At the Supreme Court Sitting as the High Court of Justice

HCJ 3571/20

Before:	**Honorable President E. Hayut** **Honorable Justice I. Amit** **Honorable Justice A. Stein**
The Petitioners:	1. **_____ Khasib** 2. **_____ Hareshah,** 3. **_____ 'Amar** 4. **_____ Sabah** 5. **_____ Hussein** 6. **_____ Daud** 7. **_____ 'Amarneh** 8. **HaMoked: Center for the Defence of the Individual**
	v.
The Respondent:	1. **Prime Minister of Israel** 2. **Minister of Defense** 3. **IDF Commander in the Judea and Samaria Area** 4. **Ministry of Defense - Separation Fence Administration**
	Petition for *Order Nisi*
Session Dates	9 Adar A 5782 (February 10, 2022
Representing the Petitioners:	**Adv. Michael Sfard; Sapir Kala**

Representing the Respondents : Adv. Kobi Abadi; Adv. Sharon Hoash Eiger

Judgment

Justice I. Amit

In the petition before us the court is requested to instruct the respondents to dismantle the separation fence in the segment of the villages of Nazlat 'Isa, Qaffin and Akkabah, "and inasmuch as they so wish, its relocation west of the Israeli-Jordanian 1949 Armistice Line (the Green Line)."

Background

1. In 2002 the government of Israel decided to build a fence between the Judea and Samaria area (hereinafter: **Judea and Samaria** or the **Area**) and the territory of Israel (hereinafter: the **Fence**), following the terror attacks which had hit Israel at the time (for a broader description of this decision and the backdrop against which it was made see, *inter alia*, HCJ 2056/04 **Beit Sourik Village Council v. Government of Israel**, paragraphs 1-6 (June 30, 2004) (hereinafter: **Beit Sourik**); HCJ 7957/04 **Mara'abe v. Prime Minister of Israel**, paragraphs 1-3 of the judgment of President **A. Barak** (September 15, 2005) (hereinafter: **Mara'abe**). Certain segments of the fence were not built on the Judea and Samaria border line (hereinafter also: the **Green Line**) but rather east thereof, leaving on the west side of the fence territories belonging to the Area. These territories are known as the "seam zone" and there is no physical barrier separating them from the territory of Israel.

2. Against this backdrop, in 2003 the Commander of IDF Forces in the Area (Respondent 3 and hereinafter: the **Military Commander**) declared the seam zone a closed military zone prohibiting Palestinian residents of the Area from entering it without a specific permit issued to them for this purpose (hereinafter: the **Permit Regime**). The arrangements pertaining to the issuance of permits as aforesaid are set forth in a procedure established by the Judea and Samaria Civil Administration, which is known as the "Seam Zone Standing Orders" (hereinafter: the **Standing Orders**) as those are updated from time to time. Among other things, the Standing Orders establish the conditions for receiving seam zone entry permits for agricultural needs and the procedure for their issuance. Entry into the seam zone is made through special purpose gates in the fence. I shall briefly state that in 2011 this court approved the lawfulness of the decision to declare the seam zone a closed military zone and to apply the permit regime thereto (HCJ 9961/**03 HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger v. Government of Israel** (April 5, 2011), (hereinafter: **HaMoked**), as shall be discussed in more detail below.

3. Certain segments of the fence were built on private land and in these cases the Military Commander issued a land confiscation order and compensation was paid for the use

thereof. An appeal could have been filed against the confiscation order to the Military Commander. If the appeal was denied, a petition could have been filed with this court within seven days (see, for instance, **Mara'abe**, paragraph 5; **Beit Sourik**, paragraph 8). And indeed, over the years in which the fence was erected numerous petitions have been filed with this court against certain segments of the fence. In some cases, the fence left within the seam zone whole villages, disconnecting their residents from the entirety of civil services provided in the Judea and Samaria Area (see, for instance, **Mara'abe** and HCJ 10309/06 **Alfei Menashe Local Council v. Government of Israel**, paragraph 3 (August 29, 2007) (hereinafter: **Alfei Menashe**)). In other cases it was argued that the fence, the seam zone and the permit regime deriving therefrom limit the access of Palestinian residents to their seam zone lands in a manner violating their rights and harming their ability to earn a living (see, for instance, **Beit Sourik**; HCJ 4825/04 **'Alian v. Prime Minister** (March 16, 2006)). Tens of petitions as aforesaid were deleted following an arrangement between the parties (**Mara'abe**, paragraph 5). Other petitions were accepted by the court which held that certain segments of the fence, running through Judea and Samaria lands, disproportionately harmed the residents of the area, and instructed the Military Commander to examine an alternative route (see **Beit Sourik**; **Mara'abe**).

4. As aforesaid, this petition concerns the route of the fence running near the villages of Nazlat 'Isa, Qaffin and Akkabah (hereinafter collectively: the **Villages**). In 2002 confiscation orders were initially issued to build the fence in that area, leaving the villages of Nazlat 'Isa and Baq'a al-Sharkiyeh within the seam zone (confiscation orders C/18/02 (Judea and Samaria) 5762-2002 and C/21/02 (Judea and Samaria) 5762-2002) (hereinafter respectively **Order C/18/02** and **Order C/21/02** and collectively: the **Original Orders**)). The residents of the villages in the surrounding area petitioned to this court against said route (HCJ 7783/02) and subsequently the Military Commander re-examined the route of the fence in that area and decided to change it such that the villages of Nazlat 'Isa and Baq'a al-Sharkiyeh would not be included in the seam zone. On November 17, 2002, the following judgment was given in said petition:

> "According to our proposal petitioners' counsel notified us of the withdrawal of the petition.
>
> The right of the petitioners is reserved to them to file with the competent authorities a specific appeal focusing on the route of the fence and the gates placed therein in the sections relevant to their matter. At the same time, the petitioners would not be able to re-argue arguments which had been raised by them in the past and which were discussed and rejected by this court. Petitioners' right is reserved to them, if their appeal is dismissed, to file another petition against the dismissal of the appeal including against the forum which made the decision.
>
> We have registered before us the state attorney's statement whereby one of the major considerations which would be considered in petitioners' anticipated appeal would be the consideration which had already been applied to the construction of the seam zone and that hearing the appeal at this time may considerably encumber the mere execution of the project. We have also registered before us the statement of petitioners'

> counsel whereby they object to the state's argument concerning a change for the worse in the situation.
> Subject to the aforesaid we decide to dismiss the petition"
> (HCJ 7783/02 **Sharim v. Commander of IDF Forces in the West Bank** (November 17, 2002)(hereinafter: **HCJ 7783/02**)).

Subsequently Order C/18/02 and Order C/21/02 were revoked and the segments of the fence which had been erected by virtue thereof were dismantled. The Military Commander issued confiscation order C/36/03 (Judea and Samaria), 5763-2003 (hereinafter: **Order C/36/03**), and in 2005, the erection of the fence in the section which is the subject matter of the petition at hand was completed on the basis of Land Confiscation Order C/17/02 (Judea and Samaria), 5762-2002 and Order C/36/03. Once every three years the validity of the confiscation orders pertaining to the section of the fence at hand was extended by the Military Commander and they are currently in force until December 31, 2022.

5. The northern edge of the section of the fence at hand meets road 611, and from that point the fence keeps running south-westward, west to the villages which are the subject matter of the case at hand – Akkabah, Qaffin and Nazlat 'Isa. The southern edge of the above section meets the Green Line at the gate of the fence serving the residents of Nazlat 'Isa. The section is about six kilometers long and it creates a seam zone consisting of more than 3,000 dunams of the lands of the above villages. Among others, the communities of Mizpeh Ilan, Kibbutz Metzer, Baq'a al-Gharbiyeh and the city of Harish are located west of the section of the fence at hand and the Judea and Samaria border line. As alleged in the petition, 60 out of the 85 families residing in the Akkabah village own lands in the seam zone (forming 80% of the farmlands of Akkabah's residents), and the same applies to 60% of the 12,300 residents of Qaffin. Currently the section of the fence at hand consists of three gates leading to the seam zone: gates 408, 436 and 526 serving the residents of Akkabah, Qaffin and Nazlat 'Isa, respectively. Gates 436 and 408 open three times a week between 06:30-07:15, 12:00-12:30 and 15:45-16:30. Gate 526 opens every day between 05:00-21:00.

6. In 2005, applications were submitted to the respondents on behalf of the residents of Qaffin and Nazlat 'Isa with respect to the passage arrangements through the gates leading to the seam zone (RS/3). It was subsequently decided, *inter alia*, to open the gate serving the residents of Qaffin all year long, instead of opening it on a seasonal basis. On December 25, 2006, the Jerusalem Legal Aid Center, a not-for-profit association, addressed the respondents on behalf of the residents of the Akkabah village (including petitioner 7) and demanded that the section of the fence running near the village be dismantled and diverted to the Judea and Samaria border line (RS/4). On March 6, 2007, the respondents notified that the demand to dismantle the fence in the Akkabah area was denied. However, on August 13, 2007, respondents' officials visited the area together with the applicants from the village and on October 2, 2007, respondents' officials notified that a decision was made to open an additional agricultural gate (gate 408) near Akkabah (RS/5).

7. Petitioners 1-7 are residents of the three villages mentioned above and they own lands in the seam zone. Petitioners 1-4 are residents of Qaffin, and they own 25.25 dunams of

such lands; petitioners 5-6 are residents of Nazlat 'Isa and they own 18.5 dunams of such lands; and petitioner 7, a resident of Akkabah, is the head of the village council and owns 200 dunams of such lands. Petitioner 8 is HaMoked Center for the Defence of the Individual, a not-for-profit association (hereinafter: **HaMoked**).

On January 8, 2020, the petitioners applied to the respondents and requested them to dismantle the above segment of the fence, alleging that the fence, the seam zone and the permit regime deriving therefrom severely limit the access of the land owners to their seam zone lands and critically harm the agriculture in said area. On February 26, 2020, a meeting was held between representatives of the Military Commander in charge of the fence and the permit regime in the above section and petitioners' counsels and HaMoked representatives. According to the respondents, in said meeting petitioners' counsels refused to discuss the specific difficulties caused, according to them, as a result of the permit regime, and insisted on their demand that the segment of the fence be dismantled. According to the petitioners, during the meeting the respondents refused to discuss any amendments to the route of the fence. The respondents noted that during the meeting they have proposed to petitioners' representatives to establish a periodic forum to promote solutions for problems in accessing the seam zone.

On June 3, 2020, the petition at hand was filed.

The arguments of the parties in brief

8. The petitioners argue that the segment of the fence at hand disproportionately violates their basic rights and the basic rights of the members of their communities, in a manner justifying the dismantling of the above segment such that subsequently, in general, their lands shall not be included in the seam zone.

The petitioners argued that the permit regime arrangements which were established during the last 15 years have critically violated their rights and their access to lands located in the seam zone. The petitioners emphasized that over the years, stricter procedures for the issuance of seam zone entry permits were imposed, limiting permit eligibility and impairing the farmers' ability to access their lands in the zone. It was argued that consequently there was a significant decline in the agricultural yield of the lands located in the seam zone; and that the purpose of the above changes in the permit regime was to empty the zone from Palestinian presence and disposes the residents of their lands which form an important part of their culture, aside from the fact that they are their main source of income. It was argued that in view of the numerous petitions which were filed by HaMoked on behalf of Palestinian farmers whose access to lands in the seam zone was prevented as a result of the permit regime, petitioners' position was that the segment at hand and the seam zone which was created by it, embodied a structural, systemic problem, which could not be solved by specific remedies. The petitioners emphasized that they had no other option but to demand that the segment at hand be dismantled to avoid the need to receive a permit to access the lands of the villages which are currently located in the seam zone, and that "the question does not concern this or that condition of the permit regime but, rather, its underlying concept".

9. Respondents' position is that the petition should be dismissed *in limine* and on its merits. First, it was argued that it is a general petition which challenges the seam zone permit regime without clarifying how the permit regime and the changes made therein affect the petitioners themselves. It was argued that the petitioners did not exhaust their discussions with the respondents in an attempt to find a solution to the problems encountered by the farmers in said zone, while the respondents offered the petitioners and their representatives to hold concrete discussions on this issue. It was further argued that the petition was heavily delayed and that the petitioners requested to dismantle the segment at hand after the passage of some 18 years from the issuance of the original orders and the deletion of the petition in HCJ 7783/02; approximately 15 years after the construction of the fence in its current route; approximately 12 years after the termination of the legal correspondence concerning the seam zone near Akkabah; and approximately 9 years after **HaMoked** judgment, which confirmed the lawfulness of the permit regime.

10. To the crux of petitioners' arguments, the respondents argued that the route of the fence at hand has long been established on the basis of security-operational considerations, taking into account all relevant considerations, including the rights of the local residents. It was emphasized that the position of the security bodies concerning the necessity of the fence is examined once every three years when the relevant confiscation orders are extended; and that the alternative route proposed by the petitioners frustrates the above security-operational considerations in a manner which can pose a substantial threat to the residents of the Israeli communities located near the fence. Among other things it was noted that before the erection of the fence, on November 10, 2002, an armed perpetrator infiltrated from the zone to Kibbutz Metzer and killed five Israelis, including a mother and her two children. The respondents argued that for the purpose of maintaining the fabric of life in the seam zone, several agricultural gates were placed along the fence and suitable permits were issued to the landowners; that these are proportionate arrangements which enable to reasonably maintain the agriculture in the zone; and that petitioners' arguments that the agricultural yield has declined as a result of the route of the fence are not properly founded. It was emphasized that if the petitioners are of the opinion that the permit regime has problematic aspects, they can contact the respondents to find concrete solutions; and that respondents' proposal which was raised in the aforementioned meeting between the parties, to convene a periodic forum to promote solutions for access difficulties to the seam zone, is also valid at this time.

The proceeding in this court

11. On February 10, 2022, a hearing was held in the petition, in which the parties have completed their oral arguments. In addition, Colonel (reserves) Arieli who had submitted a security opinion on behalf of the petitioners, and Colonel Ofer Hindi, Head of the "Rainbow of Colors" (*Keshet Zevaim*) Administration at the Central Command, whose affidavit was attached to respondents' preliminary response to the petition, both appeared before us.

A decision should now be made in the petition.

Deliberation and Decision

12. I shall start by saying that after I have reviewed the arguments of the parties which were presented to us in writing and orally, I have reached the conclusion that the petition should be dismissed, as I have found no reason to interfere with the decision of the military commander not to dismantle the segment of the fence at hand and divert it to the Judea and Samaria border line. Before I specify in detail the reasons which led me to my conclusion, I shall briefly present them.

First, given the applicable rule concerning the special weight which should be given to the security opinion of the security bodies, I was not convinced that the alternative route which was proposed by the petitioners is more beneficial in security terms, than the existing route of the fence.

Moreover, the actual meaning of the requested remedy in the petition is the cancellation of the permit regime in the area of the villages at hand. The petitioners emphasized that in their petition they were not seeking specific solutions for the problems created by the permit regime, and that the problem according to them existed in the concept underlying the permit regime. However, in **HaMoked** it was held that in general, the application of the permit regime to the seam zone was lawful, provided that the State maintains to the maximum extent possible the fabric of life of the residents; and that claims concerning severe impingements as a result of the permit regime should be heard in the framework of individual petitions. The petition in its current format makes it difficult to properly examine petitioners' arguments about the harm inflicted on them as a result of the permit regime, and give them, to the extent necessary, the proper remedies.

In addition, the petition is based on the argument that the permit regime arrangements became stricter over the years. However, most of the arrangements mentioned by the petitioners were either cancelled, amended (or will be soon amended) following concrete petitions which were filed in that respect or are not relevant to the petitioners.

Furthermore, without taking lightly the difficulties experienced by the petitioners as a result of the permit regime, their arguments concerning the scope of the harm inflicted on them and the members of their communities are not free of difficulties.

The bottom line is that the proportionality of the permit regime derives from the content of its arrangements and the manner of their implementation. Accordingly, as a general rule, the way to rectify such severe harm is by challenging the relevant arrangements or the manner of their implementation in a concrete set of circumstances. This was not the way which was chosen in the petition at hand, and the petitioners requested to divert the fence from its current location in a manner revoking the permit regime in their case.

In view of the aforesaid and as shall be specified in detail below, we cannot accept their request.

The Security Issue

13. The petitioners argue, on the basis of a security opinion of Colonel (reserves) Arieli, that the relocation of the above section of the fence to the Judea and Samaria border line, with slight corrections, shall realize to a larger extent its security purpose. Essentially, it is

argued in the above opinion that the alternative route is more beneficial in the ability to make an early detection of infiltration suspects before they reach the fence since the area east of the current route is "saturated with buildings, greenhouses and the like"; that the proximity of the current route to the built-up areas of the villages can put at risk the security forces patrolling along the fence when there is an escalation in the security situation; and that two hills west of the Green Line totally control the area up to Qaffin and Akkabah.

14. On the other hand, the respondents noted that an inspection conducted by the military commander showed that the alternative route undermined the operational considerations underlying the determination of the route of the fence and may significantly harm its effectiveness and put the nearby Israeli settlement at a substantial risk. It was argued, *inter alia*, that the alternative route would significantly limit the buffer zone that the security forces need in order to identify and catch perpetrators infiltrating through the fence; that the alternative route would place the fence a few single meters away from the village of Baq'a al-Gharbiyeh, thus increasing the ability of infiltrators to assimilate in the urban space; that a part of the Judea and Samaria border line in that area is close to a wooded area in a manner harming the operational and spotting abilities of the forces travelling along the fence; and that the alternative route would lead to topographic inferiority of the fence opposite the hills to its east. The respondents added that the diversion of the fence is expected to harm additional wide-ranging private lands, including cultivated plots; and that as a secondary consideration, the diversion of the fence from its existing location involves the diversion of infrastructure and technological means at the cost of tens of millions of Shekels.

15. Hence, we have before us two conflicting opinions on the question of which route is more beneficial in terms of security for the location of the fence in the area of the villages at hand. In this context, the rule is that special weight should be given to the security-military opinion of those who bear the security responsibility:

> In a host of judgments it was held that the military commander who determines the route of the fence is required to consider and balance between several considerations. The **first** consideration is the security-military consideration by virtue of which the military commander can take into account considerations relating to state security and military security. These considerations require military and security expertise, with respect of which the military commander is vested with broad discretion. He is in charge of maintaining security. He has the expertise, the knowledge and the security responsibility. The court gives his position great weight on the basis of the consistent approach of the judgments of this court that special weight should be given to the military opinion of the body on which the security responsibility is imposed" (**Alfei Menashe**, paragraph 15 (emphasis in the original); and see also **Beit Sourik**, paragraph 47 and the reference there)).

16. Indeed, as aforesaid, there were cases in which the court accepted petitions that requested to examine an alternative route to a certain section of the fence due to violation of rights of Palestinian residents as a result of the fact that the fence has separated them from their

lands. However, generally, such petitions were directed against the land confiscation orders which were issued by the military commander to build the fence shortly after their issuance. On this procedure the court stated in **Beit Sourik** as follows:

> Parts of the separation fence are being erected on land which is not privately owned. Other parts are being erected on private land. In such circumstances – and in light of the security necessities – an order of seizure is issued by the Commander of the IDF Forces in the area (the Respondent). Pursuant to standard procedure, every land owner whose land is seized will receive compensation for the use of his land. After the order of seizure is signed, it is brought to the attention of the public, and the proper liaison body of the Palestinian Authority is contacted. An announcement is relayed to the residents, and each interested party is invited to participate in a survey of the area affected by the order of seizure, in order to present the planned location of the fence. A few days after the order is issued, a tour is made in the area, with the participation of the landowners, in order to identify the land which is about to be seized.
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> After the tour, **a one week leave is granted to the landowners, so that they may submit an appeal to the military commander. The appeals are examined on their merits. Where it is possible, an attempt is made to reach understandings with the landowners. If the appeal is denied, leave of one additional week is given to the landowner, so that he may petition the High Court of Justice**" (paragraph 8 (the emphasis was added)).

Hence, we are not at a point in time in which, in general, petitions are submitted against the route of the fence. In this context, it should be noted that the opinion of Colonel Arieli is principally based on arguments which could have been raised when the current route was established. Indeed, the petitioners argued that the security need as a result of which the fence had been erected grew weaker compared to its magnitude when it had been erected. But this argument was made hesitantly, and insufficient infrastructure was presented to establish **a material change of circumstances** in this context, particularly when we are mainly concerned with a general argument which does not specifically concern the section of the fence at hand. The petitioners emphasized that their petition rests on experience which has been accumulated over a period of 15 years in which their rights were actually violated as a result of the permit regime, as opposed to other petitions which tried to convince the court of an anticipated violation. However, this court did not dismiss petitions which were filed on or about the issuance of confiscation orders on the grounds that the residents' rights were not actually violated. On the contrary, as shall be specified in detail below, this court assumed in the relevant petitions that the mere existence of the seam zone and the permit regime deriving therefrom harms the residents having connection to the seam zone (see, for instance, **Beit Sourik**, paragraph 60).

17. And it should be reminded: in 2002 a petition was filed with this court against the section of the fence which had been initially established near the villages at hand (HCJ 7783/02), following which the military commander decided to divert the route to its current

location. As aforesaid, in the judgment which was given in the above petition the court held that "The right of the petitioners is reserved to them to file with the competent authorities a specific appeal focusing on the route of the fence and the gates placed therein in the sections relevant to their matter… Petitioners' right is reserved to them, if their appeal is dismissed, to file another petition against the dismissal of the appeal including against the forum which made the decision." The above words apply not only to the petitioners there, but also to any person who is of the opinion that they were harmed by the route of the fence. However, the petition at hand was not filed following the dismissal of appeals as aforesaid against the corrected route of the fence (compare to **Alfei Menashe**, paragraph 5).

18. In addition, the position of the military commander that the alternative route shall significantly limit the buffer zone allowing the forces to identify infiltration through the fence and catch the infiltrators has merit, and this matter was also noted in the opinion of Colonel Arieli. The limitation of the buffer zone increases the risk to the residents of the adjacent Israeli communities. Also, the consideration concerning the infiltrators' increased ability to assimilate into the urban area of Baq'a al-Gharbiyeh in a manner encumbering the ability to identify and catch them, is a pertinent consideration which raises a justified concern. In addition, the position of the military commander that the alternative route is topographically inferior to the hills to its east, in a manner enabling to control the fence in terms of fire and observation, was not refuted by petitioners' opinion. Indeed, in the opinion of Colonel Arieli it was argued that the area east of the existing route is saturated with construction, in a manner encumbering early identification of infiltration attempts. However, it emerges from a review of the maps which were attached to the opinion that the fence is not adjacent to the built-up area of the villages of Akkabah and Qaffin, and it therefore seems that the concern of harm to the early identification ability as aforesaid is not particularly heavy.

19. In view of all of the above, I did not find a reason to prefer in the above security matter petitioners' position over the position of the military commander, and I have no reason to determine that the diversion of the fence to the Judea and Samaria border line shall more fully or even equally, realize the security purpose of the fence compared to the existing route.

The sweeping nature of the petition and of the remedy requested therein

20. The petitioners argued that the permit regime arrangements and the manner of their implementation were aggravated over the years in a manner which led to a disproportionate violation of their rights and ability to access lands in the seam zone. According to them, said violation is a built-in component of the seam zone and permit regime ancillary thereto and "the question does not concern this condition or another of the permit regime but, rather, its underlying concept". According to the petitioners this violation justifies the relocation of the segment of the fence at hand to the Judea and Samaria border line.

21. However, accepting petitioners' above argument is problematic. The petitioners stated that in their petition they do not seek individual remedies and that the problem as far as they are concerned arises from the concept underlying the permit regime. In fact, the

petitioners argue that the harm inflicted on them by the permit regime justifies its cancellation in their case. The petitioners emphasized that the only remedy which they request is to dismantle the segment of the fence at hand and divert it to the Judea and Samaria border line. The meaning of this remedy is that the seam zone in the area at hand shall be cancelled and consequently, the permit regime shall be revoked with respect to the petitioners and the members of their communities. However, as specified below, in **HaMoked** it was held that the decision to implement the permit regime was lawful. It was emphasized there that, as a general rule, an argument that the permit regime inflicts a disproportionate harm should be raised in an individual petition, in which the concrete circumstances, the arrangements which have allegedly caused the violation, and the manner by which they were implemented under the circumstances may be examined – and on the basis of all of the above an appropriate remedy may be given to the extent necessary. As aforesaid and as shall be clarified below, this was not done in the petition before us.

22. In **HaMoked** it was argued, *inter alia*, that "the permit regime severely and disproportionately violates the human rights of the Palestinian residents" (paragraph 10). The petitioners in said case requested the court to order that the declarations of the military commander of the seam zone as a "closed military zone" should be revoked, and consequently, to order that the permit regime which applied following the above declarations should be revoked.

23. The court in **HaMoked** recognized the fact that the permit regime harmed the Palestinian residents having connection to lands in the seam zone:

> "The permit regime extremely encumbers the Palestinian residents and severely violates their rights […] Individuals who cultivated their lands in the seam zone, conducted their businesses over there and established family and social relations, are forced at this present time, in order to preserve their way of life, to apply for an entry permit based on several limited causes (paragraphs 32-23); "The application of the permit regime, and the need to obtain a permit in order to enter and leave the zone, imposes a clear restriction on the freedom of movement of the inhabitants of the Area within this zone, and restricts the accessibility of the inhabitants – to their homes, lands and businesses located within the seam zone […] this state of affairs creates a reality which makes it difficult to maintain the routine of family life, social life, commerce and work" (paragraph 22).

However, it was held there that notwithstanding the above violations, the permit regime is required, for security reasons: "In view of the nature and character of the seam zone, being an area which is not separated from the territory of Israel by any barrier, it is difficult not to accept the argument that there is a security need to establish a mechanism which would enable a close supervision of those who enter through it and which would assist the security forces and improve their ability to fight Palestinian terror threats the purpose of which is to cause harm to Israel and its inhabitants" (paragraph 17).

At the same time, since "the military commander must ensure that the human rights of the Palestinians under his control in an area which is under belligerent occupation, who are protected residents under international law, are properly protected" (Ibis., paragraph 19), it was held that the military commander should balance security considerations and the human rights of the protected residents, such that the harm inflicted by the permit regime including its different arrangements and the manner of their implementation, is proportionate (Ibid., paragraphs 23 and 29).

24. The court in **HaMoked** examined the relevant arrangements in the seam zone standing orders "from a bird's eye view, in a broad and comprehensive manner", and held that they met the proportionality tests. It was noted that "Under the circumstances at hand, *prima facie*, it indeed seems that the respondents acknowledge the residents' right to continue to farm their lands and seek to enable those who have a connection to lands in the seam zone to continue to farm them, by enabling family members and other workers to assist them with their work. In addition, special crossings exist, the purpose of which is to regulate the entry into the zone – some of which are adapted to agricultural activity according to the seasonal needs. It seems to us that this arrangement gives a reasonable solution which minimizes the violation of the rights of the farmers, and we assume in our said determination that respondents' declarations concerning the importance of giving proper solutions for the needs of the farmers in the Area are filled by them with real substance" (paragraph 34).

However, it was emphasized there that "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, emphasis was added; see also HCJ 3066/20 **Ziad v. Military Commander of the West Bank Area**, paragraph 11 (July 12, 2021) (hereinafter**: Ziad**)).

25. Nevertheless, as aforesaid, in the case at hand the petitioners stated that individual remedies could not solve the harm inflicted on them as a result of the implementation of the permit regime in their case and that "the question is not this condition or another in the permit regime but, rather, its underlying concept". The format of the petition makes it difficult to examine the specific balancing system applied to each petitioner (compare to **Ta'meh**, paragraph 34), and consequently makes it difficult to accept petitioners' main argument whereby the permit regime violates their rights disproportionately. As a general rule, for the purpose of examining proportionality as aforesaid, a basis substantiating the harm allegedly caused to each petitioner should be presented, and the concrete arrangements which have allegedly inflicted the harm should be specified. This was not done in the case at hand. A significant part of the arguments in the petition at hand concern the permit regime from a "bird's eye view", and do not necessarily concern the area which is the subject matter of the petition. Nevertheless, the petition wishes to draw a sweeping conclusion about the need to dismantle the fence particularly in the

segment at hand. Moreover, as shall be clarified below, a significant portion of the permit regime arrangements which are challenged in the petition were cancelled after its filing, were amended following concrete petitions which had been filed, or were irrelevant to the petitioners *ab initio*. In addition, a significant portion of petitioners' arguments are presented in a manner making it impossible to properly examine the relevant arrangements on their merits, and without clarifying how the discussed arrangements specifically affect the petitioners.

26. Accordingly, for instance, it was argued in the petition that travelling through the agricultural gates leading to the seam zone with vehicles and farming equipment was prohibited, that a ban was imposed on bringing fertilizer into the seam zone and restrictions were imposed on irrigation. However the petition did not specify the arrangements by virtue of which the alleged prohibitions were imposed, and consequently it was not argued how they should be changed [it should be noted that the respondents argued that there was no specific ban on bringing materials into the seam zone, but rather a general prohibition on maintaining dual-purpose materials in the Judea and Samaria areas, but in any event, a permit to maintain such materials can be received from the military commander; that the holder of an agricultural permit may enter the seam zone with an agricultural vehicle such as a tractor or plow, and that a permit to enter with another vehicle may be obtained]. The petitioners also argued against the "bureaucracy involved in obtaining a permit", but a significant portion of their arguments in that regard has also been presented in a manner which does not enable an examination of the relevant arrangements.

    The arguments pertaining to the arrangements which specifically apply to the seam zone area which is the subject matter of this petition were also argued in a manner which does not enable examining the need for judicial interference in the arrangements themselves or in the manner of their implementation. The petitioners noted that the gates which served the residents of Qaffin and Akkabah opened three times a week between 06:30-07:15; 12:00-12:30 and 15:45-16:30. The petitioners argued that "In fact, these very brief periods of time are often not enough even for those who reach the crossing and must wait in line. Soldiers often close the gates to permit holders for any number of reasons". However, the petitioners did not indicate which periods were allegedly required in their opinion for this purpose, and have also failed to mention that they have requested the respondents to extend the opening times of the gates.

27. Hence, the petitioners request that we sweepingly decide that the permit regime arrangements and their implementation in their case are disproportionate, without enabling a proper examination of the proportionality of the arrangements, and without making it possible to give any remedy other than a total cancellation of the permit regime in their case and the diversion of the fence to the Judea and Samaria border line. In this sense, the sweeping format of the petition and of the remedy requested therein – is detrimental to it (compare to **HaMoked**, paragraph 34).

28. It should be noted that after the hearing, the petitioners submitted on March 28, 2022, an updating notice with respect of gate 436. It emerges from the notice that on March 1, 2022, petitioners 1-4, residents of the village of Qaffin, found that the gate had been welded in a manner which completely prevented it from being opened, and in addition,

cement blocks were placed in front of the gate and across the dirt road used for the passage of vehicles and animals to the agricultural area. Petitioner 8 had contacted respondents 3-4, and immediately on March 6, 2022, the welding was cut-off and the cement blocks were removed from the road. In fact, the gate is wide open all day long and all week days, but it was argued that the farmers were afraid to enter their lands without undergoing IDF inspection fearing that their permits would be revoked, and therefore they were waiting for the soldiers on the gate's designated opening hours.

The respondents clarified in their response that the gate had been blocked on March 1, 2022, by civilians without the authorization or knowledge of the military commander, and when it became known to the military bodies, they have immediately removed the blockages to enable the passage through the gate. The gate was not abandoned, as was argued by the petitioners, and IDF soldiers arrive to the gate at the required times and days to enable controlled passaged of farmers according to the conditions of the permits.

Hence, the specific event described by the petitioners does not support their petition – on the contrary, the event proves that the IDF responded quickly and removed the blocks which had been placed without its knowledge, and the petitioners themselves note that IDF soldiers arrive to the gate on the relevant times and days to enable the passage as agreed.

The argument that the permit regime arrangements grew stricter

29. Moreover. At the center of the petition stands the argument that the arrangements for the issuance of seam zone entry permits grew stricter over the years, reducing the scope of permit eligibility and limiting the access of the farmers to their seam zone lands. According to the petitioners, the permit regime became a tool for dispossessing owners of lands in the seam zone of their properties. However, most of the arrangements mentioned in this context by the petitioners were cancelled, revised (or will be soon revised) after the filing of the petition at hand following petitions which had been filed in that regard, or are irrelevant to the petitioners or most of them.

30. Accordingly, the petition argued against an arrangement which had been initially introduced by the Standing Orders in 2017, whereby, as a general rule, permits for agricultural needs would not be issued for a plot the size of which does not exceed 330 square meters (hereinafter: **Miniscule Plot**), but a permit for "personal needs" may be requested for the purpose of accessing a miniscule plot for agricultural needs. It should be noted that the principal meaning of the above rule is that a permit for agricultural needs is given for two years while a permit for personal needs is generally given for three months. However, before the petition at hand was filed, a petition had been filed with this court which challenged the miniscule plot arrangement, in which a judgment has already been given by us (HCJ 6896/18 **Ta'meh v. Military Commander in the West Bank** (March 6, 2022) (hereinafter: **Ta'meh**)). In our judgment in **Ta'meh** we held that the miniscule plot arrangement led to a disproportionate violation of the right to property of owners of lands in the seam zone. With respect to the appropriate remedy it was held by us there, *inter alia*, that in order to enable owners of miniscule plots to access their plots without unreasonably burdening them, the duration of a permit for personal needs given for agricultural purposes should be the same as the duration of an agricultural

permit, such that the two types of permits would be issued for two years as a default arrangement; and that the ability to refute the presumption that a sustainable agricultural need does not exist - and consequently, an agricultural permit shall not be issued – with respect of a miniscule plot, should be entrenched in the Standing Orders (see paragraphs 9, 14-15, 17 and 20 of the Judgment of President **E. Hayut**; Justice **D. Barak-Erez** was of the opinion, in a minority opinion, that the Standing Orders provision concerning a miniscule plot should be revoked).

31. It was also argued in the petition that as of 2017, the Standing Orders require that heirs of lands in the seam zone which are registered in the *Tabu*, to transfer the ownership in the plot to their name and pay a fee, as a condition for receiving an entry permit into the seam zone, in a manner complicating the procedure and making it more expensive. However, the respondents argued that said provision was not at all relevant to the area which is the subject matter of the petition at hand, which did not undergo a regulating process and the lands therein are not registered in the *Tabu*. In addition, the above permit regime arrangement was discussed in two petitions which were jointly heard by this court (**Ziad**). In the **Ziad** hearing, the military commander clarified that the initiation of a procedure to amend the registration of ownership as aforesaid establishes an entitlement to a farmer permit until a decision is made in the procedure; that an entry permit into the seam zone can be received on the basis of a power of attorney for the cultivation of plots of other rights-owners; and that the fee charged for the above procedure shall be reduced to the amount charged in Israel under similar circumstances. Subject to the above clarifications, this court decided to dismiss the petitions.

32. Moreover, the petitioners argued against the change which was made in the 2019 Standing Orders whereby instead of a two year permit for agricultural needs, a seam zone entry permit shall be given for a limited number of entries per year ("punch card permit"), according to the agricultural need which shall be determined on the basis of the size of the plot and type of the crop. However, said arrangement was cancelled in the 2021 Standing Orders (see **Ta'meh**, paragraph 36).

33. The petitioners have also challenged different restrictions which were imposed by the 2017 Standing Orders on sheep grazing in the seam zone, including restrictions on the permitted grazing area; the grazing period, and subjecting the issuance of the permit to a certain distance from where the livestock is kept. However, it emerged from the arguments of the parties that only petitioner 4 holds flocks of sheep and the respondents argued that he has never submitted a permit application for grazing purposes (the petition noted that the family of petitioner 7 also owns a flock of sheep but an affidavit on his behalf was not attached to the petition). These arrangements are therefore irrelevant for most of the petitioners. Without expressing an opinion on the merits of the matter, if petitioner 4 sees fit, he may turn to the respondents and request to relax the above restrictions, and to the extent necessary initiate a suitable proceeding.

34. Hence, the vast majority of the Standing Orders arrangements which according to the petitioners grew stricter over the years – were cancelled after the filing of the petition, revised (or will be revised) in a manner which softens the restrictions that were imposed by virtue thereof, or are irrelevant to most of the petitioners. According to the petitioners, the above escalation in the arrangements reduced the eligibility for agricultural permits

and encumbered the farmers' access to their seam zone lands, causing a substantial harm to the yield of the lands in the seam zone, and subsequently – to their owners. This harm underlies petitioners' request to dismantle the fence in a manner cancelling the permit regime in their matter. Beyond our conclusion which arises from the sweeping nature of the petition and the remedy requested therein, the conclusion that the vast majority of the above arrangements are no longer relevant also undermines the basis of petitioners' demand as aforesaid.

Interim Summary

35. In view of all of the above, the petition in its current format causes considerable difficulty in determining that the permit regime inflicts a disproportionate harm on the petitioners, which justifies the dismantling of the fence and its diversion from its current location to the Judea and Samaria border line.

At the same time, I wish to discuss petitioners' arguments concerning the scope of the harm inflicted on them and on the members of their communities as a result of the permit regime.

The scope of harm inflicted on the petitioners and on the members of their communities as a result of the permit regime

36. The petitioners referred to a study from 2014 conducted by the UN Office of the Coordination of Humanitarian Affairs (OCHA) in lands belonging to Akkabah and Qaffin. According to the petitioners, the study shows that **"the yield from trees in the seam zone is less than that of trees in groves west of the fence (and therefore freely accessible) in the range between 50% and 78% in most cases and most years**." (emphases appear in the original).

It emerges from a review of the above study that the comparison of the yield from olive trees in 2013 was made as follows: a comparison was made between two plots owned by a certain farmer in Akkabah, each consisting of 16 trees, one in the seam zone and the other east of the fence; and a similar comparison was made between two plots owned by a certain farmer in Qaffin, each consisting of 25 trees, one in the seam zone and the other east of the fence (in addition a comparison as aforesaid was made with respect of plots of residents of the villages Zeita and al-Zawiya which are not located in the area which is the subject matter of the petition). The study shows that the quantity of olives which were harvested in the plot east of the fence which is owned by the farmer from Akkabah, was 64% higher than the parallel quantity which was harvested in his seam zone plot, and that the quantity of olive oil which was produced from the olives which had been harvested east of the fence was 75% higher than the quantity of the oil which was produced from the olives in the seam zone. With respect to the plots owned by the resident of Qaffin, a gap of 50% was found in the yield of the olives as well as in the quantity of the oil (it should be noted that the study also pointed out that "data collected by the Office of the Coordination of Humanitarian Affairs in the northern part of the West Bank since 2010 show a drop of between 40 to 60 percent in the yield of olive trees in the 'seam zone', compared to parallel trees on the 'Palestinian' side of the fence", but these data were not presented).

However, contrary to petitioners' argument, it is difficult to draw from this study a general conclusion about the impact of the permit regime. First, the petitioners themselves emphasized that "the petition and the facts described therein pertain in most part to the years from the publication of the 2014 Standing Orders until the submission of the petition in 2020" (paragraph 6 of petitioners' reply to the respondents' preliminary response), while the study showed as aforesaid data from 2013 only. Hence, it cannot be concluded from the study that the alleged escalation in the permit regime arrangements caused the above gaps. In addition, the sample size of the study is small and includes only two plots on each side of the fence, which makes it even more difficult to decipher the reasons for these gaps.

37. The petitioners added that the limitations which were imposed on entering the seam zone caused many farmers, including some of the petitioners, to forego seasonal crops in the seam zone and rely only on crops that do not require substantial cultivation, such as olive trees, and to even completely abandon some of the plots in the seam zone. To support their argument, the petitioners submitted an opinion of an expert on their behalf, Hagit Ofran, analyzing "aerial photographs of several points in the area which is the subject matter of the petition". According to the opinion, 274 dunams of land on which field crops were grown in 2002, were abandoned and were not cultivated in 2020; 50 dunams of land on which field crops were grown in 2002, were planted with olive trees before 2020; and 13 dunams of land with olive trees which were cultivated in 2002, were not cultivated in 2020.

However, as aforesaid, the seam zone which is the subject matter of the petition at hand consists of more than 3,000 dunams of farm lands, while the above opinion refers only to 337 dunams therefrom. In addition, the respondents argued that an analysis of aerial photos from the relevant years shows that already in 2002, 93% of the cultivated lands in the seam zone which is the subject matter of the petition at hand were used to grow olive trees or were not used for agricultural purposes at all; that an analysis of the aerial photos from the present time shows that the scope of crops in the area did not undergo any significant change since the erection of the fence; and that the opinion which was submitted by the petitioners as aforesaid does not refute their arguments in this regard.

In addition, it should be noted that the respondents attached two expert opinions on their behalf. The first opinion (hereinafter: the **Specific Opinion**) referred to petitioners' above opinion, and the other referred to the entirety of plots in the seam zone which is the subject matter of the petition and examined the uses of the land observed therein (hereinafter: the **General Opinion**). Among other things, the Specific Opinion noted that petitioners' opinion did not include information concerning the relevant education of the author of the opinion; that petitioners' opinion relied only on two photos to examine a change spanning over two decades in a manner making it difficult to draw conclusions about the nature of the change in the land; and that most areas which were presented as abandoned in petitioners' opinion "are actually cultivated, or at least pre-planned agricultural changes were made therein". The General Opinion noted that according to data taken from the National Topographic Data Bank of Israel Mapping Center, the scope of the cultivated lands in this area at hand increased from 75% in 2012 to 78% in 2018. In addition, the opinion relied on "orthophotos" from the years 2002, 2008, 2011, 2014,

2018 and 2021 and noted that 52% of the area at hand has been fully cultivated throughout the entire relevant period, and that in about 70% of the area at least 4 agricultural tasks were observed in the 6 periods which were examined.

38. The respondents added that Civil Administration officials pointed at a phenomenon whereby residents who hold agricultural permits and use them to constantly enter the seam zone, stopped cultivating their lands there. It was argued that therefore, a connection between the abandonment of the plots and the permit regime arrangements could not be established, and that the plot abandonment phenomenon could be explained, at least partially, in the existence of permit holders who were using their permits unlawfully for working purposes in Israel. It should be noted that these arguments have already been presented to us in **Ta'meh**, where I stressed that "it emerges from Respondents' position that there is a phenomenon whereby thousands of permit holders enter the seam zone daily, while in practice there are agricultural plots of land which are almost completely empty. This phenomenon supports Respondents' position that the concern of misuse of entry permits, including for the purpose of entering Israel illegally, is realized. It should be mentioned that entry into the seam zone enables entry into the territory of Israel without hindrance". (paragraph 4; and see also there, paragraph 5 of the Judgment of the President **E. Hayut**).

39. In view of the aforesaid, even if we assume that the permit regime affected the nature and scope of the crops in the seam zone, it seems that the impact is much less significant than that which the petitioners are trying to present, and that the abandonment of the agricultural plots can be explained, at least partially, by the unlawful use of seam zone entry permits for the purpose of entering Israel.

40. The petitioners argued that according to the data provided by the respondents in their preliminary response in **Ta'meh** there is a substantial and consistent decline in the number of approved farmer permit applications in the seam zone between the years 2014-2018. Accordingly, while in 2014, 75% of the applications were approved, in 2018, only 26% of the applications were approved. The petitioners added that this decline was also relevant to the residents of Qaffin and noted that in 2014, 71% of the total number of agricultural permit applications (including agricultural worker permits) of the residents of Qaffin were approved, while in 2018, 51% of such applications were approved. According to the petitioners these data support their allegation that the permit regime leads to the dispossession of the petitioners and the members of their communities from their lands in the seam zone.

On the other hand, the respondents acknowledged the fact that there was indeed an annual decline in the number of agricultural permits issued in the seam zone, but argued that the reasons for this are diverse including the imposition of stricter criteria for receiving agricultural permits following the misuse of said permits; the expansion of the use of permits for "personal needs" which are given for agricultural purposes; the consolidation of the "permanent agricultural permit" and the "temporary agricultural permit"; and the entering into force of an "agricultural worker permit issued to a farmer's relative".

The relevant data were presented to us by the respondents in **Ta'meh**, whereby in 2013 a total of 14,963 "agricultural", "personal needs" and ""agricultural worker" permits were

approved; in 2014 – 31,627 such permits; in 2015 – 26,623; and in 2016 – 27,267. As of 2017 an "agricultural worker permit issued to a family member" was added, and the total number of permits which were issued in that year amounted to 26,555; in 2018 – 22,250; and in 2019 – 24,917. The percentage of the applications which were approved of the total number of applications which were submitted between the years 2013-2019 amounted to 74%, 67%, 75%, 70%, 66% and 75%, respectively. With respect to these data it was noted by Justice **Barak-Erez** in **Ta'meh** that "the data which were presented may be interpreted in different ways. According to the petitioners, the acceptance rate of farmer permit applications was declining. On the other hand, the respondents are of the opinion that this datum should be analyzed alongside the increase in the acceptance rate of permit applications for personal needs" (paragraph 41). In any event, contrary to the allegations made in the petition, I was not convinced that the above data lead to the conclusion that the petitioners and the members of their communities are being dispossessed from their lands in the seam zone.

In any event, as clarified above, in the appropriate cases a petition can be filed against this or that arrangement relating to the issuance of permits as aforesaid (see and compare, for instance, **Ta'meh**). With respect to individual decisions in this regard, petitions may be filed with the court for administrative affairs (Item 3(E) of the Fourth Addendum to Courts for Administrative Affairs Law, 5760-2000; and see **Zaid**, paragraph 17), a step which was indeed taken by some of the petitioners, as alleged in the petition. It was further noted that according to the data which were presented by the respondents, the petitioners and many of their family members held throughout the years dozens of valid permits for agricultural needs, including on the filing date of respondents' response to the petition (excluding petitioner 6 whose agricultural permit has expired some three months prior to the filing of respondents' response).

41. It cannot be denied that a severe picture arises from petitioners' affidavits with respect to the effect of the permit regime on their access to their lands and on their ability to cultivate them. The affidavits of petitioners 1, 2, 3, 4 and 6 were attached to the petition (the affidavits of petitioners 5 and 7 were not attached). Most of them declared a material drop in the quantity of olive oil which is produced from the trees grown on their seam zone lands compared to the period prior to the erection of the fence. Among other things, petitioner 1 complained of the opening times of the seam zone gates, of the definition of the groups of persons eligible for entry permits into the seam zone and of restrictions concerning irrigation, fertilization, bringing agricultural equipment and vehicles into the area; petitioner 2 declared that a permit application submitted by him was denied since his plot was classified as a "miniscule plot"; petitioner 3 complained of the opening hours of the gates and claimed that he was unable to irrigate his groves or bring vehicles into the seam zone; petitioner 4 declared of grazing difficulties in the seam zone as a result of the opening times of the gates and the distance of his lands therefrom; petitioner 6 declared that permits were not issued to his family regularly and that restrictions were imposed on bringing into the seam zone agricultural equipment and essential materials for agricultural cultivation.

42. I do not take these claims lightly. Indeed, "the lawfulness and constitutionality of the permit regime depend, inter alia, on the actions taken by the state of Israel to maintain, to the maximum extent possible, the fabric of life of the residents of the Area which were

affected by the erection of the separation fence" (**Ta'meh**, paragraph 2 of the Judgment of President **Hayut**) while "the proportionality of the harm inflicted on the rights of the inhabitants should be examined not only against the backdrop of the written arrangements and procedures which were established, but also against the backdrop of the reality in which such arrangements are implemented in practice, commencing from the processing procedure of the applications and ending with the current movement and traffic regime" (**HaMoked**, paragraph 38). However, as clarified above, the sweeping format of the petition makes it difficult to properly examine petitioners' concrete arguments concerning the harm inflicted in their case and to give them the appropriate remedies to the extent necessary.

Conclusion

43. In conclusion, the content of the permit regime arrangements and the way they are actually implemented should ensure that the permit regime does not harm residents having connection to the seam zone other than is required for security purposes. As a general rule, if residents having connection as aforesaid are of the opinion that they are disproportionately harmed by the permit regime, or that its implementation in their case was flawed, they can approach the respondents, and to the extent necessary a suitable proceeding may be initiated. As specified above, the petitioners stated that different restrictions were imposed on them such as insufficient opening times of the gates, ban on bringing into the seam zone vehicles, agricultural equipment and fertilizers, limitations pertaining to irrigation and the like. Other than the fact that exhaustion of remedies with respect of the relevant arrangements was not described in the petition, the format of the petition made it impossible to properly examine them, and the petitioners insisted on the diversion of the fence to the Green Line and of a sweeping cancellation of the permit regime in their case. For all of the reasons specified above, we cannot accept the petition and the remedy requested therein.

44. We have registered before us respondents' declaration concerning their willingness to regularly communicate with the petitioners and establish a periodic forum with them for the purpose of finding concrete solutions to the difficulties they are faced with in connection with the permit regime (such as opening hours of this gate or another). The respondents are held to use their best efforts to maintain the fabric of life in the seam zone, with all ensuing consequences, and not to limit the access thereto other than as is required for security purposes as stated above. To the extent necessary, the doors of the court are also open before the petitioners.

45. In view of all of the above, I found no reason to interfere with the decision of the military commander not to dismantle and divert the section of the fence at hand from its current location, and I shall propose to my colleagues to dismiss the petition. Under the circumstance, I also propose that no order for costs is issued.

J u s t i c e

President E. Hayut

I agree with and join the detailed opinion of my colleague Justice **I. Amit** and shall only emphasize a few points.

As noted by my colleague, the petitioners emphasized before us that their arguments and the remedy they have petitioned for with respect to the location of the fence and the permit regime are made on the general level and do not concern individual practical problems, the above although the principled arguments against the permit regime following the construction of the fence and the creation of the seam zone have already been raised before this court, discussed and rejected more than a decade ago in HCJ 9961/03 **HaMoked Center for the Defence of the Individual founded by Dr. Lotte Salzberger v. Government of Israel** (April 5, 2011). In other words, the petitioners wish to re-visit the principled issue which has already been decided. The petitioners are trying to justify this action by a material change of circumstances and in this context they argue, *inter alia*, that the security need for the fence has weakened over the years. Unfortunately, the serious security incidents which have recently occurred show that the security need for the fence which was erected – is still valid and stands now as before.

At the same time, it is indeed possible and necessary to constantly look for ways to minimize to the maximum extent possible the harm inflicted on the petitioners and their fabric of life, but this should be done in the route of the individual examination, in order to solve problems requiring solution. However, in all of their arguments and in the discussions which were conducted with the respondents prior to the filing of the petition, the petitioners emphasized that this was not their intention. They have also rejected a proposal raised on February 26, 2020 in a meeting between Colonel Ofer Hindi, (the head of the Fence Administration "*Keshet Zevaim*" at the Central Command which is in charge of the fence), and their representatives to establish a "periodic forum" to promote solutions to difficulties in accessing the seam zone. As noted by my colleague Justice **Amit**, the respondents on their part have repeatedly emphasized in the hearing before us that the offer to establish a periodic forum to promote solutions, as aforesaid, still stands, and since no justification was presented to re-visit the principled issue, it seems that the petitioners will act wisely if they accept the offer to establish the proposed periodic forum in order to formulate, in its framework, solutions to individual problems and minimize to the maximum extent possible, the harm inflicted on the petitioners.

The President

Justice A. Stein

I join my consent to the judgment of my colleague, Justice **I. Amit**, and to the comments of my colleague the President.

Justice

Decided as stated in the judgment of Justice **I. Amit**.

Given today, Nisan 30, 5782 (May 1, 2022).

The President Justice Justice