

Date: 1 February 2006
In the response please cite: 37230

Osnat Mendel, Att.
Director, HCJ Division
State Attorney's Office
Ministry of Justice

By fax

Dear Madam,

Re: **Pre-petition: removal of restrictions on movement between Gaza and the West Bank and vice versa**

1. I hereby appeal to you on behalf of HaMoked: Center for the Defence of the Individual, and request that you instruct the military commanders to remove the severe restrictions on movement between the two parts of the Palestinian territory and to enable passage between them, subject to individual security screenings, but not to a criterion requiring exceptional humanitarian reasons.
2. Over the past five years, a severe deterioration has occurred with regards to freedom of movement within the Palestinian Territories in general, and movement between the Gaza Strip and the West Bank in particular:

Before the outbreak of the intifada, when the safe passage arrangement was implemented, Palestinian residents were able to travel between the two parts without passage being made conditional on special grounds. The safe passage arrangement stipulated restrictions with regards to the route of travel between Gaza and the West Bank, the duration of the journey on the said route and the manner of travel (some travelers were permitted to travel independently on this route and some only via secured shuttle). Palestinians traveling between the two parts were not required to present grounds for their application (much like arrangements for exit abroad).

Following the outbreak of the intifada, Israel drastically reduced freedom of movement between the two parts. Information we have received indicates that Israel enables movement between the two parts for approximately **2000** people, including **200** humanitarian cases. The rest are businessmen, senior PA officials, organization and reform workers. Humanitarian cases were not defined, but included mostly cases of family unification, medical treatment, and in certain instances family visitations.

The information is attached, as forwarded to us by the Coordinator of Government Activities in the Territories, appendix A.

Additionally, age restrictions were imposed, especially regarding the passage of university students, whose requests are rejected outright, on the claim that it is impossible to screen them individually (for instance, HCJ 11120/05 et al.). The abuse towards Palestinians who changed their place of residence from Gaza to the West Bank has also intensified. They are now titled "illegal aliens", some are deported (for instance, HCJ 3519/05, 4465/05) and the rest are denied basic services provided by the army (for example, HCJ 8356/05).

The severe restrictions of movement imposed after the outbreak of the intifada are not all. Often a **full closure** is imposed, which entails a further tightening of the criteria for passage between the two parts. During times of closure, even the return of spouses and children to their home is made difficult (for instance, HCJ 9896/05).

See also our letter dated 26 December 2005 regarding families split between Gaza and the West Bank, appendix B.

If this were not enough, since July 2005, the closure has become permanent, such that it is continuous (or gets renewed even before a previously imposed closure is removed). In this situation, judicial intervention is necessary for almost every matter. This is an unacceptable situation. It must be noted that the criteria during times of closure are so amorphous as to prevent passage for a woman seeking to travel from the West Bank to Gaza, where her spouse and children are, but at the same time, permit the entry of thousands of workers to Israel. A chronological list of the closures and relaxations of the closure since July 2005 is attached at the end of this letter.

3. The Gaza Strip and the West Bank are parts of a single, integral Palestinian territory. The integrality of the parts is enshrined in the HCJ's ruling in the Ajourri case, as well as in Israel's international undertakings, which have been applied to domestic law in the Territories. Despite the absence of territorial contiguity between these parts, every Palestinian resident is entitled to travel within the territory, including between its various parts. This is a basic right which parallels a citizen's right to movement within the territory of his country.
4. The right to freedom of movement is a constitutional right of the first tier, and is a part of customary international law.

The constitutional protection of freedom of movement embodies the force of the right to autonomy of personal will, and integrates with the acknowledgment of human dignity, which is the source of the individual's rights to freedom of spirit and body... Despite the fact that the individual's right to freedom of movement within the boundaries of the State was not given statutory expression in the Basic Law, unlike the freedom to enter and exit Israel, it is acknowledged in case law as a constitutional right by force of the general acknowledgment of the individual's personal freedom, and as deriving from human dignity... In the hierarchy of basic human rights, an individual's right to movement has great constitutional force... it belongs to the first tier in the hierarchy of human rights in Israel... freedom of movement has a constitutional status similar in force to that of the freedom of expression (HCJ 6358/05 Vanunu v. GOC Homefront Command, judgment dated 12 January 2006, paragraph 10).

5. The right to freedom of movement has special status for good reason. Freedom of movement is necessary for the realization of personal autonomy and many other fundamental rights, *inter alia*: the right to education, access to healthcare, the right to livelihood and religious services, the right to family life, freedom of occupation and the right to change residence. Hence its importance.
6. Like any other right, **the right to movement may be restricted for security reasons but, obviously, freedom of movement must not be restricted in such a sweeping manner, and for such a protracted period of time, to humanitarian situations and exceptional circumstances only.** A person has a right to meet with his beloved neighbor and console him for the death of his wife, despite the fact that they are not first degree relatives. A person has a right to visit his good friend who is hospitalized although there

are no first degree family ties between them, just as he has a right to visit his sister, even if she merely has the flu, and requires assistance. In the absence of individual security preclusion, freedom of movement must be facilitated.

7. The broadening of the Palestinian Authority's scope of control following the evacuation of settlements and military bases did not change the integrality of the Palestinian territory or the right of Palestinians to move between the parts. The ties between members of the Palestinian people in the two parts were not severed simply due to the evacuation of the bases or the opening of the international crossing in Rafah. Political, social, familial, religious, cultural and commercial ties continue to exist.
8. Indeed, some claim that Israel's responsibility for the territory of the Gaza Strip and its residents has changed. However, the day the competent international authorities rule Israeli responsibility has been completely removed is a long time coming. Such a ruling would be examined according to a **purposive interpretation** of international law, pertaining to all aspects of life, and the influence of military control over them. So long as Israel continues to wield exclusive control over passage between Gaza and the West Bank; so long as Israel suspends the safe passage arrangements; so long as Israel does not allow any alternative means of transit between the two parts; So long as all of these circumstances do not change, Israeli military control continues to greatly impact the daily lives of Gaza residents and their freedom of movement. In terms of this aspect of life, Israel continues to bear responsibility by force of the laws of belligerent occupation. In any case, so long as the conflict continues, the citizens of Gaza continue to benefit from the status of protected persons in accordance with international humanitarian law.
9. Furthermore, the severe restrictions on movement effectively separate Gaza from the West Bank and cause severe and permanent harm to the integrality of the Palestinian territory, in contravention of customary international humanitarian law, which prohibits making substantial and permanent changes to the occupied territory. Undoubtedly, cutting off the territory of the Gaza Strip from the territory of the West Bank for such a long period of time constitutes a severe detriment to the human and economic resources of the West Bank, which is undoubtedly an occupied territory, and to the Palestinian fabric of life. The damage is similar to that caused by the separation wall, which cuts off the West Bank from parts which were trapped on Israel's side of the wall.
10. In light of all of the above, we request that you cease from imposing severe restrictions on movement between the two parts.

Respectfully,

Gil Gan-Mor, Att.

Copies:

Major General Yosef Mishlav, Coordinator of Government Activities in the Territories
Brigadier General Avihai Mendelblit, Military Advocate General
Colonel Shlomi Mukhtar, Head of Operations Directorate, Coordination of Government Activities in the Territories
Colonel Nir Pres, Head of Gaza DCO
Colonel Pnina Sharvit-Baruch, Head of International Law Division
Colonel Yair Lotstein, Military Legal Advisor for the West Bank
Colonel David Binyamin, Military Legal Advisor for the Gaza Strip
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Lieutenant Colonel Itzik Edri, Head of West Bank Operations Directorate
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