

Date: 20 June 2005

In the response please cite: 37230

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

By fax

Dear Madam,

Re: **Pre-petition: Cessation of the deportation of Palestinians living in the West Bank to Gaza**

HCJ 10676 Shamlakh v. Commanders of the Army Forces in the West Bank and in Gaza

HCJ 3555/05 Nabaheen v. Commanders of the Army Forces in the West Bank and in Gaza

HCJ 3519/05 Ward v. Commanders of the Army Forces in the West Bank and in Gaza

HCJ 4465/05 Jdili v. Commanders of the Army Forces in the West Bank and in Gaza

1. I hereby appeal to you concerning an unacceptable and injurious practice which has prevailed in the West Bank – the deportation of Palestinians from the West Bank to Gaza. The deportation is not based on security needs, nor is it based on assigned residence orders. The deportation is based only on the fact that the deportee did not change his registered address from Gaza to the West Bank.
2. Our position on the issue is well known – it was detailed in all the petitions cited in the title, petitions concerned with the deportation of Palestinians from the West Bank to Gaza. It was detailed in two other cases where we managed, in the last moment, to prevent the deportation to Gaza of Palestinians who were crossing a routine checkpoint and were detained for the purpose of deportation.
3. Our position is, briefly, that every resident of the territories is entitled to the basic right to change his place of residence as he wishes, and this right is not revoked by the fact that passage between Gaza and the West Bank, which involves (in the absence of a safe passage) entry to Israeli territory, requires approval of the military commander. Our position is that change of residence does not require advance approval by Israel (this is the case only in totalitarian regimes) and that change of registered address is a technical matter which takes place subsequent to the actual change of residence. In any case, this article is meaningless as Israel has been freezing changes of address for many years. Our position is that the mirror image of the authority to "assign residence" (the Ajour case) is that in the absence of an assigned residence order, a person may live wherever he chooses.
4. The number of cases in which the military deported or attempted to deport Palestinians from the West Bank to Gaza, as well as the increasing use of the term

"illegal resident" to describe Palestinians whose actual place of residence does not match their registered address, indicate this is a policy. This policy has far reaching and harmful consequences not only for the deportees themselves but also for persons who live in the West Bank and carry a "Gaza" ID. These individuals are forced to live like hunted animals, avoiding checkpoints and places where soldiers are stationed. They cannot receive basic services from the military and may not leave for abroad and return through the Allenby Bridge.

5. An extended HCJ panel has recently ruled, repeating the rule established in the Ajouri case (HCJ 7015/02), that the forcible deportation of a person from his home, environment and land is tantamount to an infringement on human dignity, freedom and property (HCJ 1661/05 Gaza Beach Regional Council et al. v. the Knesset et al., judgment dated 9 June 2005).
6. In light of the above I request that you instruct the relevant officials (military, police, border police, ISA) that in the absence of an assigned residence order, Palestinians living in the West Bank must not be deported to Gaza.
7. This instruction should also apply to the deportation of Palestinians living in the West Bank, who are removed under Section 13J of the Entry into Israel Law, or who are released from detention or imprisonment.
8. In the very least, I request that you instruct the officials not to deport Palestinians to Gaza while the petitions are pending, and so long as the Court has not accepted your claim that it is within the scope of your authority to deport Palestinians from the West Bank to Gaza.

Respectfully,

Gil Gan-Mor, Att.

Copies:

Dani Horin, HCJ Division

Yuval Roitman, HCJ Division

Major General Yosef Mishlav, Coordinator of Government Activities in the Occupied Territories

Lieutenant Colonel Pnina Sharvit Baruch, Head of International Law Division

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