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**At the Supreme Court**  
**Sitting as the High Court of Justice**

**HCI 2205 /23**

In the matter of:

1. **Head of Local Council of 'Anin, Muhmmad Issa, ID No. \_\_\_\_\_**  
Palestinian resident of the occupied territories
2. **Head of Local Council Umm al Rihan, Majdi Zied, ID No. \_\_\_\_\_**  
Palestinian resident of the occupied territories
3. **\_\_\_\_\_ Yassin, ID No. \_\_\_\_\_**  
Palestinian resident of the occupied territories
4. **\_\_\_\_\_ Mansour, ID No. \_\_\_\_\_**  
Palestinian resident of the occupied territories
5. **\_\_\_\_\_ Yassin, ID No. \_\_\_\_\_**  
Palestinian resident of the occupied territories
6. **\_\_\_\_\_ Yassin, ID No. \_\_\_\_\_**  
Palestinian resident of the occupied territories
7. **HaMoked - Center for the Defence of the Individual founded by  
Dr. Lotte Salzberger RA No. 580163517**

Represented by counsel, Adv. Tehila Meir (Lic. No. 71836), Daniel Shenhar (Lic. No. 41065) and/or Nadia Daqqa (Lic. No. 66713) and/or Aaron Miles Kurman (Lic. No. 78484) and/or Maisa Abu Saleh-Abu Akar (Lic. No. 52763) and/or Nadine Abu Arafe (Lic. No. 89020) and/or Alma Elimelech (Lic. No. 82867)

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**The Petitioners**

**v.**

**Military Commander for the West Bank Area**

Represented by the State Attorney's Office, Ministry of Justice,  
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Tel: 02-6466590; Fax: 02-6467011  
email: [HCI-dep@justice.gov.il](mailto:HCI-dep@justice.gov.il)

**The Respondent**

## Petition for Order *Nisi*

Petition for order *nisi* is hereby filed which is directed at the Respondent ordering him to appear and show cause:

- a. Why he would not open the 'Anin gate which is located in the Separation Barrier seven days a week;
- b. Why the opening hours of the 'Anin gate would not be expanded such that it shall be opened all day long, or at least, three times a day and for longer periods of times compared to its current opening hours (twenty minutes at a time).

## Factual Infrastructure

### The Permit Regime

1. In 2002, the Government of Israel decided to build the Separation Barrier. The Separation Barrier should have ostensibly created a barrier between the West Bank and the state of Israel, but in fact the Separation Barrier was not built on the Green Line. Instead, approximately 85% of the route of the fence was built within the West Bank. The part of the West Bank which was trapped between the route of the fence and the Green Line is referred to by the state of Israel as the "seam zone", and it constitutes 9.4% of the territories of the West Bank which were occupied in 1967 (including East Jerusalem).
2. Once the sections of the fence had been built within the West Bank, the Respondent declared the areas that remained between the Separation Barrier and the Green Line as closed areas. The entry into these areas and the presence therein are prohibited without a special permit for this purpose. These prohibitions do not apply to residents of the state of Israel and to tourists, who may enter the seam zone as they please.
3. A number of petitions were filed regarding the legality of the erection of the fence in general and the legality of specific parts of its route. In the judgments given in these petitions, the court ruled that the legality of the route of the fence rests on whether it strikes a proper balance between the security considerations underlying it and the protection of the human rights of the protected inhabitants (see, for instance, HCJ 2056/04 **Beit Sourik Village Council v. Government of Israel**, IsrSC, 58(5) 807 (2004); HCJ 7957/04 **Mara'abeh v. Prime Minister of Israel**, IsrSC 60(2) 477 (2005); HCJ 5488/04 **A-Ram Local Council v. Government of Israel**, (reported in Nevo, December 13, 2006); and HCJ 8414/05 **Yasin v. Government of Israel**, IsrSC 62(2) 822 (2007)).
4. In addition, shortly after the first declaration of the seam zone as a closed area, which was signed on October 2, 2003, petitions were filed against the permit regime. These petitions challenged the legality of closing the seam zone to Palestinians and requiring them to obtain special permits in order to enter it. The ruling in these petitions was delayed for more than seven years, until judgments were delivered in the petitions against

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

5. The permit regime judgment examined the harm caused by the permit regime given the arrangements the Respondent had put in place for issuance of permits to enter the seam zone to Palestinians, including the "Seam Zone Standing Orders and Procedure for Addressing Exploitation of Seam Zone Permits", and given Respondent's contention that these arrangements would be applied permissively. The Honorable Court ruled that the harm caused to Palestinian residents was proportionate, barring several specific issues that were disqualified.
6. It was further clarified in the judgment that the findings on the proportionality of the harm of the permit regime on Palestinians do not preclude the possibility that "in specific cases, severe injury is caused to the rights to property and livelihood of Palestinian residents who cannot adequately farm their lands or who encounter other access difficulties, and the Respondents, on their part do not take adequate measures to minimize said injury," and that, "these cases may be reviewed within the framework of individual petitions, in which the court will be able to examine the overall arrangements that apply to a certain area, and the specific balancing which takes place therein between the rights of the residents and other interests, as was previously done in similar petitions" (paragraph 34 of the judgment).
7. And indeed, after the permit regime judgment was delivered on the assumption that Palestinians with ties to the seam zone would not be denied access to it, more and more cases in which the Respondent denies Palestinians access to their lands and workplaces in the seam zone emerged. The following was recently written about the implementation of the permit regime and its severe consequences:

The barrier has serious consequences for the entire Palestinian population in the West Bank... The hardship caused by the barrier is particularly grave in the area of the West Bank between the barrier and the Green Line, known as the 'Seam Zone'... Data supplied by the military authorities in 2018 show a consistent decline in the number of permits issued. The military authorities claim that this decline is due to the concern that a growing number of Palestinians are using Seam Zone permits to enter Israel illegally, where they may present a security risk. Figures released show, however, that over the years the percentage of security-based permit refusals has not exceeded 6% of all refusals of agriculture-related requests, and was usually under 2%. The overwhelming majority of refusals were based on bureaucratic grounds, primarily 'failure to meet the criteria'... which reached a high of 83% of all refusals in 2018. These restrictions on access impede essential year-round agricultural activities. The detrimental impact is demonstrable in the decrease in olive productivity (that accounts for

25% of the agricultural income of the West Bank), which has diminished in the Seam Zone by 55-65% in comparison with areas that are accessible all year round...

Beyond the harm to livelihood, restrictions on entry into the Seam Zone infringe on the right to access and use of private property. Moreover, they jeopardize land-owners' ownership rights, following Israel's practice of declaring as 'state land' unregistered land that has not been cultivated for three consecutive years... It is reported that the hardship suffered within the area has pushed many of its residents to relocate, while people who do not live in the Seam Zone have been abandoning land they own in the area (David Kretzmer & Yael Ronen, *the Occupation of Justice: the Supreme Court of Israel and the Occupied Territories*, 235-237 (second ed. 2021))

8. However, even if an entry permit into the seam zone is granted, it does not guarantee regular and uninterrupted access thereto, since the permits are subordinated to the Separation Barrier crossing arrangements which are established by the Respondent. In the case at hand, the closest and most convenient gate through which the Petitioners can cross the Separation Barrier is the 'Anin gate. However, the Respondent does not agree to open this gate on more than two out of the seven days of the week. In addition, on the two days in which the gate is opened, it opens only twice a day and only for twenty minutes at a time, Consequently, the Petitioners and other protected persons in their situation are forced to enter and exit the seam zone through other checkpoints, using long and indirect roads involving long delays, substantial financial costs and limitations on the transfer of agricultural equipment, unlike in the 'Anin gate. The above substantially encumber the Petitioners and adversely affects the accessibility of the farmers to their land as well as the fabric of life of the seam zone residents.

### **The Parties**

9. **Petitioners 1 and 2** are the heads of the local councils of the villages adversely affected by the opening arrangements of the 'Anin gate – 'Anin and Umm al Rihan, respectively. **Petitioners 3-6** are residents of 'Anin holding seam zone entry permits through the 'Anin gate.
10. **Petitioner 7** is a non-profit association working to promote the human rights of Palestinians in the occupied territories. Among other things, it assists Palestinians having connection to the seam zone to realize their right to access the seam zone.
11. **The Respondent** is the military commander of the West Bank on behalf of the state of Israel.

### **The case of the residents of the village of 'Anin**

12. Petitioner 3, born in 1958, is married and has seven children. He resides in 'Anin in the Jenin district and owns five plots of land located on 'Anin lands, in the seam zone. He holds a "seam zone farmer" entry permit into the seam zone, valid from May 10, 2022

through May 8, 2024, according to which he is allowed access through the 'Anin gate (214) and Barta'a checkpoint (356).

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

A copy of Petitioner 3's permit is attached and marked **P/2**;

13. Petitioner 4, born in 1981, is married and has two children. He resides in 'Anin and owns two plots of land located in 'Anin lands, in the seam zone. Petitioner 4 holds a "seam zone farmer" entry permit into the seam zone, valid from April 20, 2022 through April 18, 2024, according to which he is allowed access through the 'Anin gate (214) and the Barta'a checkpoint (356).

A copy of Petitioner 4's identification card is attached and marked **P/3**;

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

14. Petitioner 5, born in 1980, and Petitioner 6, born in 1978, are married spouses residing in 'Anin. Petitioner 6 owns three plots of land located in 'Anin lands, in the seam zone. Petitioner 6 holds a "farmer's first degree relative" entry permit into the seam zone, valid from August 17, 2020 through August 16, 2023. The permit was given to him after a petition had been filed on his behalf – AP 23302-08-20 **Yasin v. Military Commander of the West Bank Area**. Petitioner 5 also holds a "farmer's first degree relative" entry permit into the seam zone, valid from March 4, 2021 through March 3, 2023. Petitioner 5's permit was also given in the framework of a petition which had been filed on her behalf – AP 43477-12-20 **Yasin v. Military Commander of the West Bank Area**. Petitioner 5 is working to renew her permit. According to the permits of Petitioners 5 and 6, they are allowed access through the 'Anin gate (214) and the Barta'a checkpoint (356).

A copy of Petitioner 5's identification card is attached and marked **P/5**;

A copy of Petitioner 5's permit is attached and marked **P/6**;

A copy of Petitioner 6's identification card is attached and marked **P/7**;

A copy of Petitioner 6's permit is attached and marked **P/8**;

15. 'Anin gate (214) is an agricultural gate installed in the Separation Barrier, mostly serving the residents of the village of 'Anin in the Jenin district. The village of 'Anin has lands covering an area of about 11,500 dunam trapped in the seam zone. Olive trees are planted on an area of about 5,000 dunam of these lands. The farmers, residents of 'Anin, usually receive seam zone entry permits allowing them access through the 'Anin gate 214 and the Brata'a checkpoint 356, similar to the permits which were given to Petitioners 3-6.
16. The 'Anin gate is located near the 'Anin village and its lands. Accordingly it takes a few minutes to access the 'Anin lands from 'Anin through this gate. However, this gate is usually closed. The 'Anin gate is opened only on Mondays and Wednesdays, and on these

days it is opened only twice a day, and only for short periods of time – from 06:50 through 07:10 and from 15:50 through 16:10.

17. The other checkpoint which is registered on the permits of the residents of 'Anin is the Barta'a checkpoint 356. It is opened all days of the week and continuously all day long. However, it is located at a great distance from 'Anin, towards the south - between Ya'bad and Barta'a. The settlements of Hinanit, Tal Menashe and Shaked are located between 'Anin and Ya'bad, and the Separation Barrier surrounds the above settlements, such that it protrudes to the east, deep into the West Bank. Therefore, apart from the considerable distance “as the crow flies” between 'Anin and the Barta'a checkpoint, travelling from 'Anin to the Barta'a checkpoint also requires a large detour of the entire area which was surrounded by the Separation Barrier and even beyond. After the 'Anin farmers travel from 'Anin to the Barta'a checkpoint, they must wait in line for an inspection at this checkpoint, which serves as an entry checkpoint into Israel, and after they manage to get through the checkpoint, they must travel all the way back north, within the seam zone, to access their lands which are adjacent to the 'Anin gate.

A map of the area is attached and marked **P/9**.

18. The Petitioners, residents of the 'Anin village, reported that it is much more difficult to access their lands through the Barta'a checkpoint than through the 'Anin gate. The 'Anin gate is about five minute drive from Petitioners' homes in 'Anin, and Petitioners' lands are adjacent to this gate, within a few minutes walking distance therefrom. Accordingly, it takes between five minutes (in the case of Petitioner 4) to twenty minutes (in the case of Petitioner 3) to access Petitioners' lands from the 'Anin gate. On the other hand, a journey of some **1.5 hours** is required to access 'Anin agricultural lands from the village of 'Anin through the Barta'a checkpoint, including through improvised dirt roads within the seam zone, passable only by a 4x4 vehicle or tractor.
19. In addition to the long drive to the lands through the Barta'a checkpoint, the individual Petitioners reported that the cost of the gas which is required for this trip is substantial and amounts to about NIS 40 in each direction, namely, about **NIS 80 per day**. By public transportation the travel cost from the village of 'Anin to the seam zone lands through the Barta'a checkpoint amounts to NIS 30 in each direction, namely, about NIS 60 per day. Public transportation is not continuously available throughout the day, but mostly in the morning and in the afternoon. When public transportation is scarce, no direct transportation is available from 'Anin to the Barta'a checkpoint. Instead, the travelers are required to travel from 'Anin to Jenin and from Jenin to the Barta'a checkpoint, which increases the hardship and travel costs.
20. In addition, since the Barta'a checkpoint does not only serve the framers but is also used by inhabitants of the seam zone enclaves, owners of businesses located in Barta'a in the seam zone and workers, and since this checkpoint is equipped with security inspection equipment and machinery, heavy traffic and delays occur therein. It was reported by the local council of 'Anin that on average, inspection and crossing through the Barta'a checkpoint take between twenty to thirty minutes. In the morning hours the checkpoint is extremely busy, and these are exactly the hours in which the weather is suitable for cultivating the land and in which the farmers need to access their lands. On the other

hand, the 'Anin gate is not as busy and it takes only a few seconds or minutes to cross through it.

21. In addition, the Petitioners reported that crossing through the Barta'a checkpoint with agricultural tools and vehicles is problematic – a problem which does not exist in the 'Anin gate. Accordingly, for instance, Petitioner 3 reported that he has a tractor and that he is allowed to pass through the 'Anin gate with his tractor, while passing through the Barta'a checkpoint with his tractor is prohibited. Petitioner 4 also noted that tractor owners cannot pass through the Barta'a checkpoint unless the details of their tractors are registered on their permits. However, they may pass through the 'Anin gate without this requirement. Petitioner 4 added that agricultural tools may be transferred through the 'Anin gate without any problem, but that the transfer of the tools through the Barta'a checkpoint takes a long time since the inspection there is stricter and on many occasions farmers are prevented from bringing their tools through the checkpoint. Petitioners 5 and 6 also noted that it is easier to bring agricultural tools into the seam zone through the 'Anin gate than through the Barta'a checkpoint. The Petitioners added that contrary to the arrangement in the 'Anin gate, special coordination in advance for transferring agricultural equipment is required at the Barta'a checkpoint, and that having an entry permit into the seam zone for agricultural purposes does not suffice to bring in agricultural equipment into the seam zone while entering through it. It is an unnecessary and encumbering bureaucracy and the farmers reported that in practice, "coordinations" of this sort do not tend to succeed.
22. Namely, for 'Anin residents, the option of accessing their lands through the Barta'a checkpoint is not a reasonable alternative to accessing their lands through the 'Anin gate. Therefore, the petitioners are of the opinion that the fact that the 'Anin gate opens only on Mondays and Wednesdays is insufficient, and that it should be opened all week long to enable 'Anin farmers reasonable access to their lands.
23. In addition to the need to open the gate all week long, the Petitioners also informed that the opening hours of the gate during the day should be expanded. For 'Anin farmers whose lands are located in the seam zone, the fact that the 'Anin gate opens only twice a day means that they cannot enter the seam zone unless they intend to stay there for the entire work day – they cannot return to their homes in the middle of the day if they entered the seam zone in the morning, and they cannot access their land at noontime and work there until the evening. In addition, the fact that the gate opens only twice a day does not enable the farmers to return to their homes during the day if it rains or if it is very hot; if they are hungry or thirsty and run out of food or water; if they or their minor children get tired or do not feel well during the day, and the like. The fact that the gate opens only for twenty minutes at a time also encumbers the farmers and binds them to a rigid and limited timetable.

#### **The case of the residents of the village of Umm al Rihan**

24. Umm al Rihan is a small village of about 600 inhabitants, located in the seam zone. The residents of Umm al Rihan receive seam zone entry permits allowing them to travel through the Shaked-Tura gate 300 and the Barta'a checkpoint 356. These two checkpoints are opened all weekdays and continuously all day long (the Barta'a checkpoint is opened 24/7 and the Shaked-Tura gate is opened from 07:00 to 21:00). However, these

- checkpoints do not provide the residents of Umm al Rihan reasonable access to 'Anin village.
25. Petitioner 2, the head of the local council of Umm al Rihan, reported that there are many marriages between the residents of Umm al Rihan and the residents of 'Anin and accordingly many residents of Umm al Rihan have family members in 'Anin. Therefore, the residents of Umm al Rihan need to access 'Anin frequently and easily.
  26. The village of 'Anin is located north-east of Umm al Rihan. The 'Anin gate is located between Umm al Rihan and 'Anin, while the Shaked-Tura gate and the Barta'a checkpoint are both located south of Umm al Rihan, in the opposite direction from 'Anin. Accessing 'Anin through the Shaked-Tura gate or the Barta'a checkpoint requires a long circular drive, completely disproportionate to the short distance as the crow flies between the two villages. To get from Umm al Rihan to 'Anin through the Barta'a checkpoint, one must travel from Umm al Rihan southwards to the Barta'a checkpoint; from the Barta'a checkpoint north-east to Jenin; and from Jenin north-west to 'Anin, covering a distance of about 40 kilometers. On the other hand, it is only about a ten minute drive from Umm al Rihan to 'Anin through the 'Anin gate. With respect to the Shaked-Tura gate, accessing 'Anin from Umm al Rihan through this gate requires travelling from Umm al Rihan to the Shaked-Tura gate; from the Shaked-Tura gate southwards, to Ya'bad; from Ya'bad north-east to Jenin; and from Jenin north-west, to 'Anin. Hence, it is obvious that the journey of the residents of Umm al Rihan to the village of 'Anin through these two checkpoints is much longer, in a manner that does not allow them easy and daily access to the village in which the families of many of the residents live (see P/9).
  27. However, as aforesaid, crossing through the 'Anin gate is also not easy, since this gate opens only two days a week, and on these days it opens only twice a day, and only for short periods of time. It is clear that these opening arrangements do not enable the residents of Umm al Rihan to travel daily and regularly to 'Anin and back, to visit their families in 'Anin, even if this gate is added to the permits of the residents. If the 'Anin gate is opened every day and for longer periods of time during the day, the residents of Umm al Rihan will be able to request to add this gate to their permits, and will be able to access 'Anin comfortably, to maintain current and frequent connections with their families. At this time they are prevented from doing so.

### **Exhaustion of remedies**

28. The local council of 'Anin requested the Jenin DCO, through the Palestinian coordination office, to change the opening days and opening hours of the 'Anin gate. Said request has not been answered and the opening arrangements of the 'Anin gate remained unchanged. Therefore, the heads of local councils of 'Anin and Umm al Rihan (Petitioners 1 and 2) contacted HaMoked: Center for the Defence of the Individual (HaMoked) and requested it to handle the matter.
29. HaMoked wrote to the head of the Civil Administration Crossings and Seam Zone Division, Major Hussam Muadi, on August 18, 2022 requesting to change the opening arrangements of the 'Anin gate such that it shall be opened every day and to expand its opening hours. The request was sent on behalf of Petitioners 1 and 2 and mentioned the



request which had been previously sent to the military in that regard, through the Palestinian coordination office.

A copy of HaMoked's letter dated August 18, 2022 is attached and marked **P/10**.

30. On August 23, 2022 an email message was received from the Civil Administration Public Liaison Officer, which stated as follows:

We hereby confirm receipt of your request concerning the above matter.

Your request is being reviewed by the relevant bodies at the Civil Administration and shall be handled as soon as possible.

A copy of the message of the Civil Administration Public Liaison Officer dated August 23, 2022 is attached and marked **P/11**.

31. A reminder of the above request was sent by HaMoked on September 18, 2022.

A copy of the reminder dated September 18, 2022 is attached and marked **P/12**.

32. On that day a message was received from the Civil Administration Public Liaison Officer, which stated as follows:

As aforesaid, your request is being reviewed by the relevant bodies at the Civil Administration and shall be handled as soon as possible.

A copy of the message of the Civil Administration Public Liaison Officer dated September 18, 2022 is attached and marked **P/13**.

33. The local council of 'Anin reported that on October 2, 2022 the DCO orally informed the Palestinian coordination office that during the olive harvest season, the 'Anin gate shall be opened all days of the week, twice a day, from 06:45 until 07:05 AM and from 15:45 until 16:10 PM. The above, while in prior years the 'Anin gate used to be opened three times a day during the olive harvest season and for much longer periods of time – from 05:30 until 07:30 AM; from 12:00 until 13:00 PM; and from 16:00 until 17:30 PM.

34. Petitioner 1 contacted the Palestinian coordination office on October 3, 2022 and requested to transfer to the military a request to expand the opening hours of the 'Anin gate, such that the gate shall be opened in the same hours in which it was opened in prior years. The request also mentioned the previous request of the local council to open the 'Anin gate all days of the week (permanently, and not only during the olive harvest season).

A copy of Petitioner 1's letter dated October 3, 2022 is attached and marked **P/14**.

35. On October 26, 2022, Petitioner 4 entered the seam zone in the morning, on or about 06:20 AM, to harvest olives. However, subsequently it started to rain and Petitioner 4 and additional farmers who were in the seam zone wanted to return to their homes. Petitioner 4 returned to the 'Anin gate on or about 09:00. About twenty farmers arrived

to the gate at the same time due to the rain – men, women and children. However, since the gate opens only twice a day, between 06:45 and 07:10 AM and between 15:40 and 16:00 PM, the farmers were prevented from crossing the gate and returning to their homes. The soldiers who manned the gate refused to open it for the farmers who were forced to stay and wait in the rain. HaMoked's representative, Ms. Irit Eshet, had contacted the Civil Administration Public Liaison Officer with respect to this matter, and subsequently, at 10:10 AM, the farmers reported that the soldiers had opened the gate and that they have crossed it – after having waited for an about an hour and a half in the rain near the gate.

36. On October 27, 2022 HaMoked wrote to the head of the Civil Administration Crossings and Seam Zone Division requesting to expand the opening hours of the 'Anin gate in the olive harvest season.

A copy of HaMoked's letter dated October 27, 2022 is attached and marked **P/15**.

37. On October 30, 2022 a letter was received from the Civil Administration Public Liaison Officer which stated as follows:

Your request was transferred for the attention of the relevant bodies.

The opening hours of the agricultural gates, including the gate at hand, are determined in coordination with the Palestinian coordination office and are changed from time to time according to the needs raised by it. In certain cases, the opening hours of the gates are even expanded according to the discretion of the forces to provide a full solution to all those crossing it.

For your attention.

A copy of the letter of the Civil Administration Public Liaison Officer dated October 31, 2022 is attached and marked **P/16**.

38. HaMoked responded to this letter on November 10, 2022 and wrote as follows:

We do not understand your reply dated October 31, 2022 and it fails to provide a pertinent response to our above request...

Our letter dated October 27, 2022 stated that your recent decision to open the 'Anin gate 214 only twice a day in the olive harvest season is an offensive decision since the farmers who arrive to their lands in the morning are trapped in the seam zone for the entire day, and are prevented from returning to their homes at noon.

The decision to open the gate only twice a day does not provide a solution to all those crossing it, but rather creates a difficulty for no reason whatsoever. From your response it is **unclear** why you have decided not to expand the opening hours of the gate despite the difficulties which were presented in our letter. We therefore request that you reconsider the above request.

In addition, we reiterate our request to receive your response to our letter to you dated August 18, 2022, in which we have requested to expand the opening hours of the 'Anin gate 214 and to open it seven days a week, throughout the entire day, or at least three times a day for longer periods of time.

A copy of HaMoked's letter dated November 10, 2022 is attached and marked **P/17**.

39. On November 17, 2022 a letter was received from the Civil Administration Public Liaison Officer which stated as follows:

Expansion of the opening hours of all of the relevant gates is set through the accepted channel between the Palestinian coordination office and the relevant DCO.

The DCO shall examine the request upon its receipt and all claims and requests presented by the Palestinian coordination office and according to the relevant need and operational considerations even expanding the opening hours.

A copy of the letter of the Civil Administration Public Liaison Officer dated November 17, 2022 is attached and marked **P/18**.

40. HaMoked responded to this letter on November 27, 2022 as follows:

In your letter dated November 17, 2022 you have also failed to provide any substantial response to our request to expand the opening hours of the 'Anin gate 214 – such that it shall be opened three times a day and all week long.

It should be noted that we have written to you after a letter on behalf of the local council of 'Anin requesting to expand the opening hours of the above gate in the harvest season, which was sent through the Palestinian coordination office in the beginning of October 2022, remained unanswered.

Therefore, if we do not receive a pertinent answer, we shall regard it as a refusal and shall be forced to apply to legal instances.

A copy of HaMoked's letter dated November 27, 2022 is attached and marked **P/19**.

41. On that day an email message was received from the Civil Administration Public Liaison Officer which stated as follows:

A response to your letter was sent on November 17, 2022.

As is customary every year, the back-and-forth concerning the expansion of the opening hours is conducted between the relevant DCO and the district Palestinian coordination office, and it shall so continue in the future.

When an official request is received from the district Palestinian coordination office, the DCO shall handle it according to the relevant priorities and operational considerations.

A copy of the letter of the Civil Administration Public Liaison Officer dated November 27, 2022 is attached and marked **P/20**.

42. Petitioner 1, head of the local council of 'Anin, sent to the Palestinian coordination office another request concerning the opening arrangements of the 'Anin gate on January 11, 2023. The Palestinian coordination office informed that the request had been transferred to the DC within one week from its receipt. The request stated as follows:

... most lands of the 'Anin village, totaling 11,500 dunam, are located on the other side of the fence and a large percentage of 'Anin residents own lands in the seam zone. The military opens the gate only twice a week and these days are insufficient. Consequently, damage is caused to the lands and trees which are eaten by the cows and sheep in that area... We therefore request your assistance in opening the gate all week long for passage in both directions. Your written answer is highly appreciated.

A copy of the letter dated January 11, 2023 is attached and marked **P/21**.

43. HaMoked wrote to the head of the Civil Administration Crossings and Seam Zone Division on February 7, 2023 requesting an answer to the letter dated January 11, 2023 (the letter dated January 11, 2023 was attached to HaMoked's letter).

A copy of the letter dated February 7, 2023 is attached and marked **P/22**.

44. On February 9, 2023 Petitioner 1 received a letter from the Jenin Palestinian coordination office which stated as follows:

With respect to the above request to expand the opening of the gate (214) such that it shall be opened throughout the week, after checking the matter with the Israeli side, our request was refused more than once, on the basis of inability to do so.

A copy of the letter dated February 9, 2023, informing of the military's denial, is attached and marked **P/23**.

45. Hence the petition.

### **The Legal Argument**

46. The Petitioners shall argue that the opening arrangements of the 'Anin gate according to which the gate opens only twice a week and only twice a day for short periods of time, are contrary to case law concerning the Separation Barrier and the permit regime. In addition, these arrangements disproportionately violate the fundamental rights of the protected persons to property, freedom of occupation and freedom of movement.

### **The legal background**

47. The Petition concerns Respondent's acts within the occupied territory. The respondent is authorized to act in occupied territory to protect the legitimate security interest of the administration and to protect the inhabitants of the occupied territory:

Israel occupies the territories of the area by belligerent occupation. In the framework of the military administration, the military commander

exercises in the area powers imbibing from the rules of international law combined with the principles of Israeli public law... The belligerent occupation of the area is subordinated to the major principles of international customary law entrenched in The Hague Convention respecting the Laws and Customs of War on Land from 1907 [25], while the humanitarian principles of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949 (hereinafter: the Geneva Convention) are actually applied by the state and by the commander of the area (Iskan [1], *Ibid.*, pages 793-794). **The Hague Convention authorizes the commander of the area to act in two major areas: the first – secure the legitimate security interest of the administration holding the area; and the other – secure the needs and rights of the local population in the area which is under belligerent occupation.** The first is a military need. The other is a civilian-humanitarian one. The first focuses on the safety of the military force as well on the order, security and rule of law in the area; the other – concerns the responsibility for the safety and wellbeing of the inhabitants. **While protecting the wellbeing of the inhabitants as aforesaid, it is incumbent on the military commander not only to maintain the order and safety of the inhabitants but also to protect their rights, and particularly the constitutional human rights vested in them.** "The concern for human rights stands at the center of the humanitarian considerations that the military commander should take into account" (HCJ 10356/02 **Hass v. Commander of IDF Forces in the West Bank** (hereinafter: Hass [4], page 456). While performing his duties the military commander should secure the necessary security interests, on the one hand, and that the rights of the civil population are protected, on the other. Between these two centers of responsibility proper balancing is required (Y. Dinstein "The Legislation Power in the Occupied Territories" [23], page 509). In protecting the constitutional rights of the inhabitants of the area, the military commander is also subordinated to the principles of Israeli public law, including the fundamental principles of human rights (HCJ 7862/04 **Abu Daher v. Commander of IDF Forces in Judea and Samaria**, IsrSC 59 (5) 368, 375-376 (2005), all emphases in the petition were added unless otherwise noted, T.M.).

48. The state of Israel decided to erect a considerable part of the Separation Barrier within the West Bank and to close to Palestinians the parts of the West Bank located between the Separation Barrier and Israel's border – the seam zone. Consequently, the basic rights of the protected inhabitants were and are violated, and particularly the rights of those having an individual connection to the seam zone area. In view of the above, the courts held that the Respondent must mitigate, to the maximum extent possible, the harm caused by the barrier to the local inhabitants:

Having completed the examination of the proportionality of each order separately, it is appropriate that we lift our gaze and look at the proportionality of the entire route of the part of the Separation Barrier

which is the subject of this petition. The length of the part of the Separation Barrier to which these orders apply is approximately forty kilometers. It causes injury to the lives of 35,000 local inhabitants. 4000 dunam of their lands are taken up by the route of the fence itself, and thousands of olive trees growing along the route itself are uprooted. The barrier separates the eight villages in which the local inhabitants live from more than 30,000 dunam of their lands. The great majority of these lands are cultivated, and they include tens of thousands of olive trees, fruit trees and other agricultural crops. The permit regime which the military commander wishes to establish cannot prevent or substantially decrease the extent of the severe injury to the local farmers. Access to the lands depends upon the possibility of crossing the gates, which are very distant from each other and not always open. Security checks, which are likely to prevent the passage of vehicles and which will naturally cause long lines and many hours of waiting, will be performed at the gates. These do not go hand in hand with the farmer's ability to work his land. **There will inevitably be areas where the security fence will have to separate the local inhabitants from their lands. In these areas, the commander should allow passage which will reduce, to the extent possible, the injury to the farmers (HCJ 2056/04 Beit Sourik Village Council et al., v. The Government of Israel, paragraph 82 (reported in Nevo, June 30, 2004)).**

and also:

The conclusion according to which it is impossible to establish an alternative geographic route for the barrier which is less injurious does not, in and of itself, terminate the proportionality analysis in its second sense. **In the examination of the harm caused by the barrier, the geographic route and the permit regime and the passage to the lands which remained west of the fence are interrelated.** Petitioners' groves and grazing lands were cut-off by the Separation Barrier. Under these circumstances, **the respondents must see to it that reasonable passage arrangements and an access regime to Petitioners' lands are established, in a manner minimizing, to the maximum extent possible, the harm inflicted on them. (HCJ 4825/04 Alian v. The Prime Minister, paragraph 16 (reported in Nevo, March 16, 2006)).**

and also:

The arrangements which were established concerning the issuance of permits to those who have a permanent and an occasional need, as such were specified, also satisfy, according to us, the second proportionality sub-test. As indicated by us above, we agree that the harm inflicted on this group is severe. Individuals who have cultivated their lands in the seam zone, conducted their businesses there and established family and social relations, are forced at this present time, in order to preserve their way of life, to apply for an entry permit based on several limited

justifications. The residents of the zone itself are also adversely affected by the regime which was applied thereto, since, against their will, the reality of their lives becomes difficult and complex, as social and business isolation is imposed on them in their place of residence. **These harms require the establishment of arrangements which preserve, to the maximum extent possible, the fabric of life which preceded the declaration, subject to security needs which require same.** It seems to us, that as a general rule, the arrangements which were established satisfy this requirement. We shall refer to the arrangements which concern the different interest groups (the **Permit Regime Judgment**, paragraph 33).

#### **Respondent's undertakings in the framework of the Permit Regime Petitions**

49. The Permit Regime Judgment broadly discusses the crossing arrangements in the gates which are installed in the Separation Barrier. The judgment states as follows:

With respect to the entry arrangements into the seam zone, the state specified in its response the various gates which were located along the route of the fence at the entrance to the seam zone, and the measures taken by it, which were intended, as argued, to enable, to the maximum extent possible, an easy entry of the inhabitants to the seam zone areas. Accordingly, the state noted in its response, that in the seam zone which was declared along phases A and B, there were 53 gates, out of which 37 gates were agricultural gates used for the passage of Palestinians to their lands or homes. The state pointed at four types of gates which existed in the seam zone: a fabric of life gate – which is open daily on a continuous basis between 12 to 24 hours a day; a day gate – which opens twice or three times a day, for variable durations of between half-an-hour to two hours, depending on the scope of those who wish to pass through and the agricultural needs; a seasonal gate – which opens in the agricultural seasons with an emphasis on the relevant olive growing periods, and in the other seasons the gate opens subject to coordination in advance; and an operational gate – which serves the operational forces. The state reiterates time and again in its responses that ongoing acts are taken by it to improve the movement and traffic arrangements which were established, including the various types of crossings which form a part thereof. Thus, the state emphasized that extensive effort, financial and other, is invested by it in the construction of high standard crossings, in the improvement of the quality of the services rendered therein and in the installation of advanced security devices which enabled a better security check along with the shortening of the waiting periods in the crossing. Similarly, it was noted that significant amounts of money were invested in the improvement of the agricultural gates, that their opening hours were extended and that various arrangements were established for their opening when required. It was noted that various possibilities existed for the opening of the agricultural gates beyond their regular opening hours, including, inter alia, by calling the

humanitarian center located at the civil administration headquarters in Beit-El. In addition, it was so argued, 22 Arabic speaking officers and noncommissioned officers were assigned to the main pedestrian crossings whose role was to ensure reasonable fabric of life in the crossings and to assist to find solutions for problems which arose therein. In its updating notice, the state elaborated on additional changes which took place in this area, including the upgrade and privatization of the Rihan crossing – near eastern Barta'a in which most of the seam zone inhabitants lived. It was argued that this step has significantly improved the security check procedures and the passage through said crossing, through which about 2,500 Palestinians pass on a daily basis, and that examinations which were conducted indicated that the average passage time per person amounted to about ten minutes on average during busy hours and to five minute in less busy hours. A security check and passage of four vehicles takes about 15-20 minutes on average (paragraph 28).

50. As aforesaid, the honorable court accepted the military's version concerning its attempts to mitigate the harm caused by the Separation Barrier and the closing of the seam zone and the decision of the honorable court that the permit regime does not disproportionately harm the Palestinian population was made on the basis of the military's aforementioned statements. However, the court also held in its judgment that cases may occur in which the harm inflicted on farmers is disproportionate and that these cases may be examined in the framework of petitions which shall pertain to specific areas:

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 provides 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 framers in the Area are filled by them with real substance. However, and as specified above, we cannot deny the possibility that in specific cases severe injury is caused to the human right to livelihood and land of Palestinian residents who cannot adequately farm their lands or who encounter other access difficulties, and the respondents, on their part do not take adequate measures to minimize said injury. As stated above, these cases may be reviewed within the framework of specific petitions, in which the court will be able to examine the gamut of relevant arrangements which apply to a certain area, and the specific balancing which takes place therein between the rights of the residents and other interests, as was previously done in similar petitions (paragraph 34).



51. It was also held in said judgment that

However, the examination of the arrangements alone is not sufficient. As noted by the state, the proportionality of the injury 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. These practical aspects enable the court to establish its position on the proportionality of the injury from a wide perspective, and hence, their importance... the petitions as filed, do not enable conducting a specific examination of the current situation on the ground due to the fact that the court was not presented with a specific case which pointed at a flaw in the system established by the state for the implementation of the unique regime which was applied to the seam zone, against which all other considerations which obligated the respondents to act in this manner or another may be examined (and compare: Mara'abe, page 534). Therefore, under the above circumstances we are unable to examine whether there is a gap between the state's statements and the situation on the ground (paragraphs 38-39).

52. The honorable court has recently reiterated the above holding:

The lawfulness and constitutionality of the permit regime depend, *inter alia*, on the acts 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 Barrier, all of the above, according to the fundamental principles of administrative law, including reasonableness and proportionality, and according to the relevant rules of international law. In this context it should be added and emphasized that as was held in the **Permit Regime** case "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" (*Ibid.*, paragraph 38)... (HCJ 6896/18 **Ta'ame v. Military Commander of the West Bank**, paragraph 2 of the judgment of the Honorable President Hayut (reported in Nevo, March 6, 2022)(hereinafter: **Ta'ame**).

53. In the case at hand, while the state argued that the opening arrangements of the gates installed in the Separation Barrier were aimed at providing as comfortable a crossing as possible for the inhabitants travelling back and forth from the seam zone areas and

emphasized its continuing efforts to improve said arrangements, in fact, the opening arrangements of the 'Anin gate are very limited, as described above, and the Respondent denied Petitioners' requests for their expansion – initially refusing to respond to a request which had been received from Petitioners' counsels rather than from the Palestinian coordination office, and subsequently, after another request concerning the matter had been transferred through the Palestinian coordination office, merely alleging that it was not possible.

54. The current opening arrangements of the 'Anin gate do not enable the protected inhabitants adversely affected by the Separation Barrier in this area to preserve and maintain their fabric of life as it had been prior to the erection of the Separation Barrier, not even remotely.

Since the 'Anin gate opens only on Mondays and Wednesdays, the farmers, inhabitants of 'Anin, are required to choose between two bad options – to either totally neglect their land on all other days of the week, or invest hours of their time and substantial amounts of money to access their lands through the remote checkpoint which is open, and through which the bringing of agricultural vehicles and work tools into the seam zone is problematic. As aforesaid, even on the days in which the 'Anin gate does open, its scarce and short opening times adversely affect the farmers' ability to access their lands, create great inconvenience and prevent the farmers from leaving the seam zone during the work day if necessary.

55. With respect to the inhabitants of Umm al Rihan, since the 'Anin gate is not opened continuously, and on most days is not opened at all, the inhabitants cannot use this gate to visit their family members living in 'Anin and they are forced to take long routes for this purpose. The above adversely affects the daily routine of the local inhabitants and does not allow them to maintain close family relations which include daily and spontaneous visits, as they would have done had they not been separated by the Separation Barrier.
56. Hence, the opening arrangements of the 'Anin gate do not meet the standards established by case law with respect to the Separation Barrier and the permit regime.

### **Violation of the Rights to Property, Freedom of Occupation and Freedom of Movement**

57. The right to property is a fundamental right, entrenched in Section 3 of the Basic Law: Human Dignity and Liberty, protecting the rights of all persons and in international covenants relevant to the occupied territory:

Property rights are also included among the basic human rights. Property rights have been recognized as basic rights worthy of protection in the case law of this court (see, for example, H CJ 390/79 **Dawikat v. Government of Israel**, IsrSC 34(1), 14-15; HCJFH 4466/94 **Nuseibeh v. Minister of Finance**, IsrSC 49(4) 68, 83-85) and have also been given explicit constitutional expression in section 3 of the Basic Law: Human Dignity and Liberty. These rights are also recognized in international law, and in so far as territories held under

belligerent occupation are concerned, they are enshrined, *inter alia*, in the Hague Convention and the Fourth Geneva Convention (**H CJ 1890/03 Bethlehem Municipality v. State of Israel, Ministry of Defense**, paragraph 20 to the judgment of the Honorable Justice (as then titled) Beinisch (February 3, 2005; hereinafter: **Bethlehem**)).

58. With respect to Respondent's obligation to protect the right to property in the context of accessing the seam zone, it was stated as follows:

First, the erection of the Separation Barrier, for a proper and important purpose in and of itself, was accompanied by a clear undertaking of the state of Israel to maintain the fabric of life of the residents whose daily routine was threatened by the fence. As stated in the beginning, the residents of the Area having lands which are located on the Israeli side of the Separation Barrier were subjected to the permit regime, as a necessary evil. However, it was accompanied by the undertaking, which was entrenched in the judgments of this court, to provide maximal protection to their rights and fabric of life. (**Ta'ame**, paragraphs 53-54 of the judgment of the Honorable Justice Barak-Erez).

59. Freedom of occupation has also been recognized as a fundamental right, and the authorities must refrain from violating it while acting outside the boundaries of the state of Israel:

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

60. Freedom of movement is also recognized as a fundamental right, both by Israeli and international law. It was so held in paragraph 15 of the judgment of the Honorable Justice Beinisch in **Bethlehem**:

Freedom of movement is one of the basic human rights and it has been recognized in our law both as an independent basic right and as a right deriving from the right to liberty. In addition, there are some authorities according to which this freedom derives from human dignity (See paragraph 15 and the references there). Freedom of movement is also recognized as a basic right by international law and is entrenched in a host of international covenants.

61. In HCJ 9593/04 **Morar v. Commander of IDF Forces in Judea and Samaria**, IsrSC 61(1) 844, 863 (2006), it was held that freedom of movement is particularly weighty when restrictions are imposed on the access of landowners to their lands:

It is important to emphasize that in our case we are not speaking of the movement of Palestinian residents in nonspecific areas throughout Judea and Samaria but of the access of the residents to land that belongs to them. In such circumstances, where the movement takes place in a private domain, especially great weight should be afforded to the right to freedom of movement and the restrictions imposed on it should be reduced to a minimum. Obviously, the limitations imposed on freedom of movement in the public domain and the limitations imposed on a person's freedom of movement within the area connected to their own home should not be examined in the same manner, and different rules apply to each set of limitations.

62. As clarified by case law, the erection of the Separation Barrier within the West Bank has severely violated the fundamental rights of the farmers whose lands remained behind the barrier and of the villages located in the area which was blocked by the fence. The violated rights include the right to property, the right to freedom of occupation and the right to freedom of movement. Similarly, the establishment of crossing arrangements in the Separation Barrier which do not enable the protected persons having a connection to the seam zone daily passage in reasonable conditions, violates the above rights. The residents were not provided with a plausible explanation for this violation and for Respondent's refusal to mitigate it. The only reason which was given was "inability" – without any details, reasoning or support. Therefore, *prima facie*, the violation of the fundamental rights of the Petitioners and all other protected persons in their condition is disproportionate.

### **Conclusion**

63. The erection of the Separation Barrier within the West Bank has severely harmed local farmers and the residents of the area who remain behind the barrier. The closure of the seam zone to Palestinians was approved by the Honorable Court based on the assumption that the Respondent uses his best efforts to mitigate the harm inflicted by him on the local population and enable them to preserve their fabric of life, and that the arrangements established by him shall be liberally applied.
64. However, the opening arrangements of the 'Anin gate do not enable the residents of the Area to preserve their fabric of life. This gate opens only on Mondays and Wednesdays, and on these days it opens only twice a day and only for twenty minutes at a time. Therefore, on most days of the week, the farmers of 'Anin cannot access their lands through this gate and they are forced to either neglect their lands or access them traversing a very long and cumbersome route, involving high costs and limitations on the transfer of agricultural equipment to the lands. The same applies to the inhabitants of Umm al Rihan, most of whom have families in 'Anin – as a result of the limited opening arrangements of the 'Anin gate, the inhabitants cannot easily and comfortably visit their families, and are forced to take an expensive and long trip to do so. The encumbrances imposed on the

protected population who are adversely affected by the Separation Barrier, disproportionately violate their fundamental rights to property, freedom of occupation and freedom of movement.

65. In view of all of the above, the Honorable Court is requested to issue an *order nisi* as requested in the petition. The Honorable Court is also requested to obligate the Respondent to pay Petitioners' costs and attorneys' fees.
66. This petition is supported by affidavits signed before attorneys in the West Bank which were forwarded to HaMoked by WhatsApp following telephone coordination. The Honorable Court is requested to accept these affidavits and the powers of attorney which were also forwarded by WhatsApp, considering the objective difficulties in arranging a meeting between the Petitioners and their attorneys.

March 16, 2023.

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Tehila Meir, Advocate  
Petitioners' counsel