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Date: June 13, 2017
In your response please note: 40670

To:
Brigadier General Achvat Ben-Hur
Head of Civil Administration

By Fax: 02-9977341

Dear Sir,

Re: **2017 Seam Zone Collection of Standing Orders**

1. The following are our comments to the 2017 Seam Zone Collection of Standing Orders (the New Standing Orders). Following a previous letter dated January 4, 2017, which consisted of a detailed list of comments to the wording of the previous collection of standing orders, and demands concerning items included in the New Standing Orders, a letter which has not yet been answered, and it should be reiterated – a letter from January 2017 – we wish to focus now on general and in principle aspects of the Standing Orders rather than on novelties included in the most recent collection of Standing Orders.
2. Our comments are based on the long term experience of HaMoked Center for the Defence of the Individual (Hamoked) in handling hundreds of applications of Palestinian residents regarding the seam zone.
3. It should be reminded that in a judgment which dismissed the petitions against the permit regime (HCJ 9961/03 **HaMoked Center for the Defence of the Individual founded by Dr. Lotte Salzberger v. Government of Israel** and HCJ 639/04 **Association for Civil Rights in Israel v. Commander of IDF Forces in Judea and Samaria**), it was held:

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.

4. Contrary to the above gist and undertaking, the New Standing Orders seem to continue the negative trend of their predecessors and the policy reducing the scope of permits while causing a severe damage to the connection



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between the land owners and their family members and the family plots in the seam zone. Accordingly, instead of regulating the continuity of the Palestinian residents' proprietary link to their land trapped beyond the separation wall, while respecting the tradition of familial-collective cultivation of the lands, the Civil Administration causes irreparable harm to the customs and fabric of life existing in the area for. This should be coupled with the establishment of a complex, exhausting and discouraging bureaucratic mechanism for the grant of permits, repeatedly causing loss of farming days of agricultural land, loss of work days for business owners in the seam zone, economic damage and even abandon access to the seam zone, as will be broadly described below.

Agricultural permits in the seam zone – from familial farming to an "enterprise" employing laborers

5. The Palestinian tradition of familial collective responsibility for agricultural farming of lands – sometimes as a secondary occupation, co-existing alongside another main source of income – is not recognized by the strict provisions and criteria of the New Standing Orders. Prior to the erection of the separation wall, agricultural lands were farmed collectively by members of the extended family, work assignments were divided between them by way of full access to all parts of the land and common enjoyment of the work itself, and the agricultural yield and produce.
6. The demand established by the New Standing Orders according to which each plot shall be divided between the heirs of the registered owner of the land, deliberately disregards the above tradition and customs. Restrictive provisions which were added later on, included reference to immediate family members of the land-owner as laborers/employees, whose entry into the land requires a work permit, like a list of factory employees. Namely, despite the clear connection of these family members to the lands – which in time they will also become their owners by virtue of inheritance – their right to enter the lands is not recognized, unless they form part of the quota of employees required to farm them, which is determined according to the Agricultural Staff Officer Table.
7. As a result of the demand that the plot be artificially divided between the heirs, throughout the years, family plots are divided into tinier and tinier sub-plots. Contemporaneously, according to the interpretation given to the Agricultural Staff Officer Table, agricultural work permits cannot be issued for plots the size of which is less than five dunams. Accordingly, only the registered owner of the plot can receive a permit and enter the land to farm it, while his family members have no right to join him. Following said policy, the New Standing Orders added a presumption according to which, with respect to a plot of land smaller than 330 square meters "no sustainable agricultural need exists". In view of said determination, even the land owner himself is unable to receive an entry permit into the land. In order to enter land which is owned by him, the land owner will have to request a permit for personal needs (which is a one-time permit), before each entry into the plot!

8. Additional limitations were imposed by the new Standing Orders on shepherds who, from now on, will be allowed to graze their sheep in the seam zone only in specific plots of land owned by the flock's owner. In addition, the grazing period was limited, and it was further determined that a permit would be granted only if the distance between the grazing area and the pen or cowshed does not exceed 2.5 Kilometers.
9. Grazing sheep is one of the oldest trades in the world and the same applies to the West Bank. Limiting the grazing area to the flock's owner piece of land is contrary to the custom in the area, according to which sheep owners may also enter plots not owned by them, since it only benefits agricultural land. Accordingly, likewise, the Jewish National Fund (Keren Kayemet Le'Israel) encourages sheep grazing on lands owned by it since it reduces the danger of fires and the spread thereof. (see: <http://www.kkl.org.il/afforestation-and-environment/srefot-yaar/forests-fire-prevention>)
10. The restrictions imposed on shepherds by the New Standing Orders result in an extreme reduction of grazing areas and grazing periods which may cause a severe economic damage to flock owners and their families, to the point of total lack of profitability which will not enable them to continue with this occupation. Thus, the trend of changing the traditions, life patterns and culture of the residents of the area continues, a trend led by the civil administration and its agencies.
11. There is nothing between these provisions of the New Standing Orders and the policy on which they are premised, and the state's undertaking given in the above mentioned permit regime HCJ, to maintain the rights and access of Palestinians and their family members to their agricultural lands located beyond the wall. Worse than that, it seems that in the future said provisions will gradually cause land owners to lose access to their lands and stop farming their plots. This will consequently lead to a complete separation between the Palestinian residents and their lands located beyond the wall.
12. However, even those meeting the more restrictive criteria for receiving entry permits into agricultural land, are required to deal with discouraging bureaucratic difficulties involved in obtaining entry permits into the seam zone. We shall discuss this issue below.

The bureaucracy, foot-dragging and exhausting procedures involved in obtaining a permit

13. The first difficulty characterizing the entry application procedure into the seam zone derives from the inability to submit the application directly to the Israeli DCO. Therefore, sometimes only weeks after the date on which the application had been submitted to the Palestinian coordination office, the applicant learns that the application has not been transferred to the Israeli DCO, and it should therefore be re-submitted, with the long waiting period involved therein, all of the above, due to circumstances unknown to

the applicant over which he has no control. Likewise, sometimes it becomes evident that the application was denied shortly after its submission, but since no notice was given to the applicant to that effect he continues to wait in vain for the much expected permit. In many cases the Palestinian coordination notifies the applicant that his application had been denied, but instead of advising him to appeal the decision, he is directed to submit a new application, which entails another long waiting period, in the end of which the applicant is not only told that his application has already been denied, but also that in view of the long time which passed from the date of the first denial, he can no longer appeal it.

14. Although we have repeatedly protested against these deficiencies in the past, to date no solution was provided to them and the severe injury caused to Palestinian applicants, whose livelihood and daily routine depend on this permit, continues to exist. It should be reminded that the responsibility to protect the rights of land owners, business owners and laborers in the seam zone is imposed on the Civil Administration. Therefore, if deficiencies are revealed in the application transfer mechanism or in the decision delivery mechanism, it is your duty to handle them and ensure that such deficiencies do not re-occur. Accordingly, for instance, we have proposed in the past that a detailed denial form would be transferred by you to the Palestinian coordination, to be signed by the applicant himself, to ascertain that the decision was actually delivered to him.
15. In the event that the permit application was denied, the applicant has to go through a multi-level bureaucratic procedure before he can file a petition with the court against the military's decision. In the vast majority of cases, the applicant must request to be summoned for clarification before the head of the DCO, following which the DCO will summon the applicant within two weeks from the date of the request. Having waited for the summons and for the clarification itself, the applicant may also be required to wait for the decision of the head of the DCO an additional period of two week. If the head of the DCO does not approve the permit application, the Palestinian applicant is directed to another Civil Administration appeal instance – an appeal committee. Then he must wait a whole month to be summoned by the committee, and after he appears before it, he must wait another week for its decision.
16. It should be noted that according to the New Standing Orders additional issues which were handled in the past by the appeal committee, are currently handled by the head of the DCO in the framework of a clarification proceeding, including issues which by their nature concern rejections for security reasons (for instance, permit suspension due to an entry of a new security preclusion), and it is therefore unclear why they are handled in this framework. Consequently, in many more cases the Palestinian applicant must go through the two military's internal appeal instances, before he can turn to court and challenge the decision made in his case.

17. As aforesaid, filing a petition against the military's decision can be made only after the decision of the appeal committee is received. And so, the waiting period for the results of the legal proceeding before the High Court of Justice is added to the lengthy waiting periods which have already passed in the previous stages described above. Throughout the entire period, the Palestinian applicant is denied access to the land/work place in the seam zone. In addition, in each stage the applicant may be instructed to submit a new application, which means going back to the starting point of the bureaucratic procedure, including the waiting and desperation involved therein.
18. The lengthy and cumbersome procedure described above is coupled by exhausting foot-dragging and failure to meet time schedules by Civil Administration personnel, which only lengthens the waiting period for a permit. Unfortunately, in some cases the foot-dragging and hopeless waiting do not end upon the approval of the application, since we have handled cases in which the applicants were forced to continue waiting weeks, and sometimes months, until the permit was actually given to them. In many cases the Palestinian applicant receives the permit a long time after its effective date, which leaves him a very short time to use it, before he is forced to embark again on the exhausting bureaucratic excursion of permit renewal.
19. As specified above, the provisions of the New Standing Orders extended the stages of the bureaucratic proceeding until permit is granted, all of the above without taking into consideration the needs and economic interests of Palestinians engaged in commerce and agriculture, and their dependency on the permit for livelihood purpose.
20. Such a long and multi-level proceeding in a bid to obtain a permit means many lost work days, damages to businesses which cannot be operated and damage to agricultural crop as a result of long periods in which access to land located in the seam zone is denied. In some of the cases handled by us the applicants were denied access to their lands for periods spanning entire agricultural seasons, with no ability to prepare themselves in advance for such a situation.
21. Palestinians who need an entry permit into the seam zone for livelihood purposes stand helpless before the bureaucratic obstacles specified above. Said helplessness is intensified in view of the inability to understand the bureaucratic proceeding and receive information about the different provisions of the Standing Orders.

Making the Standing Orders accessible to the Palestinian Population

22. The collection of orders regulating the conditions and procedures for obtaining entry permit into the seam zone was not translated into Arabic

and is not accessible to the Palestinian population which should act accordingly. We are concerned with a failure which continues for years and which even now, upon the publication of the New Standing Orders, you have failed to rectify. The Civil Administration dismisses *in limine* as a matter of routine applications of Palestinian residents based on the argument that they have failed to comply with the provisions of the New Standing Orders without making a minimal effort to enable said residents, whose lives and livelihood depend on it, to read and understand these directives.

23. In addition, the current New Standing Orders, like their predecessors, incorporate complex and intricate web of directives and criteria, which even Hebrew speakers, including persons having legal education, find hard to understand. Until this day no thought was invested in the need to adopt simple and clear procedures, which can be understood and followed.

Conclusion

24. As known, Hamoked opposed the permit regime and was one of the petitioners against it. In the framework of the petitions against the permit regime you undertook to reduce to the maximum extent possible the damage caused to the Palestinian population. Said promises led to the dismissal of the petitions. However, during the period of time which passed from the dismissal of the petitions, more and more encumbrances and restrictions were added forming part of a general policy intended to limit to a minimum Palestinians' access to the seam zone. Said policy reached its peak with the New Standing Orders.
25. How can the undertaking to enable land owners in the seam zone continue farming their lands while enabling their family members and other laborers assist them, be reconciled with the establishment of work quotas for family members? How can it be reconciled with the limitation imposed on the proprietary rights of land owners preventing them from entering their land only because of their size? How can one maintain a daily routine, prepare in advance for agricultural seasons or keep steady work when receiving a permit to enter the seam zone involves so many bureaucratic difficulties?
26. The severe violation of the right to access lands in the seam zone is also accompanied by a violation of customs and traditions of familial-collective farming of lands which persisted for many generations. The implications of said policy are already noticeable on scene. Less and less permits are granted, and even those who meet the narrow criteria for receiving a permit, prefer sometimes to avoid the uncertainty, terrible waste of time and exhausting bureaucracy involved in obtaining a permit and its renewal. Accordingly, as a result of the policy applied by you, more and more lands are not farmed and the connection between the Palestinians and their lands in the seam zone is gradually disconnected, which also opens the door to future arguments of land abandonment in a bid to gain control over them.

27. Upholding the undertaking given to the High Court of Justice in the framework of the permit regime petitions requires far reaching changes in the current version of the New Standing Orders, which are mainly:
- a. Free access should be given to land owners in the seam zone and their family members against whom no security preclusion is pending, regardless of the size of the plot or the nature of the agricultural crop, recognizing their collective connection to the land, in view of the fact that the erection of the separation wall was based on security reasons, which have nothing to do with the quantification of the needs of agricultural farming of which you are so punctilious.
 - b. The limitations imposed on shepherds in the seam zone should be abolished, and particularly the limitation allowing grazing only in plots owned by the owner of the flock.
 - c. The schedules and stages of the bureaucratic procedure applicable to permit applications should be shortened, to conform with the need to receive a quick response which will reduce the damage and disruption of routine caused by the delays in the proceedings to those whose livelihood depends on the permit.
 - d. The provisions of the New Standing Orders should be made accessible to the Palestinian population, including by simplifying the intricate web of current directives, translating the New Standing Orders into Arabic and having them published.
28. In view of the discussions currently conducted with representatives of the Palestinian Authority on this issue, it seems that the time has come to revisit the provisions of the New Standing Orders and to make the required revisions in the spirit of this letter.

Sincerely,

Anat Gonen, Advocate Abir Jubran-Dakawar, Advocate

CC:

Colonel Eyal Toledano, Legal Adviser, West Bank