted a hearing before the Appeal Committee. In November, the Jenin DCO informed HaMoked that it had decided to give Mr. Abadi a farmer permit valid for two years, but given that he owned a “tiny plot” the permit was limited to 40 entries per year. Mr. Abadi refused to take this permit, insisting on his right to access his land whenever he wanted. Mr. Abadi explained his rationale to the Appeal Committee in January 2020:

This permit that sets a limited number of entries to my land is humiliating and offensive. My connection to the land cannot be quantified into a number of entries. It isn't a function of what I'm growing there. I have a deep emotional connection to my land. The memories of my childhood are linked to it. Every time I enter my land, I remember my father and my mother. I remember the rock on which my father used to boil coffee and tea. I continue this tradition – I use that same rock to boil coffee and tea. This maintains my connection to my past and to my family. Reducing my connection to my land to a calculation of the crops grown there is offensive. It in no way captures my connection to my land.

The Committee rejected the appeal, citing a suspicion that Mr. Abadi had used his previous permit to enter Israel illegally to work and noting that “there is no physical barrier preventing entry into Israel from the Seam Zone.” The Committee stated that Mr. Abadi had not brought any evidence that he required more than 40 days a year to cultivate his land, noting that “making tea and coffee in the Seam Zone, every day, does not constitute a real ‘agricultural need.’”

Mr. Abadi joined HaMoked's amended court petition against the "tiny plots" policy.³⁶ This petition is still pending.

REVOLVING DOOR OF PERMIT REJECTIONS

Jihad and Fehmiye Harashe from Qaffin are in their late sixties. The family owns 22 dunams of farmland. The Separation Barrier cut their land in half, and 12.5 dunams are isolated to the west of the Barrier. Mr. Harashe relates:

My four brothers and I inherited this land from my father, who inherited it from our grandfather. Before the Barrier was built, I made my living from agriculture. We grew almonds, avocado, fava beans, lentils and chickpeas. We can't grow these crops anymore; they require constant care and the Barrier has reduced our ability to reach our land and tend our crops.

My four brothers were denied permits for security reasons, so my wife and I tend the land alone. Other relatives can only join us during the olive harvest. Up until 2017, I always got a permit. But suddenly in 2017 my permit was rejected."

In June 2017, the Harashes' request to renew their permits was rejected on the grounds that their land was "not in the Seam Zone." Their efforts to contest this rejection were unsuccessful. In July 2018, HaMoked submitted a request for a DCO review. This request received no response. In October, HaMoked submitted a request for an appeal committee hearing. In a written response, the military gave a new reason to reject their request: The Harashes do not meet the criteria for a permit, as their plot is only 157 m². HaMoked submitted a petition to the Jerusalem District Court challenging this rejection.

A court hearing was scheduled for March 2019. Just before the hearing, the military summoned Jihad Heresha to an appeal

³⁶ Ibid., [Amended Petition](#).

committee hearing. He was told to submit an affidavit that his brothers give him power of attorney to care for their part of the land. After the affidavit was submitted, the military granted the couple two-year permits, which they received in April 2019 – a year and a half after their previous permit had expired.

As a result of the lack of regular access and the neglect of the land during this year, the olive yield dropped from an average of 50 containers of olive oil each season to about five containers. By comparison, the yield from my land on the “Palestinian” side of the Barrier is about 20 containers of oil. I calculated that as a result of the Barrier, I lose about 25,000 shekels in income every year. Before the Barrier, I would tend the land together with my nieces and nephews. Other relatives would also come and help harvest. Now no one gets permits. My wife and I have to do it alone.

Recently, HaMoked challenged the requirement that elderly Palestinians must also obtain Seam Zone entry permits, given that they may enter Israel without any permit due to their age. This, following the lengthy bureaucratic ordeal endured by Ms. Sabah, born in 1958, and her husband, born in 1961, residents of Qaffin, who sought to tend their trapped land.

Ms. Sabah inherited a three-dunam plot, now located inside the Seam Zone, where the couple grow olive trees, fava beans and barley. Over the years, Ms. Sabah received two-year permits, but in September 2018, when she applied for a renewal, she was granted an olive harvest permit valid only until December 1, 2018.

Responding to HaMoked’s inquiry, the Public Liaison Officer at the Civil Administration insisted Mr. Sabah had asked for an olive harvest permit only rather than a general farmer permit. Having no other choice, Ms. Sabah filed a new application for a farmer permit in January 2019. The request was transferred from the Palestinian DCO to the Israeli DCO in a matter of days.

When no response came for weeks, HaMoked appealed over lack of processing. However, the appeal went unanswered as well. In late

March 2019, HaMoked demanded Ms. Sabah be granted an appeal hearing immediately, and filed another permit application at the same time. The Palestinian DCO said the request had been rejected as it failed to enclose an inheritance order, but the Civil Administration told HaMoked the application had never been received.

HaMoked contacted the Civil Administration on Ms. Sabah's behalf once again, and in May, was told the application had been rejected due to "illegible" documents and that the applicant must "bring clear documents showing the size of the plot" or else the application would not be considered. Shortly after that, without any explanation, the military issued Ms. Sabah a Seam Zone personal needs permit valid from June to the end of August 2019. HaMoked's request to extend the permit's validity was unanswered, and a petition was filed with the Court for Administrative Affairs in September.³⁷ It was only after the Court's intervention, in March 2020, that Ms. Sabah received a farmer permit valid for three years.

In the petition, HaMoked noted an absurdity: in order to enter the Seam Zone to work her plot of land, located inside the West Bank, Ms. Sabah has to wage an 18-month long battle against the permit regime's exhausting and hostile bureaucracy, but, at the same time, she may enter Israel freely, as according to military protocols, any Palestinian man over the age of 55 and any Palestinian woman over the age of 50 do not require a special permit to enter Israel.

In January 2021, HaMoked filed a petition on behalf of Ms. Sabah and four other Palestinians who meet the age requirement for permitless entry into Israel, demanding they be granted access to the Seam Zone without a special permit. In May 2021, the State announced the Seam Zone regulations have been amended to allow any Palestinian who may enter Israel to enter the Seam Zone as well.³⁸

It is still unclear how this welcome change in policy will be implemented and the petition is still pending.

³⁷ AP 50249-09-19, [Sabah et al. v. Military Commander of the West Bank](#) (2020) (Hebrew).

³⁸ HCJ 475/21, [Kabha et al. v. Military Commander of the West Bank et al.](#), [Preliminary Response](#), May 12, 2021.

Case Study: Qaffin

In June 2020, HaMoked petitioned the High Court of Justice to dismantle the Qaffin segment of the Barrier. The petition, filed by Attorneys Michael Sfar and Haya Abu Warda, was submitted on behalf of seven farmers from villages in the area and states as follows:

This petition concerns a segment of the Separation Barrier located on lands belonging to three villages, Qaffin, Nazlat 'Isa and Akkaba, in the northwest occupied West Bank. The segment traps thousands of dunams of farmland belonging to residents of the three villages, effectively dispossessing them of their property, livelihoods and way of life. [...] This petition is filed some 15 years after this segment of the Barrier was built and is based on the experience accumulated throughout this period of living “in the shadow of the Barrier” and the permit regime [...] [I]n the years that have passed since this segment of the Barrier was built, **it has been proven beyond doubt that the existence of the Barrier leads to the erasure of Palestinian life in the Seam Zone created by the segment and the severance of connection between the lands and their owners** [...] [O]ver the years, the Respondents have demonstrated that they are unable, and seemingly also unwilling, to fulfill the assurances they dispensed in the years during which the legality of building the Separation Barrier was considered by this Honorable Court, to the effect that landowners’ use of their lands beyond the Barrier would be protected and the connection Palestinian communities have to the area would be preserved.³⁹

³⁹ HCJ 3571/20, Khasib et al. v. Prime Minister of Israel et al., [Petition for Order Nisi](#), para. 2; emphasis in original.

Adjacent to the village of Qaffin, the Barrier was built along a route that is 200-1,600 meters inside the West Bank. This segment of the Barrier isolates some 3,200 dunams (3.2 square kilometers), all of it privately-owned Palestinian land, belonging primarily to the three adjacent communities: Qaffin, Nazlat 'Isa and Akkaba. Qaffin and Akkaba in particular are farming communities and the Barrier separates them from a majority of their farmlands: some 60% of Qaffin farmlands and some 80% of Akkaba farmlands. These lands can only be accessed through two agricultural gates, which are open three days a week, Sunday, Tuesday and Thursday, for three short times: in the morning from 6:30 A.M. to 7:15 A.M.; at noon from 12:00 A.M. to 12:10 P.M.; and in the late afternoon from 3:45 P.M. to 4:30 P.M.

The Separation Barrier has had devastating effects on these communities, which have always relied on agriculture as their primary source of sustenance. Taysir Amarneh, the head of the Akkaba Municipal Council, and one of the petitioners, explains:

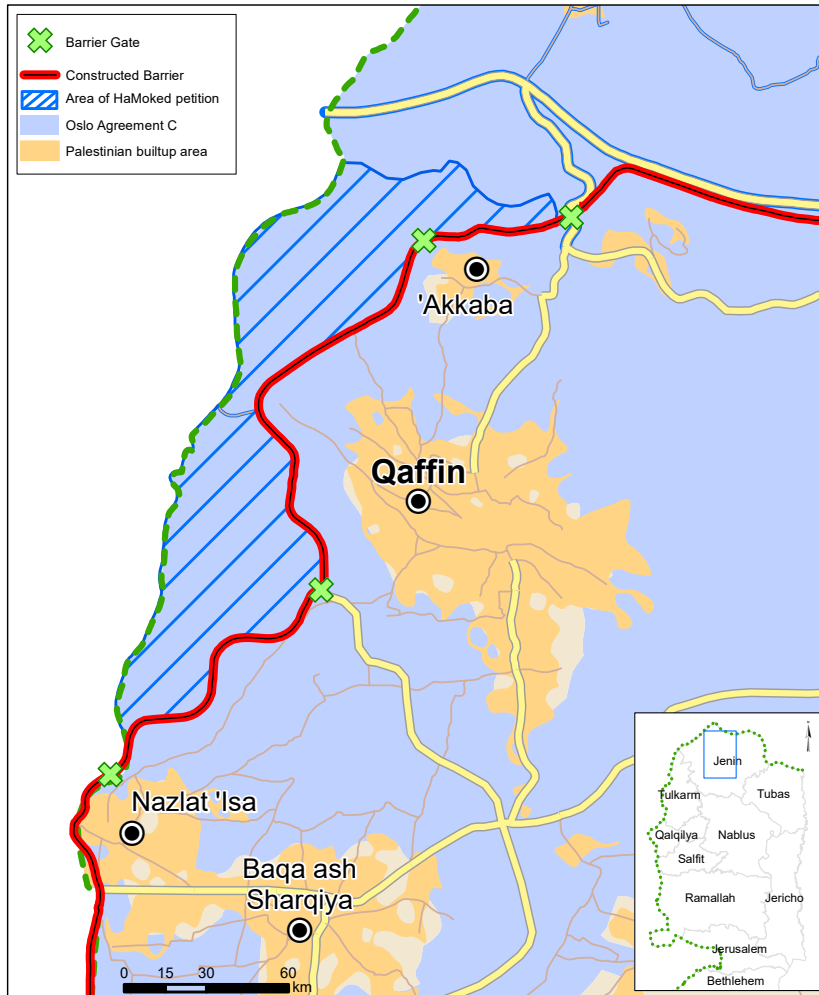
Starting in 2014, there has been a severe deterioration in agriculture in this area, because of the increasing restrictions on permits. Spouses and children of landowners can't get farmer permits anymore, so in most cases a single – usually elderly – landowner has all the burden of tending the land. In 2012-2014, the military gave 280 permits to people from our village. Today we only get about 80 permits.

The fertility of the land has also declined as a result of the neglect. The yield from olive trees in the Seam Zone has decreased by 65%.

Today many farmers have abandoned their lands west of the Barrier. Most of the residents of Akkaba now work inside Israel, or they rent land to the east of the Barrier.

I myself inherited from my father 260 dunams of land that are in the Seam Zone; of them, 60 dunams were seized to build the Barrier itself. I have another 74 dunams east of the Barrier. Today I mostly grow olives on the land in the Seam Zone. I don't grow seasonal vegetables anymore.

Between 2008 and 2014, I got permits for 12 workers to help me in the fields, but in 2014 the military stopped giving permits for agricultural workers, so it's only me who can tend the land. Of course, I'm very limited in what I can do myself, so I lost a lot of the yield from the land due to its neglect, and the income I get from the land dropped dramatically.



Map prepared by UN OCHA

My family's economic situation has really been badly affected because we can't reach our land. We used to grow all our own vegetables and fruits and grains. Today we have to buy everything. And I was a shepherd – I had 400 sheep. Today I only have 100, because it's too difficult to graze them in the Seam Zone. I don't know when the soldiers will let me pass with my flock and when they won't.

Like in Akkaba, the roughly 12,300 people living in Qaffin have been hard-hit by the Barrier and the restrictions. Many have had to find alternative sources of income since the construction of the Barrier, either as day laborers inside Israel or as employees of the Palestinian Authority.

In response to HaMoked's request, the Israeli military provided figures on permit requests to pass through the Qaffin gate. In 2014, the military received 1,778 requests for permits, of which it approved 1,256 (71%). This number has steadily declined over the years. In 2018 (the last year for which data was provided), Qaffin residents submitted 1,182 requests for permits, of which 606 (51%) were approved. The data support the reports from the villagers: fewer people are requesting permits at all, and far fewer permits are granted to those who request them.

The petition, filed on behalf of the three villages, argues that:

[T]he violation of the Petitioners' and their community members' fundamental rights to freedom of movement, livelihoods, culture and dignity, make the Barrier disproportionate both in the sense that there is a less injurious alternative (the Green Line-based barrier) and according to the proportionality test in the narrow sense, meaning the harm to protected persons in the area greatly outweighs the security benefit offered by the current route.

After many years and more than one hundred petitions filed by Petitioner 8 [HaMoked] on behalf of farmers whose access to their farmlands was blocked due to the provisions of the permit regime, the Petitioners have arrived at the conclusion that remedy in individual cases cannot resolve the systemic issues inherent in the current route of the Barrier, and that their only remaining course of action to avoid losing their lands is to demand the dismantling of the physical barrier on the current route, so that it would no longer trap lands belonging to the villages of Akkaba, Qaffin and Nazlat 'Isa.⁴⁰

⁴⁰ Ibid., paras. 9, 26.

The petition includes an expert opinion from Colonel (Res.) Shaul Arieli, a researcher of the Palestinian-Israeli conflict and a leading expert on Israel's border, Jerusalem and the Separation Barrier. The expert opinion concludes that there is no security logic to this segment of the Barrier. In fact the opposite is true: Arieli compared the current route to an alternative along the Green Line and concluded that a barrier based on the Green Line is preferable by every operational parameter set by the military: the ability to cross, early detection, dominating terrain in observation and fields of fire, proximity to urbanized terrain, security of troops operating along the Barrier, reduction of Barrier length, reduction in the number of agricultural gates, drastic reduction of permits needed for village residents, and reduction of Barrier and agricultural gate maintenance.⁴¹

⁴¹ Ibid., Exhibit 15, [Expert Security Opinion for Petition Regarding the Security Barrier Route in the Qaffin Area](#), Shaul Arieli, March 22, 2020.

A Violation of Basic Rights

The Israeli military is bound by International Humanitarian Law (IHL) regarding all its actions in the occupied territory. IHL requires the military to protect the Palestinian population under occupation and to ensure its welfare. Israel is also obligated to respect the rights of Palestinians according to international human rights law, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination, to all of which Israel is a signatory. These treaties require Israel to respect and protect Palestinians' right to free movement, the right to work and to earn a decent living, the right to family life, the right to an adequate standard of living, the right to cultural life, the right to property, and the rights to dignity and non-discrimination.

All of these rights are impacted by the construction of the Barrier inside the West Bank and the restrictions on Palestinians' access to the Seam Zone. Most obviously, the Barrier violates Palestinians' right to free movement. However, the restrictions on movement in turn lead to other human rights violations. Ownership, for instance, is meaningless if one cannot access the property, nor reap the benefits of it.

The Barrier also causes a severe violation of the principle of non-discrimination, which is a fundamental component of international human rights law: while Israelis and foreign nationals have free access to the Seam Zone, the vast majority of Palestinians are denied entry to those areas. Only a small minority of Palestinians are eligible to apply for permits, and in the process, they must endure the extremely restrictive, complicated and time-consuming permit bureaucracy.

The 2004 advisory opinion of the ICJ found that those segments of the Barrier route inside the West Bank violate Israel’s obligations under international law. The ICJ called on Israel to dismantle the segments already completed; and “repeal or render ineffective forthwith all legislative and regulatory acts relating thereto.”⁴² The ICJ also found that this situation obligated other states as well: “[A]ll States are under an obligation not to recognize the illegal situation resulting from the construction of the wall,” and must “see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end.” Furthermore, the ICJ stated, States parties to the Fourth Geneva Convention are obligated “to ensure compliance by Israel with international humanitarian law as embodied in that Convention.”⁴³

“The Olive Harvest Used to Be a Big Festival”

Amal Zeid, 36, from Nazlat Zeid near Jenin, owns a large plot of land of 266 dunams in the Seam Zone. Her July 2019 request for a Seam Zone permit was rejected on the grounds that she had to file a current Civil Administration document confirming her ownership, even though this document was submitted several months earlier. She filed another request with the same documents in August. The Palestinian DCO told her that her request had been sent to the Israeli DCO on September 22, but for months this request remained unanswered, even after HaMoked sent several requests and reminders on her behalf. In January 2020, HaMoked filed a petition to the District Court.⁴⁴ A week later, the military replied that her request was rejected “due to the enclosure of an illegible inheritance order.” HaMoked resent all of the documents and in February 2020, counsel for the State responded that Ms. Zeid had been granted a three-year permit.

Since the Barrier was built, it is so hard to reach our land. There are always new rules. I want to go to my land without restrictions, whenever I want to. I’m not asking to enter Israel.

⁴² [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory](#), International Court of Justice, Advisory Opinion of 9 July 2004, para. 163(3)B, p. 53.

⁴³ *Ibid.*, para. 163(3)D.

⁴⁴ AP 14057-01-20, [Zeid et al. v. Military Commander of the West Bank](#) (2020) (Hebrew).

We have olive groves on a big plot of land in the Seam Zone that we inherited from my mother's father. This is an important source of income for us. We also used to grow alfalfa, wheat and seasonal vegetables in between the olive trees. Produce you grow yourself has a different taste. It can't be described. But for a while I didn't have a permit, so we couldn't grow vegetables anymore.

Every time I want a permit, like most people I know, it's a battle. My sisters haven't gotten a permit for years. They've given up. But we have to maintain our connection to the land. Two days ago I took my two youngest children, aged 7 and 8, to our land across the Barrier. They were so happy. I want to pass on my love of the land to my children. I remember myself as a child. I would spend so much time on the land. The olive harvest was like a big festival. All of our relatives would meet and spend hours and days together, adults and children alike. I remember we would sometimes sleep out on the land. We can't do that anymore. You have to file documents. You need a permit. There's a checkpoint. If I cross, I'm worried I'll get stuck inside. Maybe the soldiers won't open the checkpoint.

Long-Term Implications of Denial of Farmers' Access

In addition to the violation of Palestinians' human rights, the Separation Barrier and the Seam Zone regime have economic and political implications for the broader community. Restricted access to farmlands has harmed livelihoods in the Jenin-Tulkarem-Qalqilya area, the most fertile area of the West Bank. Communities can no longer fully exploit the potential of this area due to the Barrier. Many farmers reported to HaMoked that they have switched from high-yield to low-yield agriculture in the Seam Zone, as access restrictions make it difficult to maintain greenhouses and cultivate high-yield vegetables.

Since most farmers are no longer able to grow vegetables and instead must rely exclusively on fruit trees, mainly olives, their income has dropped significantly. A 2003 report, prepared by the major donors of humanitarian aid to the Palestinians, documented that in 2000, a square kilometer of irrigated land in this area (i.e., land on which vegetables can be grown) produced nearly 7,000 tons of agricultural yield, compared to 319 tons per square kilometer on rain-fed land.⁴⁵ The necessity of switching from vegetables to olive trees, therefore, reduces income by 95%.

Taysir Amarneh, the head of the Akkaba Municipal Council offers an illuminating description of the state of affairs in the village:

In the past, Akkaba residents earned their living from agriculture. We grew almonds, za'atar, cucumbers, olives, sesame, tobacco, and okra, and we used the land for grazing. Construction of the Barrier and the restrictions on

45 [The Impact of Israel's Separation Barrier on Affected West Bank Communities](#), The Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LACC), May 2003.

reaching our land had a dramatic influence on our lives and blocked our main source of income. We had to abandon the crops that require daily attention. Now we grow mostly olives, and some wheat and sesame. And grazing herds is very difficult. Before the Barrier the village had 1,170 head of sheep. Today we only have about 340.

Even olive cultivation has suffered as a result of restricted access to lands in the Seam Zone. The United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA) has monitored olive production in the northern West Bank since 2010, by tracking four farmers who each have comparable plots of land on both sides of the Barrier. The study shows that on average, olive trees in the Seam Zone yield 60% less fruit compared to equivalent trees on the 'Palestinian' side of the Barrier, which can be tended on a regular and planned basis.⁴⁶

In fact, many Palestinians have abandoned agriculture in the Seam Zone altogether, due to the obstacles in accessing these lands. In villages like Qaffin and Akkaba discussed above, that once relied on agriculture as a primary source of income, most households are now dependent on day labor inside Israel, mainly in construction, or employment with the Palestinian Authority. And so, highly fertile areas of the West Bank have become barren, uncultivated lands due to the highly restricted access.

Finally, the Separation Barrier undermines the territorial integrity of the West Bank as a whole. The isolation of 9.4% of the West Bank has deleterious implications for the Palestinians' collective right to control their natural resources and their right to self-determination.

46 For data up to 2013, see [UN OCHA Humanitarian Bulletin](#), February 2014. Data for the years 2013 to 2018 was provided directly to HaMoked by UN OCHA.

Conclusion

Nearly two decades since the construction of the Barrier, we see the logic of a creeping dispossession – more and more restrictions on Palestinians trying to access areas trapped between the Barrier and the Green Line, and as a result, fewer and fewer people willing to navigate the complex permit bureaucracy Israel has put in place in order to limit access to the Seam Zone. The Barrier and permit regime have decimated the livelihoods of individuals, families and entire communities.

Any agricultural community will tell you that land is not merely functional. The land is a source of produce and, therefore, income, but its benefits cannot be assessed solely in monetary terms. The land is also a source of other kinds of satisfaction. It is a site for family and community events, and connection to the land is integral to the local culture. For dozens of Palestinian communities, and tens of thousands of people, all of this has been destroyed by the Separation Barrier. Even those who receive permits to cross the gates during their limited opening hours cannot have a picnic with their family or a spontaneous outing to their land as they once did.

The permit regime reverses the basic logic of international law that individuals enjoy freedom of movement within their own country, and that movement can only be restricted with just cause. For Palestinians living near the Separation Barrier Israel built on a route that cuts through the West Bank, free movement is the exception, and the restriction on movement is the rule. Initially Israel promised to always enable access to lands behind the Barrier, except when security needs preclude it. But now no security need is required to deny access and the premise of the permit regime is that only Palestinians who prove a need to enter these areas will be allowed

to do so. Furthermore, the military periodically amends its definition of “need” to be more and more narrow.

HaMoked has had success in overcoming some of the restrictions: permit policies have changed thanks to petitions filed by HaMoked and will hopefully undergo further changes following pending petitions; and, individuals who were denied permits eventually received them following legal advocacy by HaMoked. However, none of this changes the overall picture emerging from this report: steadily increasing restrictions on Palestinians’ access to areas within the West Bank known as the Seam Zone are creating an unbearably difficult reality.

Recommendations

The areas of the so-called Seam Zone are an integral part of the West Bank, and Palestinians have individual and collective rights to freely access these lands.

To meet its international legal obligations, Israel must change its policy with regards to these areas as follows:

1. Dismantle the segments of the Separation Barrier built inside the West Bank. If Israel chooses, it can reroute the Barrier to the Green Line or inside its own territory;
2. So long as the Barrier remains in place, Israel must cancel the Seam Zone permit regime. All Palestinians should be allowed to access these areas subject to a security check;
3. As an immediate measure, so long as the Barrier and the Seam Zone regime remain in place, Israel must grant long-term, unrestricted permits to all Palestinians with ties to lands beyond the Barrier, subject to a security check.

Israel's High Court of Justice approved the construction of the Barrier as a security measure born out of "a severe temporary reality."⁴⁷ Therefore, the unnecessary violation of Palestinians' individual rights and the collective rights of Palestinian communities must come to an end. Israel has an obligation to dismantle all segments of the Barrier located inside the West Bank and rescind the permit regime. The international community has an obligation to ensure that Israel do so. As the 2004 advisory opinion of the International Court of Justice makes clear, all UN member states must not recognize the illegal situation created by the Barrier and should ensure Israel's compliance with international law.

⁴⁷ HCJ 9961/03, 639/04, HaMoked Center for the Defence of the Individual v. Government of Israel et al. (2011), [judgment dated April 5, 2011](#), para. 46.



HaMoked: Center for the Defence of the Individual is a human rights organization founded in 1988 by Dr. Lotte Salzberger. HaMoked provides free legal aid to Palestinians living under occupation, and conducts strategic litigation and advocacy against Israel's violations of international humanitarian and human rights law in the West Bank, East Jerusalem and the Gaza Strip.

