The Permit Regime: Human Rights Violations in West Bank Areas Known as the "Seam Zone"

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Executive Summary

Ever since 2003, the Israeli military has been employing a permit regime in the areas of the West Bank it calls the "seam zone." The term "seam zone" refers to those areas within the Occupied Palestinian Territories (OPT) that are trapped between the separation wall and the Green Line, excluding the Israeli-annexed areas of East Jerusalem, and the lands in the area of Gush Etzion. All Palestinians living in the "seam zone" or wishing to enter it must first obtain a military permit in order to do so. The permit regime applies only to Palestinians, while Israelis and tourists need no permit whatsoever in order to enter and stay in the "seam zone."

The permit regime violates various human rights of Palestinian OPT residents living on both sides of the separation wall. First and foremost, it constitutes a violation of the right to freedom of movement in general, and in one's own country in particular. This leads to the violation of other human rights: the rights to family life, health, education, property, a livelihood, culture and social and community life; all accompanied by a severe violation of the rights to equality and dignity. The right to freedom of movement is therefore the central expression of the individual's autonomy, freedom of choice and the ability to exercise other rights and it is one of the norms of customary international law.

Palestinians who wish to obtain a "seam zone" permit of entry must prove a "connection" to the areas of the West Bank west of the wall, one of the 13 types of "connection" the military recognizes as grounds for entering the "seam zone" and matching its definition in the military orders. The military issues 13 types of permits corresponding to the 13 "connections": a permanent resident certificate; permits for farmers; temporary farmers; education workers; Palestinian Authority employees; international organization employees; infrastructure workers; medical personnel; students; minor children; for business; employment; and a personal needs permit.

Obtaining permits and renewing them requires applicants to weather lengthy and complicated processes and have "connections" to the "seam zone", as defined by the military in the "Standing Orders for the Seam Zone" (hereinafter: the Standing Orders). However, proving the existence of a connection is not enough, and permit applicants are also required to prove that it is imperative to act on it. In either case, providing the military with documents is no guarantee of approval as permits are granted subject to the military's discretion and the manner in which it defines what is imperative. If a permit is issued at the end of this process, its use is restricted to a limited period of time, usually just a few months, and to passage through specific gates in the wall which are only open at certain hours. Because the permits are valid for only a short (and increasingly shorter) periods of time, Palestinians must reapply for a permit time and time again.

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The human rights violations caused by the permit regime have a destructive effect. They lead to creeping dispossession of West Bank residents from their land under the cover of a bureaucracy that operates pursuant to military law with the Israeli Supreme Court's seal of approval, yet, in breach of a number of norms accepted in both Israeli and international law. Moreover, the manner in which the military implements the permit regime denies Palestinians – those living in the "seam zone" as well as those wishing to enter it for various purposes – any possibility of leading a normal life. In the "seam zone," mundane, everyday activities run up against the brick wall of military bureaucracy. The need to obtain the military's approval in order to continue one's daily routine results in severe harm to Palestinian residents' fabric of life. Evidence of the severe harm the permit regime causes to the Palestinian population, particularly to farmers who require a permit to work their land in the "seam zone", has mounted over the years.

The restrictions imposed by the military on entry into the part of the West Bank that is located beyond the wall and the complicated bureaucracy it requires Palestinians to endure, inevitably lead to a dramatic decline in the number of Palestinians permitted to be present in the "seam zone" and also to the transformation of this area. Decreased Palestinian presence in the area as a result of Israel's policy has serious, apparent and immediate consequences: the Palestinians who live in the "seam zone" are physically separated from the rest of the population of the West Bank, leading to their economic, familial, social, cultural and professional isolation from the rest of their society. Another consequence of the regime is a sharp decrease in cultivated farmland in the "seam zone", which severely harms the residents of about 150 West Bank villages and communities whose farmland has been cut off by the wall.

In November 2003, HaMoked petitioned the High Court of Justice, or HCJ, requesting it to invalidate the route of the wall running through the West Bank, and the permit regime imposed in the "seam zone." An additional petition on this matter was filed in 2004 by the Association for Civil Rights in Israel. In April 2011, the HCJ dismissed both petitions (which had been amended to focus on the permit regime following previous judgments). In so doing, the Court effectively legitimized the obligation the military imposes on Palestinians, and Palestinians only, to obtain a permit in order to be in their homes and lands. The justices did state that the permit regime inflicts severe harm on the Palestinian population, but expressed their hope that this was a "temporary situation which results from a temporary harsh reality." Nonetheless, the petitions were dismissed subject to minor changes to the military orders.

This report seeks to shed light on the reality behind the permit regime and to expose the daily operation of this destructive bureaucratic mechanism. Despite certain changes made to the regime in order to mitigate the burden on Palestinians who seek "seam zone" permits, the permit regime remains a blanket ban on movement based on nationality. Using the narrow openings still left in this regime requires applicants to stand firm, and repeatedly weather lengthy, Sisyphean procedures that culminate in the granting of short-term permits with limited usability and subject to the strict conditions stipulated by the military.

The bureaucratic-legal procedure

Ostensibly, obtaining a "seam zone" permit is a simple process: Palestinians who are interested in entering the parts of the West Bank that are located between the separation wall and the Green Line must file an application with the military. If rejected, they may file an appeal and their matter will be heard by a military committee. If the committee also rejects the application, they may petition the HCJ. In reality, however, this straightforward description conceals a grueling bureaucratic process which requires significant amounts of time and money, a process composed of complicated and intricate military working protocols which often render the entire endeavor impossible.

Filing an application for a "seam zone" permit requires Palestinians to be thoroughly familiar with the military orders (issued in Hebrew only): where to file the application, what type of permit to request, what documents to attach, etc. Even when the application is filed in accordance with the provisions of the Standing Orders, the military may take weeks to respond, during which applicants may not enter the "seam zone". When answers are finally given, about a quarter of the applicants discover that the military has not approved their application.

All permits issued for the "seam zone" are temporary: the longest lasting is granted for two years, but most are given for much shorter periods of time – one to three months at most. By limiting the validity period of the permits, the military forces Palestinians to renew their "seam zone" permits time and again through a process designed to be lengthy in the first place and during which applicants are prevented from entering their lands. In addition to this, the bureaucratic apparatus and the many obstacles it puts in the way of applicants lead to many applications being rejected out of hand, refused without explanation, or left unprocessed altogether.

Residents who wish to pursue their rights after the military has rejected their application must embark on yet another lengthy process – an appeal. In essence, the appeal is no more than an application to convene a hearing committee – a military committee, which, if the process were followed properly, would have convened before the rejection was issued. Because of the applicants' lack of familiarity with the military orders, which are inaccessible, and the military's demand they arrive at the DCO in person to file the appeal, in most cases no appeal is filed at all. Thus, of 33,746 applications for permits that were denied between 2007 and 2010, only 959 applicants were ultimately summoned to a hearing committee – less than 3%!

The DCO is required to convene the hearing committee within a month from the date on which the appeal was filed. This period of time significantly extends the entire process, especially considering the fact that in many cases, a hearing is not scheduled even within this liberal schedule. In addition, notices of the date of the hearing often fail to reach their destination and most individuals summoned to a hearing do not know they have been summoned. Figures provided by the State indicate that between 2007 and 2010, of the 959 individuals who were summoned to a hearing, only 282 appeared – 29%.

And so, only 0.008% of the permit applications rejected during this period of time ultimately reached a hearing committee.

The hearings are often meaningless sessions which do nothing to help overturn the rejection. The military asks unnecessary questions, to which is already knows the answers; lawyers acting as counsel to the applicants cannot participate in the hearings; and the minutes taken at the hearing – a rare occurrence in itself – are incomplete and inaccurate. Like the original rejection, the decision given following the hearing is unexplained, and rarely given in writing. Despite this, in 2007-2010, about half of the appeals which made it to a hearing committee, 133 of 282, resulted in the permit being granted.[1] In this context, it should be noted that the soldiers who participate in the hearing committee are the same soldiers who made the original decision to reject the application.

As shown, about 30% of the applications for "seam zone" entry permits are not approved, and as a result of the military bureaucracy, only a small fraction of these applications reaches a hearing committee – this, when almost half of the rejections which the DCOs themselves review in the appeal process are ultimately found to be unjustified! It is safe to assume that if the hearing were held as part of the initial review process, rather than only following rejection, the applications would have been approved in the first place.

Palestinians whose applications have been rejected by the hearing committee may petition the HCJ. HaMoked's experience indicates that in the absolute majority of the cases in which applicants petition against non-response or unlawful rejection of applications for "seam zone" entry permits, the petitioners are eventually granted the permits, whether as a result of a judicial decision or after the State retracts its position simply as a result of the petition having been filed. These proceedings needlessly cost both the petitioners and the courts significant amounts of time and money.

Though it is important to process permit applications expediently and effectively, and despite the HCJ's instruction on this issue, the military's processing of "seam zone" related applications and the time it takes it to do so are inconsonant with the needs and rights of Palestinians who wish to arrive at the part of the West Bank located beyond the wall. Since it is impossible to know if an application will be approved, rejected or even reviewed, Palestinians who need permits have to assume that in order to follow procedures in a manner that would allow them to petition the Court if need be, they must file each application two and a half months ahead of time. However, the military does not allow filing applications so long in advance. In addition, this complicated and time consuming mechanism offers no real solution for individuals who file applications for "seam zone" entry permits due to an unexpected event or an urgent need.

The process of obtaining a permit to enter the "seam zone" takes time, patience and often money and culminates in a permit which is not only time limited but also, as demonstrated in the report, restricted for use in certain places, for certain needs and on certain days and times. These permits are also under the constant threat of revocation or confiscation by a mechanism which appears to be arbitrary, at least prima facie. Not all Palestinians who require "seam zone" permits have the mental and material resources necessary to go through the entire process, and,

[1] The figures are taken from HCJ 9961/03 **HaMoked: Center for the Defence of the Individual v. Government of Israel**, State's Notice, July 30, 2009, Art. 20 and Exhibit R/44; and from Letter of the Civil Administration Public Liaison Officer to ACRI, April 4, 2011. The figures for 2009 cover January to June only.

as the figures provided by the State demonstrate, many – to their detriment – despair and give up their right to enter the "seam zone."

The permit regime and its consequences

International law presumes that people may be found anywhere in their country, and it is only in exceptional circumstances that this right may be restricted and only for a limited period of time. The permit regime reverses this premise and determines that Palestinians who wish to be present in the part of the OPT known as the "seam zone" must prove a special "need" that would justify granting this wish, and the ability to prove this "need" is subject to the manner in which the military defines and recognizes it.

The limited validity periods of the permits, the bureaucratic complexity and the inherent arbitrariness of the military system do not allow Palestinians to make long term plans. As previously stated, the permit regime particularly harms Palestinian farmers who, due to the restrictions imposed on them, are unable to effectively plan the agricultural cycle and use their land throughout the year. As a result, many avoid growing profitable crops which require maintenance year round. The violation of Palestinians' right to freedom of movement in their own country results in severe harm to local agriculture – a decline in yield and yield quality – and family feuds over the right to get a permit. Moreover, because of the great difficulty in navigating through the permit regime, many Palestinians relinquish their right to access land located inside the West Bank but beyond the wall. In these cases, it is not just the farmers' livelihoods that are in jeopardy, but also their rights to their property. Under Israel's interpretation of the law applicable to the OPT, "unregulated land" – which accounts for most of the land in the West Bank – that has not been cultivated for three years may turn into "state land". This is one of Israel's primary methods of procuring land reserves for settlement construction and expansion.

The military's requirement that Palestinians travel between the "seam zone" and the rest of the West Bank through specific gates in the separation wall makes matters worse, particularly considering the fact that, despite undertakings made to the Court as part of the general petitions against the permit regime, Israel does not allow Palestinian permit holders to enter and exit through the gates according to their needs. Thus, farmers whose land is located in the "seam zone" are stranded on the other side of the wall until their gate reopens and Palestinians who live beyond the separation wall must return home before the gate closes. The limited opening hours of the gates affect the usability of the permit and the manner in which routine lives are lived in the "seam zone", including the ability to maintain a family life, make a living, farm and receive health, education and welfare services, or assistance in emergencies.

In fact, "seam zone residents" are under constant quasi-curfew. The military intrusively monitors all their movements and their homes have turned into cages, where they remain trapped for fear that if they leave they will not be able to return. Naturally, many are reluctant to marry "seam zone residents" and the latter hesitate to leave their homes and move to live with their spouses on the other side of the wall. Those who do marry "seam zone residents" must either give up the notion of having a shared life with their spouses or willfully choose to enter the

cage known as the “seam zone”, which often means giving up their ties to their families and their sources of income in the process.

In its judgment in the general petitions against the permit regime, the HCJ ruled that the regime was justified on security grounds. However, there is no doubt that at least some of its objectives, as determined by Israel, serve no security purpose whatsoever. The permit regime is used as a tool for preventing illegal aliens from entering Israel, as well as Palestinian goods that might compete with Israeli products. These objectives may be achieved by the construction of a fence along the Green Line, in such a way that does not violate the human rights of the entire West Bank population.

It seems that the bureaucratic mechanism of the permit regime fuels and perpetuates itself. The ever present fear is that the decline in the number of Palestinians who enter the “seam zone” and the scope of cultivated farmland in it are desirable results in the eyes of those who make land policy in the West Bank.

Recommendations

The permit regime is about to enter its tenth year. In view of the daily violation of human rights and the alarming figures on the situation of the population and of agriculture in the areas Israel calls the “seam zone”, which are a direct result of the permit regime described in this report, HaMoked repeats its call for the adoption of the ICJ’s advisory opinion and the revocation of the permit regime in the West Bank.