

Date: 21 September 2005

In the response please cite: 37220, 37230,
31706

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

Most urgent!!!
By fax

Dear Madam,

Re: **Pre-petition:**

Restoring basic services for the civilian population of the Gaza Strip following the withdrawal

Ref.: our letter dated 13 September 2005

1. Pursuant to my previous letter, which has yet to be answered and is attached again (appendix A), I wish to add the following:

Leaving the Gaza Strip for abroad

2. A solution enabling residents of Gaza to travel abroad through the Rafah crossing has yet to be found. According to the agreement between Israel and Egypt, Palestinians will not be able to exit through the Rafah crossing until a permanent solution is reached. Obviously, the population of the Gaza Strip must not be imprisoned in the territory with no possibility of travelling abroad, if only in urgent or humanitarian cases, during the interim period. Therefore, a mechanism for processing applications of this kind must be established. As Israel requires the closing of the crossing, it would appear an Israeli decision is the key to the opening of the crossing by the Egyptians and Palestinians, through coordination, in urgent humanitarian cases. So long as Israel demands that the border crossing remain hermetically sealed, it is its duty to find temporary solutions.

Entry to Israel for the purpose of passage to the West Bank

3. In a letter dated 15 September 2005, the Military Legal Advisor for the Gaza Strip notified HaMoked that an objections committee had begun operations at the Erez DCO, and would handle appeals against decisions to prevent entry to Israel (including for the purpose of traveling to the West Bank). The letter stated that Palestinian residents could appeal **only** through the objections committee, whose members are Palestinian delegates, by fax. No mention was made of the identity of the organ which processes the appeals transferred by the Palestinian side.
4. With all due respect, this is not a new solution, nor is it streamlining, but to the contrary, this is no more than an attempt to throw dust in our eyes. Applications for entry to Israel have always been submitted to the Palestinian DCO, which transfers the applications to the Israeli side. The appeals committee is not new either, and was previously one of the options available to residents of Gaza who wished to appeal against an Israeli refusal, in conjunction with appeals by human rights organizations to the Military Legal Advisor. The legal situation has not changed either, since Israel continues to control entry to Israel

and the West Bank. **This change is nothing more than an attempt to disrupt the work of human rights organizations and prevent Palestinians from Gaza from obtaining legal counsel of their choice. This is unacceptable.**

5. Needless to say, the response which the Palestinian side receives from Israel only states "refused" or "not refused", without providing grounds or making reference to various legal claims, such that any prospect of contending with Israel's refusals is prevented.
6. In light of the above **we demand that you immediately publish the identity and contact details of the officials responsible for processing objections**, so that we and other organizations and attorneys may continue to represent the public, defend human rights, and receive substantive and complete responses, with the transparency necessary in such matters.

A copy of the letter dated 15 September 2005 is attached, appendix B.

The expected entry to Israel arrangement

7. On 18 September 2005, the Interior Minister sent a letter to the chairman of the Knesset's Internal Affairs Committee, requesting to schedule a hearing regarding an order he intended to publish, exempting residents of the Gaza Strip from the provisions of the Entry into Israel Law (Entry into Israel Order (Gaza Strip residents exemption), 5765-2005). This Order was issued following the transfer of authority under the Entry into Israel Law from the military commander to the Interior Minister, following the end of the military administration.
8. We wish to emphasize that we have no objection to this measure, insofar as it pertains to entry to Israel for the purpose of employment, for instance. In such matters, although considerations pertaining to Gaza residents are different from those pertaining to foreign nationals, there is room for the kind of considerations which characterize the Ministry of the Interior. However, insofar as entry to Israel for the purpose of passage to the West Bank is concerned, indeed, the authority to prevent such entry remains strictly security based, and is subject to the principles of international human rights law and international humanitarian law.
9. The evacuation of army forces and settlers from Gaza did not cut off Gaza from the West Bank. It did not change the fact that these territories are, by definition, a single territorial unit, and Palestinians are free to move between its parts. Unlike entry to Israel for the purpose of employment, which is subject to the considerations of the Ministry of the Interior, entry to Israel for the purpose of passage to the West Bank is mostly a technical matter, which is necessary due to geography and must be facilitated, whether under the safe passage arrangement or under an alternative arrangement. This right may not be revoked except for pure security reasons.
10. Transferring the authority and the power to review applications to the Ministry of the Interior, and in the future, to civilian organs, would create a problematic state of affairs: a Palestinian who wishes to travel from the West Bank to Gaza will have to receive a permit from the military commander for the West Bank (the GOC Central Command) but in order to return to the West Bank, he will be required to obtain a permit from the Interior Minister.
11. In light of the above and **insofar as movement between Gaza and the West Bank is concerned, we request that the Minister delegate the authority to permit passage through Israel to the GOC Central Command**, and that the latter remain responsible for granting permits, in accordance with the occupying power's obligation to preserve the ties between sections of the territory even if military administration comes to an end in one of these sections.

A copy of the letter dated 18 September 2005 is attached, appendix C.
A copy of the anticipated wording of the order is attaches, appendix D.

Entry of Israelis into Gaza

12. The issue of the entry of Israelis to the Gaza Strip includes two central concerns – divided families and family visitations (without stating a position on this issue – at the moment, we are not dealing with the entry of Israelis for other purposes).
13. There are not many divided families, but their plight is certainly the most severe. In recent days we have learned that wives from divided families who called the Israelis' desk in order to extend their permits were unequivocally instructed to pack their belongings and leave for Israel, and told they would not be able to return to Gaza.
14. This demand is unacceptable and outrageous. The divided families procedure has been in place for many years - it is part of Israel's obligation to respect the familial rights of its citizens and residents. This arrangement was also enshrined in the military's undertakings before the High Court of Justice (HCJ 10043/03 Abajian v. Commander of the Army Forces in the Gaza Strip). The State of Israel does not permit Palestinians from Gaza to live with their spouses and children in Israel and therefore these families must reside, along with their children, in Gaza. A solution must be found immediately so that these families may continue their routine lives without fear of forced, protracted separations.
15. Article 24(A) of the Disengagement Plan Implementation Law, 5765-2005, states that: "From the day of the evacuation of a territory and henceforth, an Israeli shall not enter that territory and shall not be present therein except by force of a permit granted by the commander, and in accordance with the terms of the permit." The "commander" is the Commander of the Army Forces in the Gaza Strip or the GOC Southern Command. Therefore, **the GOC Southern Command is already authorized to grant Israelis an entry permit for the Gaza Strip. In light of this we demand that you announce that citizens and residents living with their spouse and children in Gaza will be able to remain in Gaza, enter Israel and return to their families, as has been the norm until now.**
16. Article 24(A) of the Law also pertains to the entry of Israelis to the Gaza Strip for the purpose of visits. For this purpose **we regard the GOC Southern Command as bearing the responsibilities specified in HCJ Abajian, mentioned above, and in HCJ 552/05 HaMoked: Center for the Defence of the Individual v. Commander of the Army Forces in the Gaza Strip**. We stress that the army's undertakings in this matter include (apart from the issue of divided families) a commitment to facilitate family visits in humanitarian cases and during holidays.
17. In this matter too, there is no room for delays, as urgent cases such as funerals or serious illness require immediate solutions for Israeli citizens and residents who wish to enter Gaza. On 20 September 2005, we labored for many hours in order to facilitate an Israeli resident's entry to Gaza, for his sister's funeral. His entry was made possible only after many telephone calls to various officials, including the Military Legal Advisor himself, the office of the GOC, a representative of the International Law Division and the head of the Israelis' desk. **Therefore we request that you announce the Israelis' desk will continue to process applications on behalf of the GOC, publish the contact information for both the Israelis' desk and the Military Legal Advisor - who considers objections submitted against Israeli refusals, and finally, that you publicize this information appropriately.**
18. We also request that you make arrangements for visits to the Gaza Strip by Israelis during the Muslim holiday of 'Eid al-Fitr, which takes place in early November.

In conclusion

19. Since our previous letter, we have not been informed of any interim solution until the new normative situation becomes clear. This delay is causing unnecessary harm to the civilian population of Gaza.
20. In light of the above, we request your prompt response, if only to some of the abovementioned issues, in order to avoid needless appeals to the courts.

Respectfully,

Gil Gan-Mor, Att.

Enclosed: appendices A-D

Copies:

Minister of Defense
Minister of the Interior
GOC Southern Command
Coordinator of Government Activities in the Territories
Head of the International Law Division
Military Legal Advisor for the Gaza Strip
Military Legal Advisor for the West Bank