

**HaMoked: Center for the Defence of the Individual**  
**Position Paper:**  
**Safe Passage between the Gaza Strip and the West Bank**

Discussions regarding the renewed format of traffic arrangements between the Gaza Strip and the West Bank are currently being held. These arrangements are likely to determine the linkage between the two in the future.

According to the press, Israel wishes to include in the traffic arrangement a number of precedents that will impede the integrality of the Palestinian Territories, harshly violate human rights and be detrimental to the civil and economic life of Palestinian society.

These include:

- Dividing the Palestinian population into two "nationalities": "residents of the West Bank" and "residents of the Gaza Strip";
- Allowing only "residents of the Gaza Strip" to use the traffic arrangements and blocking any traffic of "residents of the West Bank" to Gaza;
- Limiting the stay of "residents of Gaza" in the West Bank to a maximum of 10 days – as if they don't have the right, as Palestinians, to be wherever they choose within the Palestinian Territories;
- Requiring those who traveled to the West Bank in the proceeding ten days to come back to Gaza as a condition to the continuation of the traffic arrangement in the same volume;
- Prohibiting the use of the traffic arrangements for people between the ages of 16 to 35 – a sweeping condition that violates the freedom of movement of a large portion of the population and undermines any viable economic and social life.

It is of outmost importance that these conditions are rejected.

Any other outcome would have fatal consequences on human rights, on the right of the Palestinian People to self determination and on the development of Palestinian civil society.

**The Gaza Strip and the West Bank as one integral territorial entity**

The Gaza Strip and the West Bank are one integral territorial entity. This is recognized in international agreements between the Palestinians and Israel formed under international supervision, including paragraph 31(8) in the interim Israeli-Palestinian Interim Agreement from 28.9.1995. Israel's High Court of Justice unambiguously proclaimed that Gaza and West Bank form one integral unit (HCJ 7015/02 Ajouri v. IDF Commander in the West Bank Court Decisions PD 54(6) 352).

No matter what agreement is reached, it must not compromise the unity of these two segments of the occupied territory.

Compromising the integral status of the occupied territory will harshly violate individual human rights of the Palestinian residents.

Compromising the integral status of the occupied territory might also impede the right of the Palestinian people to self determination in these areas.

Separating the Palestinian people into two categories, "residents of the West Bank" who cannot travel to Gaza and "residents of the Gaza Strip" who cannot stay in the West Bank for more than 10 days at a time, is extremely dangerous. The meaning of this separation would be a breach of the principle of the integrity of the territories, a contravention of the status quo and a distinct violation of human rights.

Every demand to limit free movement between the Gaza Strip and the West Bank is illegitimate, unless it relates to danger in the transfer stage within Israel. It is unacceptable that there be any limitation on the time of visitation of an individual in the West Bank or Gaza Strip depending on the circumstance, once the transfer through Israel is completed.

### **Current and Past Arrangements According to Israeli Military Law**

The transfer arrangements between the Gaza Strip and the West Bank over the years have been based on the logic according to which there is no need for any special permission for any resident of the territories to be in any place within them. Accordingly, residents of one segment desiring to go to the other were issued a permit labeled "Permit to Enter Israel". Primarily these permits were issued for certain time periods so that the individual could cross back to the segment of origin on a return trip without receiving an additional permit. At times these permits were issued for one day to entitle crossing through Israel in order to stay in the other segment for an undefined period of time.

In the last few years Israel deported Palestinians living in the West Bank to the Gaza Strip, claiming that their registered address was in Gaza. Some of these individuals returned to the West Bank with the agreement of Israel after HaMoked's intervention. In these cases, as well, return to the West Bank was facilitated through entry permits to Israel for one day and not through any formal "Permit for a Gaza resident to stay in the West Bank" – a nonexistent form of permit.

There is no basis to Israel's claim, according to which a resident of the Gaza Strip needs a special permit to stay in the West Bank (or the vice versa). This is not validated by any Israeli military regulation nor any verdict entered by Israeli courts. In fact, only recently the Israeli High Court of Justice issued an order requiring the State to delineate the reasons for this approach.

### **The Safe Passage: Permits Transfer through Israel and does not Relate to Staying in the West Bank**

The presence of a resident of the Occupied Territory in any place in the territories – Gaza *and* the West Bank – is always legal. This principle is based in the arrangements for the safe passage established in the Israeli-Palestinian Interim Agreement ("Oslo II") signed on 28.9.1995.

This arrangement for the safe passage establishes limitations on the route of movement between the Gaza Strip and the West Bank, the length of time permitted in the agreed route and on the mode of transportation (some are permitted to travel independently, some only via guarded shuttle).

In addition, the agreement sets that an entry permit to Israel is equivalent to a safe passage card. This means that any individual holding an entry permit into Israel can use it to move between the West Bank and the Gaza Strip.

This agreement does not set any limitations of any sort on the length of time that a Palestinian resident can stay in any part of the Occupied Territory after completing passage through Israel. It does not require that an individual who traveled from Gaza to the West Bank or vice versa need return within any delineated period of time. The agreement does not establish any procedure to define any time limit on any visitation.

**The arrangement on Safe Passage is based on the principle that the Palestinian Territory is one integral unit. There is no need to make arrangements for the presence of a Palestinian in any segment of the Territory. There is only a need to make arrangements for the physical transfer through Israel.**

### **Potential Damages**

Any arrangement that sets a time-limit to the stay of a Palestinian resident in the West Bank or in the Gaza Strip, will deviate from these established principles. It will create a new status of a Palestinian resident being "illegal" within the Palestinian Occupied Territories. Such an arrangement would divide the Palestinian population into two separate groups – residents of Gaza and residents of the West Bank. This would legitimize Israel's illegal practice, which was not accepted even by Israel's own High Court of Justice.

Such an arrangement violates the basic right of residents of any state (or similar entity) to move freely within its territory.

In practice this is a severe blow to any normal life style. For example, this harms the possibility of individuals to keep family relations, to marry residents of the other segment, to find work, to change their address, and all that comes from this. Students from Gaza will not be able to study in the West Bank (and vice versa). Companies and industries will not be able to operate freely within the Palestinian areas, and employees will not be able to travel freely as necessary between branches of the same firm, or change their place of residence according to their promotion within the firm. Accessibility to governmental institutions would be damaged; for example a resident of Gaza will not have the flexible freedom of movement necessary to lobby members of the Parliament located in Ramallah (or work as a lobbyist there). Good governance would be harmed due to the inability of governmental functionaries to travel back and forth to fulfill their tasks and the impossibility of moving governmental employees as necessary to the West Bank or Gaza Strip.

For the first time, official approval would be given to divide the Palestinian areas into separate cantons. This would severely damage the viability of a future Palestinian entity.

**HaMoked: Center for the Defence of the Individual calls upon all sides to renew free movement between the West Bank and the Gaza Strip without any further delay.**

**HaMoked calls upon all sides to defend the integral status of the territories within any agreed upon solution. Any solution must refrain from denying the right of any resident of Palestine to be present in any segment for any length of time and must eliminate all possibility of the issuing of "permits" which limit this basic right.**

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