

-Urgent -

Date: June 14, 2017  
Reference: 10005

To  
Mr. Avichai Mandelblit  
Attorney General  
Ministry of Justice

By fax: 02-6467001

Dear Sir,

**Re: The Security Cabinet's decision to reduce electricity supply to residents of the Gaza Strip**

On behalf of Gisha – Legal Center for Freedom of Movement, Adalah – The Legal Center for Arab Minority Rights in Israel, HaMoked: Center for the Defence of the Individual, The Association for Civil Rights In Israel, Physicians for Human Rights-Israel, Zazim Community Action, Bimkom – Planners for Planning Rights, Yesh Din – Volunteers for Human Rights, Amnesty International Israel, B'Tselem - The Israeli Information Center for Human Rights in the Occupied Territories, Breaking the Silence, Haqel – Jews and Arabs in Defense of Human Rights, Akevot – Institute for Israeli-Palestinian Conflict Research, Ir Amim, Peace Now, and Rabbis for Human Rights – I hereby urgently request that you advise the members of the Security Cabinet that their decision to reduce the electricity supply to the Gaza Strip contravenes Israeli and international law. This decision could have disastrous consequences, not only for the residents of the Gaza Strip, but for residents of the entire region. Therefore, your office requires that you direct the cabinet to immediately rescind its decision. Details as follows:

**Background**

1. On Sunday, June 10, 2017, Gisha wrote to the minister of defense and members of the Security Cabinet, urgently cautioning them against a decision that would reduce the amount of power supplied to the Gaza Strip. The letter emphasized that **the situation in Gaza is already grave and dangerous**. The reduced supply of electricity has far-reaching implications: one hundred million liters of untreated sewage are pumped into the Mediterranean Sea daily; residents receive no more than four hours of electricity at a time, followed by at least twelve hours of blackouts; water desalination stations cannot operate; sewage cannot be pumped away from residential areas; generators are over-extended; entire hospital wings are shut down during blackouts, and people who rely on life-saving equipment are at risk. **Given this dire situation, experts are already warning of an imminent humanitarian crisis.**
2. Regrettably, our call fell on deaf ears. Yesterday, the media reported that the Security Cabinet had decided “to respond to the request of Palestinian President Mahmoud Abbas” and reduce the supply of electricity to the Gaza Strip. The reports also noted that top military officials described the worsening conditions in Gaza to the cabinet prior to the decision and that it was made despite warnings from the army, according to which “further reductions in the electricity supply to Gaza are likely to hasten escalation in violence.”<sup>1</sup>

<sup>1</sup> <http://www.haaretz.com/israel-news/.premium-1.795198>

### HCJ ruling in al-Bassiouni

3. The decision of the cabinet is unlawful. It defies Israeli and international law. Briefly: this is not the first instance in which Israeli governmental and judicial authorities have addressed the issue of power supply to the Gaza Strip. As is known, in 2008, the High Court of Justice ruled that Israel must meet its obligations under international humanitarian law and enable the supply of essential humanitarian goods to the Gaza Strip. Unfortunately, the minimum threshold set in this judgment for Israel's responsibilities toward residents of Gaza was extremely **low**. The court ruled that Israel is obligated "to allow the Gaza Strip to receive only what is needed in order to provide the essential humanitarian needs of the civilian population."
4. On the specific issue of electricity supply, which is the matter at hand, the High Court ruled: "the main obligations of the State of Israel relating to the residents of the Gaza Strip derive from the state of armed conflict that exists between it and the Hamas organization that controls the Gaza Strip; these obligations also derive from the degree of control exercised by the State of Israel over the border crossings between it and the Gaza Strip, as well as from the relationship that was created between Israel and the territory of the Gaza Strip after the years of Israeli military rule in the territory, as a result of which the **Gaza Strip is currently almost completely dependent upon the supply of electricity from Israel.**"<sup>2</sup>

### The cabinet decision fails to meet the minimum criteria set in case law.

5. Unfortunately, Gaza's dependence on power supplied from Israel remains as it was, and has possibly grown greater still. In the years that have passed since the judgment was given, Israel has retained its control over border crossings and has continued to enforce severe restrictions on the movement of people and goods into and out of Gaza. So, for example, 100 percent of the items needed for the repair, maintenance and development of Gaza's civilian infrastructure require approval from Israel. Israel also imposes stringent restrictions on the entry of generators and their spare parts, and other equipment intended to help the population cope with the electricity shortages, such as various types of batteries, uninterrupted power supply components, and more.
6. Despite the significant increase in demand for electricity, Israel sells Gaza the same amount as it sold the Strip when the *al-Bassiouni* judgment was given in 2008, a meager 120 megawatts of electricity. At the time, the estimated demand for electricity in Gaza stood at 200 megawatts only. Today at least 400 megawatts is required for meeting the needs of the population. It should further be noted that Gaza's sole power station was shut down in mid-April following a dispute between the Palestinian Authority and Hamas, and ever since then, between 80 and 100 percent of the electricity available to the two million residents of Gaza has been supplied by Israel (depending on the intermittent supply from Egypt).
7. As stated, in our view, in *al-Bassiouni*, the High Court set an extremely low threshold, imposing on Israel only minimal obligations toward Gaza Strip residents. The cabinet decision indicates the current reduction would be greater than the five percent reduction considered in the *al-Bassiouni* case. Should the decision be implemented, the amount of electricity supplied to the Gaza Strip could drop by at least 30 percent. **A further reduction in the amount of electricity supply is a red line that must not be crossed. It would constitute a brazen violation of the judgment of the High Court and international humanitarian law applicable to Israel.**

<sup>2</sup> H CJ 9132/07 *al-Bassiouni et al. v. Prime Minister et al.* (judgment dated December 30, 2008), paragraph 12 (hereinafter: *al-Bassiouni*).

### Relying on a full and objective factual basis would have prevented the decision

8. For good measure, we note that since the cabinet decision was made in secrecy and never released to the public, we are compelled to rely on various media reports. The fact that the decision-making process lacked transparency raises many urgent questions that must be answered and brought to the attention of the public in both Israel and Gaza before the decision is implemented: What are the specifics of the decision that was made? What would be the rate of the reduction to supply? When will the decision be implemented? Will the current be reduced on all ten supply lines equally or just on some of the lines? Is there a comprehensive, detailed plan in place for the reduction? Will the reduction occur throughout the day or only during certain hours? Have the Gaza authorities been notified of the decision and its details, allowing them to prepare for the reduction? If so, how long in advance was notice given and were any inquiries made to ensure the time given was sufficient for proper preparations? Will the decision be implemented in a manner that ensures essential services in the Gaza Strip will not be harmed (no harm to hospitals or medical services, sewage infrastructure, water desalination, etc.)? What measures have been put in place to ensure no harm is done to residents of the Gaza Strip and what sort of control and monitoring have been instituted to avert a humanitarian crisis? Has any information been gathered regarding the number of generators and generator spare parts available in the Gaza Strip and whether they can compensate for the diminished power supply? Is Israel preparing to allow for more generators, spare parts, maintenance materials and fuel to be brought into Gaza in order to mitigate the reduced supply? These are just some of the urgent questions on the agenda.
9. It is highly doubtful whether these important details, which, in the circumstances, must be examined, were investigated and considered as required by law. The state is required to gather this information from objective experts who have no vested interest in the decision. The lack of transparency and the difficulty understanding the factual basis for the government's decision troubled the court in *al-Bassiouni*. The judgment, which was critical of the state's conduct, noted that discussing a reduction in the power supply to the Gaza Strip "required complex factual verification, and we encountered difficulty obtaining figures on this issue from the state's representatives..." A proper review of the facts would have surely revealed that the fundamental rights of Gaza residents are already severely violated, and have been for years, and will be even more so should they be made to endure a further reduction in the supply.

### The decision contravenes international humanitarian law

10. Media reports indicate that the decision was politically driven and relates to the multilateral relationship between Israel, the Palestinian Authority and Hamas. In this context, we note that whatever weight these considerations may carry, they cannot justify harming Gaza's civilian population. Indeed, IHL recognizes exceptional circumstances whereby harming civilians is permitted **only when an imperative military need so requires** (and even in these circumstances, the harm must be proportionate). In the case at hand, the reduction to power supply is not being undertaken for an imperative military purpose, nor is it proportionate. As such, it is an unacceptable, grave violation of humanitarian law.
11. The requirement to provide regular supply of electricity arises not only from the duty to uphold the rights of Gaza residents. It has long been a matter of consensus that Israel has a vital interest in improving living conditions in Gaza and supporting economic development there. Israel's current plan stands in stark contrast to this understanding. It threatens the entire region and may lead to another unnecessary round of hostilities. In these circumstances, the decision is not only unreasonable, but also disproportionate, as the harm to Israelis and Palestinians, and to the region as a whole, from an escalation in hostilities, is far

greater than any benefit (political or otherwise) that may be gleaned from the implementation of the decision.

12. As stated, IHL does not absolve Israel of direct responsibility for the situation in Gaza even if there is no denying that the Palestinian Authority, the de-facto government in Gaza, Egypt, and the international community share collective responsibility for the dire state of Gaza's infrastructure. Nevertheless, this does not offset Israel's significant accountability for the situation, as the obligations being flouted in this case are **obligations that are originally incumbent** on Israel under both Israeli and international law.
13. Israel cannot claim to be only a service provider, responding neutrally to a client's request. Given its extensive control over life in the Strip, Israel is responsible for enabling normal life for its residents, as an occupying force in the Strip. Israel is obligated to find solutions that will allow for the continued supply of electricity at existing capacity and to take active steps toward increasing supply to allow residents, whose taxes are collected by Israel, access to acceptable living conditions.

### Conclusion

14. Given the aforesaid, we ask that you direct the cabinet to rescind its decision and refrain from cutting Gaza's power supply. We further request your prompt response to this letter, and to the questions posed in paragraph 9 thereof in particular. **We also ask to be informed of the date on which the decision is expected to enter into effect in order to avoid unnecessary legal action. Inasmuch as no response is provided to this query by tomorrow, we shall be forced to file a petition with the High Court of Justice without further notice.**

Sincerely,  
[signed]  
**Osnat Cohen-Lifshitz**, Adv.  
Director of the Legal Department