

Israel's High Court of Justice and the Security Fence

1. Israel's Supreme Court is the highest instance in the Israeli legal system.¹ In addition, Israel's Supreme Court has jurisdiction to perform judicial review over actions by the state or its officials in its capacity as the High Court of Justice (HCJ).² Any interested party (including non-governmental organizations) or any person (including non-citizens and non-residents) affected or potentially affected by a government action can petition the HCJ, on a claim that the action is *ultra vires*, unlawful, or substantially unreasonable.
2. Access to the Court is extremely broad, with very few procedural, substantive or financial hurdles. Moreover, even those individuals residing outside the territory of the State or those residents of an entity with which Israel is engaged in a military conflict, are able to petition Israel's highest judicial instance.
3. The broad scope of judicial review exercised by Israel's HCJ is unique. The Court has not hesitated to adjudicate matters pertaining to national security and has intervened, when appropriate, in issues relating to military operations even in the midst of ongoing hostilities. When warranted, the HCJ can enjoin the Government and/or grant other relief. Under Israel's legal system, a ruling of the HCJ against the IDF or a government agency is final and binding.
4. One of the issues that has been addressed numerous times by the High Court of Justice in the last decade has been the Security Fence. The Security Fence was constructed as a defensive measure in order to protect Israel's civilians from terrorist attacks committed by Palestinian terrorist organizations, after over one thousand Israelis lost their lives and thousands more were injured in such attacks between 2000 and 2005, with the majority of such attacks originating from the West Bank. In response to the abovementioned violence,

¹ Article 15(b) of the Basic Law: The Judiciary, 1984 S.H. p. 78 (1984) provides the Court with appellate jurisdiction, stating that “[t]he Supreme Court shall hear appeals against judgments and other decisions of the District Courts.” Justices of the Supreme Court are selected by a professional committee composed of Supreme Court Justices, Government Ministers, Members of the Knesset and representatives of the Israel Bar Association, as set forth in Article 4 of the Basic Law: The Judiciary.

² Article 15(c) provides the Court with original jurisdiction by providing that “[t]he Supreme Court shall sit also as a High Court of Justice. When so sitting, it shall hear matters in which it deems it necessary to grant relief for the sake of justice and which are not within the jurisdiction of another court....”

the Israeli Government approved in 2002 the construction of a barrier that would prevent infiltration of terrorist elements into Israel.³ Since the Fence's construction, the number of terrorist attacks emanating from the West Bank has drastically decreased.⁴

5. As construction of the Security Fence began, petitions challenging the legality of the Fence and its route were filed with the HCJ. It should be noted that legal challenges pertaining to the Security Fence were raised by both Palestinian residents of the West Bank and Israeli citizens concerned with the route of the Security Fence, as will be further detailed below.⁵
6. Two landmark decisions issued by the HCJ addressed in detail the question of the legality of the Security Fence and provided the State with legal guiding principles as to how to determine the route of the Security Fence. Subsequent cases which challenged the legality of the Security Fence have been adjudicated in accordance with this legal framework.
7. In *Beit Sourik Village Council v. The Government of Israel*,⁶ the petitioners, Palestinian landowners and local village councils, raised various challenges to the legality of the Security Fence. The HCJ, which held extensive hearings in the case, initially examined the fundamental question of whether the construction of the Security Fence by Israel was legal. It reiterated, as it had ruled in previous petitions pertaining to national security issues, that the military commander was authorized under international law to take various steps to meet the security needs in the West Bank to the extent such steps were temporary in nature,⁷ including the seizure of land.⁸ Within this legal framework, and based on the information presented to it, the Court reviewed the security threats that Israel had faced in

³ See Ministry of Defense Website, Israel's Security Fence, <http://www.securityfence.mod.gov.il/Pages/ENG/purpose.htm> (last updated on 31.01.2007).

⁵ See, for example, HCJ 3680/05 **Tene Municipality Council v. The Prime Minister** (01.02.2006), available in Hebrew at: <http://elyon1.court.gov.il/files/05/800/036/A13/05036800.a13.pdf>; HCJ 9055/05 **Neot Reut Association v. The Prime Minister** (09.01.2006), available in Hebrew at <http://elyon1.court.gov.il/files/04/830/056/A19/04056830.a19.pdf>.

⁶ HCJ 2056/04 **Beit Surik Village Council v. The Government of Israel** (30.06.2004), available in English at: http://elyon11.court.gov.il/files_eng/04/560/020/A28/04020560.a28.pdf.

⁷ Id. at paras 27-28.

⁸ Id. at 32.

the years preceding construction of the Security Fence, which had led to the construction of the Security Fence. The HCJ determined that the construction of the Security Fence in the area in dispute was motivated by security interests and that the Fence was not being built to promote a political agenda, as had been alleged by the petitioners.⁹

8. The HCJ went on to examine the proposed route of the Fence challenged in the particular petition. It should be noted that in the course of the legal proceedings themselves, the State agreed to conduct a number of changes to the route of the Fence.¹⁰ Notwithstanding these changes, the Court applied a three-prong proportionality test to examine the legality of the Fence. In accordance with this test, the Court determined that there was a rational connection between the objective of the Security Fence and its established route.¹¹ It also accepted the State's position that there is no alternate route that fulfills, to a similar extent, the security needs while causing lesser injury to the local inhabitants.¹²
9. Nevertheless, the HCJ determined that the damage caused to the Palestinian petitioners as a result of the challenged section of the Security Fence was disproportionate to the security advantage reaped from the route.¹³ Despite accepting the military commander's position that an alteration of the route would provide less security, the Court found this could not justify the damage caused to the petitioners and ordered the State to alter the route of the Security Fence. That segment of the Security Fence was subsequently changed.
10. Another central decision with respect to the Security Fence is *Ma'arabe v. The Prime Minister of Israel*.¹⁴ Petitioners in the case were local Palestinian residents, as well as an Israeli NGO. They challenged the legality of the construction of the Security Fence, relying, *inter alia*, on the Advisory Opinion of the International Court of Justice on the

⁹ Id. at para. 31.

¹⁰ Id. at para. 31 ("We heard the explanations of officers and workers who handled the details of the fence. During our hearing of the petition, the route of the fence was altered in several locations. Respondents were open to our suggestions. Thus, for example, adjacent to the town of Har Adar, they agreed to move the fence passing north of the town to the security zone closer to it, and distance it from the lands of the adjacent village of El Kabiba.").

¹¹ Id. at para. 57.

¹² Id. at para. 58.

¹³ Id. at para. 60.

¹⁴ HCJ 7957/04 *Mara'abe v. The Prime Minister of Israel* (15.09.2005), available in English at: http://elyon1.court.gov.il/Files_ENG/04/570/079/A14/04079570.A14.pdf.

matter. The petition was heard by an expanded panel of nine Supreme Court justices. In its ruling, the HCJ discussed in detail the differences between its conclusions in the *Beit Sourik* case with respect to the Security Fence and those of the majority opinion of the advisory opinion. It ultimately concluded:

"Our point of departure was that the basic normative foundation upon which the ICJ and the Supreme Court based their judgments is a common one. Despite that, the two courts reached different conclusions....We asked ourselves: what is the explanation for this difference? We answered that question by saying that the difference stems from the factual basis that was laid before the ICJ, which was different from that which was laid before the Court in *The Beit Sourik Case*. We also noted that the difference in the model of proceedings also contributed to the different results. Against this background, we must answer the following question: what is the effect the Advisory Opinion of the ICJ on the future approach of the Supreme Court on the question of the legality of the separation fence according to international law, as determined in *The Beit Sourik Case*?

Our answer is as follows: the Supreme Court of Israel shall give the full appropriate weight to the norms of international law, as developed and interpreted by the ICJ in its Advisory Opinion. However, the ICJ's conclusion, based upon a factual basis different than the one before us, is not res judicata, and does not obligate the Supreme Court of Israel to rule that each and every segment of the fence violates international law. The Israeli Court shall continue to examine each of the segments of the fence, as they are brought for its decision and according to its customary model of proceedings; it shall ask itself, regarding each and every segment, whether it represents a proportional balance between the security-military need and the rights of the local population. If its answer regarding a particular segment of the fence is positive, it shall hold that that segment is legal. If its answer is negative, it shall hold that that segment is not legal. In doing so, the Court shall not ignore the entire picture; its decision will always regard each segment as a part of a whole."¹⁵

11. With respect to the specific section of the Security Fence challenged in *Ma'arabe*, the Court, after reviewing the various data presented on the issue, determined, as in *Beit Sourik*, that the route of the Fence was motivated by security considerations.¹⁶ The Court noted in this context the immediate impact that construction of the Security Fence had had on terrorist attacks:

"Thus, for example, according to the figures of the General Security Service, in the (approximately) 34 months between the outbreak of the armed conflict and until the completion of the first part of the separation fence, the terrorist infrastructure committed 73 mass murder attacks in the Samaria area, in which 293 Israelis were

¹⁵ Id. at para. 73-74.

¹⁶ Id. at para. 100.

killed, and 1950 injured. Since the completion of the separation fence – that is, the year between August 2003 and August 2004 – the terrorist infrastructure succeeded in committing five mass murder attacks, in which 28 Israelis were killed and 81 injured. Comparison between the year prior to commencement of work on the separation fence (September 2001 – July 2002) and the year after construction of the fence (August 2003 – 2004) indicates an 84% drop in the number of killed and a 92% drop in the number of wounded. The respondents brought to our attention an example of the security efficacy of the separation fence. The Islamic Jihad organization wished to detonate a suicide bomber from the Jenin area at a school in Yokneam or Afula. The suicide bomber and his guide left Jenin in the early morning, and intended to reach Wadi Ara, and from there, Afula or Yokneam. In the pre-separation fence era the terrorists' job was easy. The seashore area was wide open, and one could easily reach Wadi Ara. This route is now sealed. Therefore, the terrorist had to travel to Wadi Ara through a much longer route, through an area where the separation fence had not yet been constructed, a detour which lengthened the route from 27 km to 105 km. The long detour allowed the security forces to gather intelligence, arrange the forces and locate the two terrorists en route. After they were caught, the explosive belt was located, and the attack was avoided. This is only one of various examples brought to our attention. They all indicate the security importance of the fence and the security benefit which results from its construction.¹⁷

12. The HCJ was provided with similar information regarding the segment of the Security Fence in dispute. Notwithstanding the security needs in the region, the Court ultimately determined that it was not convinced that with regard to the particular segment of the Security Fence in dispute, the Government had made a sufficient effort to examine potential alternate routes which would result in less harm to the Palestinian population in that area.¹⁸ The Court therefore ordered the State to examine alternate routes for the Fence in that particular area in the hopes that an alternative route could be devised, which would provide sufficient security to the Israeli residents in the region while hampering to a lesser extent the Palestinian population.¹⁹ The route of the Fence was subsequently altered by the Government.
13. Since the HCJ decision in *Beit Sourik*, the Court has adjudicated numerous petitions concerning the Security Fence, addressing issues regarding the underlying purpose for the construction of the Fence; the route of the Fence and its effect on the Palestinian

¹⁷ Id.

¹⁸ Id. at para. 114.

¹⁹ Id. at para. 116.

population; various mechanisms implemented to alleviate any hardship on the local population, *etc.*

14. A particularly telling example is the HCJ decision with respect to three consolidated petitions filed by both Palestinians and Israelis pertaining to a segment of the Security Fence in the vicinity of the Palestinian village of Azun Atme.²⁰ The petition involved a portion of the Security Fence that would have originally left the village to the west of the Fence. Following the HCJ decision in *Beit Sourik*, the route of the Security Fence in the area was re-examined and altered in a manner that would leave the northern part of the village entirely connected to the West Bank and to the majority of the village's agricultural land. Until the revision could be implemented, a provisional fence that included a passageway was put up in the vicinity of the village to prevent terrorist infiltrations through the village into Israel.²¹ Subsequently, because of growing security concerns, revised security measures were put into place in this area until the completion of the construction of the new route.
15. The Palestinian petitioners challenged the proportionality of the revised provisional security measures put in place and also alleged that the Security Fence could be re-routed yet again closer to the Green Line, were it not for political considerations. The Israeli petitioners argued that the alteration made by the State to the route of the Security Fence, which had relocated the Fence in very close proximity to their homes, could not adequately provide security and that the original route should not have been changed.
16. The State responded that the new route had been formulated taking into consideration the various topographical and geographical challenges in the area, as well as the State's obligation to minimize to the greatest extent possible the anticipated damage to the

²⁰ HCJ 8222/08 **Davka Co. Inc. v. The IDF Military Commander**, HCJ 9113/08 **Ornit Municipality Council Government of Israel**, HCJ 9144/08 **Salame v. The State of Israel** (21.12.2009), available in Hebrew at: <http://elyon1.court.gov.il/files/08/220/082/n15/08082220.n15.pdf>.

²¹ An earlier petition challenging the imposition caused to the residents of Azun Atme by this provisional fence was denied in light of the Government's presentation of the security threats in that particular area, which required the establishment of a temporary fence, as well as various assurances given by the Government regarding the Palestinian farmers' free access to their fields, see HCJ 8444/06 **Salame v. The State of Israel** (06.11.2006), available in Hebrew at <http://elyon1.court.gov.il/files/06/440/084/N03/06084440.n03.pdf>.

Palestinian population in the West Bank. It argued that the chosen route presented a reasonable balance between the need to provide security to Israelis on the one hand and the requirement that any damage to the Palestinians be proportionate on the other hand. With respect to the provisional fence in place, through which the State had previously agreed to allow free movement, the State explained that since that agreement, the passageway in the fence had been exploited to smuggle terrorists and illegal aliens into Israel,²² requiring its closing, despite the hardship caused to the Palestinian residents as a result of limited access to their fields. The State further reiterated that the situation was a temporary one until the new route of the Security Fence would be completed.

17. After reviewing the extensive information presented to it with respect to how the route of the Security Fence in the area had been determined, the HCJ determined that the route was meant to address security considerations and went on to examine the proportionality of the route. It reviewed the various alternatives presented by each of the parties and ultimately ruled that the amended route proposed by the State (as well as the provisional arrangements) took into consideration all of the relevant rights and interests and was the most balanced alternative. In its decision, the Court noted security considerations did not trump other competing rights and interests:

"...we accept respondents' statements that given the existing data, the additional security that would be provided to the future residents of those plots by a change in the route as proposed by the [Israeli petitioner], is not equivalent to the additional damage that would be caused to the Palestinian residents in the region as a result of such a change to the route.... It should be kept in mind that the construction of the Security Fence in the proposed route is meant, among other things, to provide protection to the... Israelis in the region, to provide them with security and protection and to enable safe access to their homes. In the process of doing so, the [Security] Fence harms the property of the Palestinian residents and access to their lands and limits their movement. This injury must be as limited as possible, and as a result, in some cases, we must make do with security solutions which are not the optimal solutions."²³

²² In support of its claim, the State, *inter alia*, introduced data according to which the population of the Azun Atme village had increased by 50% in just three years from 4,011 residents to 6,019. This was because the opening in the temporary fence meant to accommodate the village residents had become a gateway for illegal infiltration into Israel.

²³ Id. at par. 30.

All three petitions were accordingly dismissed. As noted above, the case is reflective of the various facets of judicial review regarding the Security Fence: the accessibility of all petitioners to the Court who present competing claims and interests; the careful examination of the underlying security considerations for construction of the Fence undertaken by the Court; the Court's willingness to reconsider renewed challenges to a particular segment of the Fence as circumstances change; and the Court's close scrutiny of the particular measures employed by the State to meet its obligations with respect to the Palestinian population in the West Bank.

18. The HCJ's ruling in *Beit Sourik* affected more than just the route of the Fence challenged in that particular petition. The decision in *Beit Sourik*, which provided parameters with regard to how to evaluate the legality of the Security Fence, had a wide-spread effect on the Government's planning process regarding the Security Fence. Following the issuance of the decision by the Court, the military authorities initiated a reevaluation of all segments of the Security Fence that had not yet been constructed in order to ensure that these segments met the guidelines set forth by the Court and numerous changes were made to the Security Fence's route. Various mechanisms are also available to ensure that the planning process of the Security Fence and any necessary land seizures are conducted in a transparent manner.²⁴ Information is disseminated to the local population regarding future construction. A dialogue is conducted between the military and local residents in the West Bank, as well as NGOs, regarding the proposed route of the Security Fence and whenever possible, modifications are made in order to minimize to the greatest extent possible the damage or inconvenience to the local population, while reasonably addressing the security needs in the region.

²⁴ For example, as noted by the HCJ in HCJ 2056/04 **Beit Surik Village Council v. The Government of Israel** (30.06.2004) (par. 8), every land owner whose land is seized is offered 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. Following the issuance of the order, a survey is taken of the area, with the participation of the landowners, in order to point out the land which is about to be seized. After the survey, leave is granted to the landowners, so that they may submit an appeal to the military commander. The substance of the appeals is examined. Where it is possible, an attempt is made to reach understandings with the landowners. If the appeal is denied, leave is given to the landowner, so that he may petition the High Court of Justice.

19. Notwithstanding this dialogue and the alterations made by the Israeli authorities to the route of the Security Fence, the door of the HCJ remains open to those individuals or organizations wishing to challenge the legality of decisions pertaining to the Security Fence. Since the initiation of construction of the Security Fence, more than 130 petitions have been filed by Palestinian residents, village councils and various NGOs (for example, the Association for Civil Rights in Israel, HAMOKED Center for the Protection of the Individual, Al-Haq), and Israeli citizens, challenging various aspects of the Security Fence. When warranted, the Court has issued injunctions preventing construction work from continuing until the resolution of the case.²⁵

20. A review of the extensive case-law of the decisions of the HCJ with respect to the Security Fence reveals that the State has taken various steps in order to further accommodate the needs of the civilian population residing in the West Bank. Such steps include, *inter alia*, alterations to the route of the Fence itself,²⁶ expanding the hours of operation of agricultural gates to increase access to agricultural lands by Palestinians,²⁷ addition of

²⁵ See, for instance, HCJ 2056/04 **Beit Surik Village Council v. The Government of Israel** (30. 06.2004), available in English at: http://elyon1.court.gov.il/files_eng/04/560/020/A28/04020560.a28.pdf; HCJ 3758/04 **Agrave v. The Government of Israel** (31.07.2006), available in Hebrew at: <http://elyon1.court.gov.il/files/04/580/037/A19/04037580.a19.pdf>.

²⁶ See, for example, HCJ 7210/04 **Societe Fonciere De Terre-Sainte v. State of Israel** (19.08.2004) (petition dismissed after a change was made to the route of the Security Fence in accordance with the guidance provided by the HCJ in *Beit Sourik*), available in Hebrew at: <http://elyon1.court.gov.il/files/04/100/072/A03/04072100.a03.htm>; HCJ 5743/04 **Abu Romi v. The Military Commander in Judea and Samaria** (07.09.2004) (petition dismissed without prejudice after route of the Security Fence was moved further east, making the seizure of private land for the paving of patrol roads unnecessary), available in Hebrew at: <http://elyon1.court.gov.il/files/04/430/057/A06/04057430.a06.pdf>; HCJ 1890/03 **Bethlehem Municipality v. The State of Israel** (03.02.2005) (petition denied after the route of the Security Fence was altered a number of times in the course of the proceedings so that eventually no Palestinian residents remained to the West of the Fence), available in English at: http://elyon1.court.gov.il/files_eng/03/900/018/N24/03018900.n24.pdf; HCJ 5383/04-B **El-Kuds University v. The State of Israel** (17.06.2004), available in Hebrew at: <http://elyon1.court.gov.il/files/04/830/053/K01/04053830.k01.htm> (petition dismissed in light of a mutual agreement to change the Security Fence route); HCJ 6181/04 **El-Darawi v. The Minister of Defense** (22.03.2005), available in Hebrew at: <http://elyon1.court.gov.il/files/04/810/061/A11/04061810.a11.pdf> (petition dismissed without prejudice based on a mutual agreement with regard to the Security Fence's route); HCJ 2626/04 **Diaab v. Government of Israel** (04.11.2004) available in Hebrew at: <http://elyon1.court.gov.il/files/04/260/026/A24/04026260.a24.htm> (petition dismissed without prejudice based on mutual agreement to change the Security Fence's route).

²⁷ See, for example, HCJ 1960/07 **El-Hak Organization v. The Prime Minister of Israel** (09.07.2008), available in Hebrew at: <http://elyon1.court.gov.il/files/07/600/019/n11/07019600.n11.pdf> (petition denied after an arrangement was reached according to which a passageway in the Security Fence would remain open 24 hours for the use of the local residents); HCJ 3948/06 **Zeid v. The Prime Minister of Israel** (10.12.2006) available in Hebrew at: <http://elyon1.court.gov.il/files/06/480/039/H07/06039480.h07.pdf> (petition dismissed without prejudice based on a mutual agreement according to which, *inter alia*, a passageway in the security Fence would remain open 9.5 hours a day to meet farmers' needs); HCJ 6193/05 **Committee of Residents in Ras- Hmis v. Land Seizure Authority** (25.11.2008), available in Hebrew at:

gates to certain sections of the Fence,²⁸ the granting of permits to enter the seam-line area²⁹ and more.

21. Accordingly, the HCJ on several occasions has rejected petitions after having determined that the military commander had, in accordance with earlier HCJ rulings, taken into consideration all the relevant interests and that the route chosen was reasonable and proportionate under the circumstances. Additionally, many petitions seeking various forms of relief were ultimately either withdrawn or dismissed without prejudice after becoming moot due to various additional steps taken by the State to alleviate the hardship to the Palestinian population, or dismissed after the Court found that relief was no longer warranted. However, in those cases in which the HCJ found that the damage caused by a particular segment of the Security Fence to the local Palestinian population was disproportionate, it ordered the State to take steps to remedy this harm.³⁰
22. As of November 27, 2012, six petitions challenging sections of the Fence under construction in various areas are currently pending before the HCJ. New petitions may also be filed pertaining to segments of the Security Fence previously challenged if petitioners belief circumstances have changed and that the route of the Fence or other

<http://elyon1.court.gov.il/files/05/930/061/n15/05061930.n15.htm> (petition dismissed based on the State's guarantee to enable the passage through the Security Fence of 5,000 people during the morning rush-hours).

²⁸ See, for example, HCJ 3758/04 **Agrave v. The Government of Israel** (31.07.2006) (petition denied in light of the steps taken by the military commander to alleviate the impact of the Security Fence on the petitioner, which included, *inter alia*, the construction of a gate in the Fence to which the petitioner would have unfettered access and the employment of security cameras and sensors in the area), available in Hebrew at: <http://elyon1.court.gov.il/files/04/580/037/A19/04037580.a19.pdf>; HCJ 1348/05 **Shatiya v. The Government of Israel** (17.07.2006), available in Hebrew at: <http://elyon1.court.gov.il/files/05/480/013/A28/05013480.a28.htm> (petition dismissed based on the State's guarantee that, *inter alia*, two new passageways would operate to allow the access of vehicles and farmers to their lands); HCJ 834/07 **Takataka v. The Government of Israel** (02.08.2007), available in Hebrew at: <http://elyon1.court.gov.il/files/07/340/008/N07/07008340.n07.htm> (petition dismissed without prejudice based on the State's guarantee that a passageway for farmers would operate at any time without the need for a permit and would serve both pedestrians and vehicles).

²⁹ The area east of the Armistice Line ("Green Line") and west of the Security Fence. See, for example, HCJ 11446/03 **El Zarei v. The Minister of Defense** (04.02.2008), available in Hebrew at: <http://elyon1.court.gov.il/files/03/460/114/M22/03114460.m22.pdf> (petition denied in light of permits given to the petitioners as requested); HCJ 8161/07 **Ka'abana v. The Minister of Defense** (11.05.2009), available in Hebrew at: <http://elyon1.court.gov.il/files/07/610/081/r13/07081610.r13.pdf> (petition denied without prejudice in light of the State's guarantee to issue temporary permits renewed monthly).

³⁰ See, for example, HCJ 2056/04 **Beit Surik Village Council v. The Government of Israel** (30.06.2004). Available in English at: http://elyon1.court.gov.il/files_eng/04/560/020/A28/04020560.a28.pdf; HCJ 7957/04 **Mara'abe v. The Prime Minister of Israel** (15.09.2005). Available in English at: http://elyon1.court.gov.il/Files_ENG/04/570/079/A14/04079570.A14.pdf; HCJ 2577/04 **Al Hawaje v. The Prime Minister of Israel** (19.07.2007). Available in Hebrew at: http://elyon1.court.gov.il/files_eng/05/760/082/a13/05082760.a13.pdf.

mechanisms relating to the Fence should be revised. Judicial review by the HCJ pertaining to the Security Fence remains available to those who believe they have been adversely affected by the Fence.