

האגודה לזכויות האזרח בישראל
جمعية حقوق المواطن في اسرائيل
The Association for Civil Rights in Israel



9 June 2009

S/18913

Maj. Gen. Gadi Shamni
GOC Central Command

**Re: Enabling Residents of Beit Surik, Biddu, Beit 'Anan, and
Al-Jib Access to their Lands inside the Seam Zone**

Dear Maj. Gen. Shamni:

1. I write on behalf of the residents of the villages Beit Surik, Biddu, Beit 'Anan, and Al-Jib, who have not been able to access their land for over four months, with the request that you cancel the permits regime recently imposed on these village lands and ensure that the passage of farmers to their land is enabled with **minimum** harm to the farmers or disruption of their work.

Background

2. Following construction of the Separation Barrier on the lands of the villages Beit Surik, Biddu, Beit 'Anan, and Al-Jib, the residents of these villages were cut off from the thousands of dunam of their farmland that remained on the "other" side of the Separation Barrier.
3. The subject of routing the Separation Barrier on village land has been deliberated by the High Court of Justice in response to several petitions (HCJ 2056/04 *Beit Surik Village Council v. Government of Israel*, P.D. 58(5) 807 and HCJ 426/05 *Biddu Village Council v. Government of Israel* (10 September 2006) concerning the village lands in Beit Surik, Biddu, and Beit 'Anan; HCJ 4457/05 *Bir Nabala Village Council v. Government of Israel* (unpublished, 26 November 2006) concerning the Al-Jib lands).

4. In the framework of these petitions, the Court instructed the State to promise that the passage of farmers to their lands would be enabled with **minimum** harm to the farmers or disruption of their farm work:

The permits regime that the military commander wishes to impose, which had been used in many other areas, cannot prevent or significantly ease the severe injury to the local farmers...There will inevitably be areas where the separation fence will have to separate local residents from their lands. In those areas, passage should be ensured that will reduce as much as possible the injury to the farmers (HCJ 2056/04, parag. 82).

5. Until recently, an arrangement was in place whereby residents could access their land based on their name appearing on a list. This arrangement, used in recent years, also damaged the farmers and their farm work in various ways.

The New Edict – Absolute Denial of Access

6. Early this year, you signed a series of new orders in which the village lands trapped by the barrier were declared a “closed military zone” with entry prohibited and the “permits regime” instituted there. The existing arrangement was cancelled, and the villagers learned that from then on, they could not access their land except with special permits.
7. The published orders state that in order to obtain these special permits, each villager separately must submit a detailed and reasoned application, append all manner of documents, and then wait for a decision on this specific request. Thus to access their land, they are now dependent upon the good graces of the military commander as channeled through the bureaucracy of the Civil Administration.
8. And while the Palestinian landowners were denied the right to access their land, sweeping permission to enter it was granted to every “Israeli” or anyone who holds a permit to enter Israel.
9. For over four months – since this land was designated a “seam zone” – the villagers cannot access or work their lands. This sweeping denial of access continues as of this writing. As a result, many villagers have lost a vital source of livelihood. Their right to work and enjoy their land has been denied.

Illegality of the Permits Regime: Discrimination and Violation of Other Basic Rights

10. The Seam Zone is a part of the territory conquered by Israel in 1967; it is recognized by the international community and even by Israel itself as part of the territories occupied by Israel, i.e., the Occupied Territories. This means, first, that these territories are outside the sovereign area of the State of Israel; and, second, that the Palestinian local residents have the right to freedom of movement there, including the area “on the other side of the fence”, while this is not a right of the residents of Israel, the conquering power.
11. International law regarding occupied territory prohibits the military commander from engaging in discriminatory conduct.¹ International human rights law also establishes this prohibition.² In addition, the military commander is obligated to respect and protect the way of life of the civilian population, not harm individual property, and respect and safeguard the human rights of protected persons who reside in the territory.
12. The “permits regime”, which comes on top of the physical separation of villagers from their land because of the barrier, anchors in writing a systematic regime of discrimination and engenders further grave harm to the villagers’ rights to freedom of movement, freedom of occupation and property, and the right to earn a living. It is a severe violation of their dignity.
13. According to the orders published, Israelis can enter the Seam Zone and remain there without being required to meet any conditions or provide any explanation or reason. This is true even though they are entering an area outside the borders of their country. The entry of Palestinians to this area, on the other hand, including those whose lands are enclosed beyond the barrier in the Seam Zone, is prohibited unless they have a special permit issued by the Civil Administration.
14. Hence, this is a situation in which individuals are treated differently based on their national (or civil, if you will) affiliation, and a regime of separation and discrimination was created – one that transforms locals into visitors and citizens

¹ Fourth Geneva Convention, Part 3, Article 27, parag. 3.

² The International Covenant on Civil and Political Rights, Article 26; and the International Convention on the Elimination of All Forms of Racial Discrimination, Articles 1, 3, and 5. The prohibition on discrimination is so core to human rights laws in international jurisprudence that it may not be violated even during emergencies.

of the conquering power into masters, in absolute contravention of international law regarding occupied territories and the fundamental principles on which that law is based.

15. Thus, not only does the permits regime not reduce the injury to rights caused by the Separation Barrier, it even exacerbates the violation of these rights.
16. The very imposition of the permits regime on village land embodies a sweeping negation of fundamental rights: The right of protected persons to freedom of movement, free access to their land, and the right to work and earn a living from their property are all violated. Thus the regime transforms a basic right into a privilege that can be given or denied at the whim of the military commander. In practice, during the more than four months since this regime was imposed on the village land, access to the land was sweepingly denied to the residents.
17. In its advisory opinion on the Separation Barrier, the International Court of Justice stated that the permits regime used with the barrier constitutes a violation of international law and an illegal breach of the human rights of West Bank residents.³ The High Court of Justice, to which petitions were submitted against this regime over four years ago,⁴ has abstained from issuing a judgment to this day.

The Permits Regime: A Glaring Example of the “Bureaucratization of Occupation”

18. The special permit required by landowners, farmers, their employees, and family members to access their lands is not easy to obtain. Experience from other areas where this regime was instituted several years ago indicates that many residents are unable to obtain the permits at all, and the few who succeed had to wade through a complex and arduous bureaucratic procedure.
19. The criteria and conditions of the permits regime call for procedures in which reasons and proofs must be presented. Thus, each Palestinian who seeks access to land must submit a detailed and reasoned application to which documentation must be appended showing why in his opinion the military

³ ICJ Advisory Opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 2004, parag. 121, 134, 137, 142, and 143.

⁴ HCJ 639/04 *Association for Civil Rights in Israel v. GOC Central Command* and HCJ 9961/03 *Hamoked: Center for the Defense of the Individual v. Government of Israel*.

commander should consent to his request. The regime and instructions set a very high, and sometimes impossible, standard of proof. For example, a farmer who asks to continue working his land closed off by the barrier will have to prove by documentation his right to the land, which is not easy in light of the lack of orderly land registration in the West Bank and the various community customs regarding their land. The outcome of not meeting the bureaucratic requirements and burden of proof – which has nothing to do with the security of Israel – is denial of rights and a loss of livelihood.

20. Time and again, residents who wish to appeal a rejected request for a permit frequently encounter the claim that the system has no record of their application. They are then sent off, with due respect, to file another application, with documents appended, and the cycle begins again.
21. If the explanations and documents submitted by the resident meet the satisfaction of the military commander, the desired permit is issued – for a year, a half year, three months, or even less time. And when the permit expires, the villager will be required to file a new application, and again append the documents. While the permit might or might not be renewed (meanwhile the rules might have changed, or the applicant was listed, unknown to him, as “GSS refused”, a blacklist of the General Security Services. When will it be renewed? Within a week, two weeks, two months, or more. And if, heaven forbid, the applicant was listed by someone as “GSS refused” (together with another 200,000 residents of the territories), he can expect to wait many long months until he is allowed to appear before the “hearing committee”.
22. The military commander is both assessor and decider – how many days a season or a year the applicant will be allowed to work his land. To this end, he will make use of one of the tables listing the permissible number of days, calculated precisely by the type of crop, farm acreage, etc. The local customs? A person’s desire to make his own decision about his capabilities, his land, and what to do with it? His desire that family members help in the farm work? His need to safeguard it from poachers, or his simple desire to visit his land? All these, it seems, neither add nor detract from the military commander’s decision.
23. And if an old man receives a permit, and requests one for his son or grandson? The response: The family has already received enough permits; request denied. The family’s way of life? Communal customs? These are not considered at all.

To receive the desired permit, the Palestinian must have an adequate “justification” as defined in the complex array of orders and directives, and these are not among them.

24. Even if the farmer is granted a permit for himself, this does not ensure that he will receive the special permit required for the entry of vehicles such as tractors, carts, farming or pest control equipment. The farmer will be allowed access to his land, but without the equipment needed for his work, or he will have the equipment to work the land, but lack permission for the entry of vehicles to transport the produce. And thus, the permit granting passage to his land loses its meaning.
25. These matters are not new, even to the security authorities. Despite repeated commitments to improve and ease the bureaucracy of permits to the Seam Zone, nothing has changed. Experience shows that the alleged “staff work” and “efforts” of the authorities not only brought no improvement, but the damage wrought by the illegal regime has only worsened.
26. Thus, the permits regime has turned the lives of tens of thousands of people throughout the West Bank into a bureaucratic hell. Because the area has been closed off and the permits regime imposed, the residents are forced to request permits from the DCOs over and over again. Preparing each application and collecting all the required documents takes much time. The applicant must follow up, return to the DCO, and find out where matters stand until he receives a reply. Sometimes a hearing is required, sometimes an appeal. The hours of waiting, run-arounds, and demand for more documents are endless, a huge number of days wasted, outright arbitrariness and callousness – if these do not constitute a fundamental abrogation of rights, nothing does.
27. As is clear from imposition of the permits regime in other areas of the West Bank, the onerous restrictions wrought by this system have already severely harmed farming in the Seam Zone. This is getting worse and wreaking serious damage to the agriculture of the region. Farmers blocked from their lands within the Seam Zone still struggle, with difficulty, to maintain their farms, but farming has significantly declined. A farmer’s routine cannot survive the whims of a bureaucratic regime, and crops are even more vulnerable.

Imposing the Illegal and Harmful Permits Regime on Village Land

28. In light of the illegality of the permits region, as noted above, and its violation of fundamental rights, the residents of these villages refuse to accept it. They do not believe that they have to cooperate with an illegal policy and decision, which thwart their fundamental right to freely access their land, transforming it from a right to a privilege, purchased by suffering.
29. Imposing this requirement on the villagers entails surrender to an illegal demand, injury to their fundamental rights, and the humiliation of subjecting their daily lives to a bureaucratic mechanism – or more accurately a bureaucratic nightmare – on which realization of their basic human rights depends.

In Summary

30. For several months, military forces have placed sweeping and absolute prohibitions on the access of villagers to their lands, thereby harming their livelihoods and fundamental rights.
31. The villagers insist on their right to free access to their land every day of the year. They request that the Israeli government and authorities respect the commitments that have repeatedly been given to the international community and the Supreme Court to respect and protect this right.
32. In light of the above, the illegality of the permits regime, and the severe harm to fundamental rights entailed by this regime, we request that access of the residents of the villages Biddu, Beit Surik, Beit 'Anan, and Al-Jib to their lands trapped inside the Seam Zone shall not be conditioned upon obtaining individual permits from the Civil Administration, but that their right of access to their lands in the Seam Zone be ensured every day of the year.
33. At the very least, the villagers demand restoration of the status quo ante (prior to imposition of the permits regime on the area), when access to the lands was permitted according to a list of names. Even then, the lists must be properly kept to ensure that access to the land is assured. Therefore, these lists must include all names previously listed, and allow for the addition of new names (e.g., boys who grew up and can now work the land, new family members by marriage, etc.).
34. We would appreciate your expeditious reply.

Yours very truly,

Atty. Limor Yehuda

CC:

Ehud Barak, Minister of Defense

Atty. Ahaz Ben-Ari, Legal Advisor, Ministry of Defense

Atty. Anar Helman, State Prosecutor's Office

Maj. Gen. (res.) Amos Gilad, Coordinator of Government Operations in the Territories

Brig. Gen. Yoav Mordechai, Head of the Civil Administration

Col. Sharon Afek, Legal Advisor for Judea and Samaria