

Date: August 4, 2015

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To:
MK Mr. Moshe Ya'alon
Minister of Defense
via fax 03-6962757

To:
Major General Yoav Mordechai
Coordinator of Government Activities in the Territories
via fax 03-6976306

Dear Sirs,

Re: Ban on Entry into Gaza by Israelis

Approximately ten days ago, we were surprised to learn about the decision to impose significant restrictions on the entry of Israeli citizens and residents into the Gaza Strip, on the backdrop of the disappearance of two Israeli citizens in the Gaza Strip. This decision has very serious implications for a group numbering between hundreds and thousands of Israeli citizens and their family members and many others living in the Gaza Strip.

As all Israelis, we too hope for the safe and speedy return of the two citizens who are missing in Gaza and hope that everything will be done to precipitate their return home. However, it is unclear how the serious harm caused to Israeli citizens who wish to enter Gaza as a means of fulfilling their right to family life will achieve this goal. Regardless, the restrictions are stringent, unreasonable and disproportionate. As such, we ask you to order their immediate cancelation.

Introduction

1. According to media reports, on July 23, 2015, a decision was made to restrict entry into Gaza by Israeli citizens "given the security situation in the Strip". Entry would be allowed on an individual basis only "for humanitarian reasons and following a security screening". The (partial) responses received from officials handling the matter indicate that a blanket ban on entry into Gaza has been imposed for an unspecified period of time.

A copy of the report about the decision published on the website of Israeli daily Haaretz on July 23, 2015 is attached hereto and marked A.

2. This decision harms thousands of Israeli citizens whose right to family life is already severely restricted. The main groups impacted by the decision are as follows: 1. Israeli citizens and residents wishing to visit relatives in Gaza under clearly humanitarian circumstances; 2. Israeli citizens and residents (mostly women) who are part of what is known as "divided families", i.e., married to a Palestinian resident, or

children with one parent who is an Israeli citizen and another who is a Palestinian resident; 3. Israeli citizens and residents who are staff members of international aid agencies and enter Gaza regularly as part of their work; 4. The Palestinian population benefitting from the work performed by these international aid agency workers.

3. This decision was not merely rhetorical. Over the past week, we have received negative responses to requests to enter Gaza for the purpose of visiting first-degree relatives submitted by Israeli citizens and residents. A request by a member of a “divided family” to return to her home in Gaza was also denied. The requests were denied despite the fact that the applicants met the military’s criteria and despite the fact that such applications were routinely approved in the past.

Copies of some examples of letters denying requests by Israeli citizens/residents to enter Gaza are attached hereto and marked B.

4. It is superfluous to note that the position of an Israeli citizen who has no ties to the Gaza Strip and enters it for unknown reasons, such as in the cases of the two citizens who are currently in Gaza, is nothing like that of citizens who live in Gaza permanently or visit relatives there, and who have been traveling in and out of Gaza for many years without facing any particular danger or threat. The same holds true for international aid agency workers who have been entering and exiting Gaza for years, while greatly contributing to the welfare of Gaza residents.

Violation of the right to family life

5. As stated above, the blanket ban on entry severely harms hundreds and thousands of Israeli citizens and residents. During an average month, there are 300 entries into Gaza by Israeli citizens/residents and 300 exits. The ban harms children who cannot return to their homes in Gaza, mothers who cannot return to their children and sisters who cannot visit a sick brother in Gaza. The harm does not stop with Israeli citizens being unable to enter Gaza. Though every citizen has a right to enter Israel, Israeli citizens and residents who are in Gaza are foregoing entering Israel, for example for family visits, fearing that they will not be allowed to return home to Gaza.
6. The right to family life remains a fundamental right, part of the nucleus of human dignity. Yet, the fulfillment of this right has been severely restricted by the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003, which prevents Palestinian spouses of Israeli citizens/residents from fulfilling their right to family life inside Israel. The Supreme Court of Israel recognized the severe harm caused by the law, but ultimately upheld it, based on the recognition that these Israeli citizens’ right to family life can be fulfilled outside of Israel. **The decision to completely prevent the fulfilment of a right**

that is already severely curtailed is sheer cynicism. It obviates any possibility of having a family life, as restricted as it may be. It is immoral, unconstitutional and fails to comply with Israeli law.

7. The policy pursued by the Government of Israel for many years has forced Israeli citizens/residents who are married to Palestinian residents to leave their homes, homeland and childhood homes and go to the one place where the government allows them to fulfil their right to family life – the Gaza Strip. Now, even this limited possibility has been taken away. It is not superfluous to note that the ban applies not only to spouses, but also to the small number of family visits to first-degree relatives, often made possible only when a deteriorating medical condition is deemed to justify such a visit. Even prior this new decision, many do not get a chance to see their relatives for years, and meet only on rare occasions, usually sad ones. Now, an Israeli citizen can no longer even visit his sick father in the Gaza Strip.
8. The State of Israel, with its various branches, is responsible for the situation that has been created as a result of this ongoing policy. In the current circumstances, any further harm, even if circumscribed and time-bound, is extremely grave, and all the more so when it is inflicted indiscriminately and for an unspecified period of time.

The harm to the rehabilitation of civil society in Gaza

9. As stated, the blanket ban also applies to staff of international agencies with Israeli citizenship and residency who enter Gaza frequently as part of their work. This group of people plays an important role in Gaza's reconstruction, and in supporting civil society in the Strip, without which, no real, sustainable reconstruction is possible. These staff members also play a key role in "routine" humanitarian activities, which the State of Israel, at the very least, has the duty to enable.
10. Israeli officials repeatedly state that the rehabilitation of Gaza and assisting civilians are Israeli interests. Yet now, the new policy interferes with regular rehabilitation work and harms Palestinian residents in need of aid, and as a consequence, Israeli interests. In addition, the State of Israel repeatedly declares that its policy on entering Gaza is guided by humanitarian principles. There can be no dispute that preventing these workers from entering Gaza impedes the humanitarian aid they provide to Gaza's residents. The policy also impacts Israel's foreign relations. Many of the affected international organizations are funded by foreign countries and international foundations that are now unable to meet their goals and carry out their laudable humanitarian work.
11. It would seem that in light of all the aforesaid, the harm to the fundamental rights of thousands of Israeli citizens and residents, the impairment of rehabilitation work in Gaza and the damage to Israel's foreign relations are clearly apparent. The only question is whether such severe harm is

justified and whether it is the appropriate measure to implement following the disappearance of two Israeli citizens in the Gaza Strip – which, according to press reports, is what motivated the full ban on entry into Gaza by Israelis.

Disproportionality

12. The decision disproportionately violates the rights of Israeli citizens and their family members. Israeli citizens who live in the Gaza Strip have been doing so for many years, including under Hamas rule. Similarly, Israeli citizens/residents who travel between Gaza and Israel for the purpose of family visits or as part of their work, have also done so under Hamas rule, including when Gilad Shalit was held in Gaza. Thousands of Israeli citizens and residents live this way, often for lack of choice, fortunately without facing any harm. All entries by Israelis are controlled by the complicated permit regime run by COGAT.
13. The circumstances under which the two Israelis who are missing in Gaza entered the Strip are not clear. What is clear, however, is that they did not enter under the controlled system that includes obtaining a permit. COGAT's attempt to argue that their disappearance has some logical connection to the long-standing practice by which many Israeli citizens live in the Gaza Strip with official approval and recognition and receive stay permits in order to do so is entirely illogical and defies common sense.
14. COGAT must prove how the measure employed – a blanket ban on entry by Israeli citizens/residents, with the exception of extreme humanitarian cases (apparently limited to visiting people on their deathbeds and taking part in mourning rituals) – will ensure the safety of Israeli citizens who have lived securely in Gaza over the years, despite being Israeli. This blanket ban evinces a patronizing approach toward this population whose members are stripped of their fundamental right to family life in the name of some imagined threat they face while living among family and friends.
15. If the threat is this serious, what about the Israeli residents and citizens who are in the Gaza Strip now? How can the fact that a large contingent of Israeli citizens and residents remain in Gaza at this time be reconciled with the new directive and the official reasons for the ban?
16. Clearly, if security officials are aware of concrete intelligence information regarding a threat to the life of a specific individual in this large contingent, or if the individual him or herself is a security threat – this specific individual's entry must be denied. But COGAT has always done this. Each and every application to enter and remain in Gaza undergoes security screening. However, it is not, to put it mildly, appropriate to inflict harm on thousands of Israeli citizens and hundreds of thousands of Palestinian residents who receive aid from international agency workers, all because of these isolated

cases. **To be clear, this is the outcome of the new policy – a type of collective punishment.** As Abraham, the common patriarch said, “Will you sweep away the righteous with the wicked”?

17. If a specific individual poses a concrete threat, security officials will surely do what is needed, but a blanket ban? The High Court of Justice has often opined on blanket bans, ruling that they have no place in our legal system, all the more so when they involve Israeli citizens. Less injurious measures are available, but a blanket ban for an unspecified duration is disproportionate and suggests that no attempt was made to take the protection of the rights to family life and freedom of movement into consideration.

The timing of the decision

18. The timing of the decision to deny Israeli citizens/residents entry into Gaza is also rather perplexing and raises serious doubts as to whether the ban really is predicated on concern for the safety of Israeli citizens/residents entering Gaza and whether there is a rational connection between the alleged security objective and the means chosen to pursue it. Mr. Mengistu entered Gaza in September 2014, almost a year ago. The second missing citizen entered Gaza in April. Security forces were well aware of these dates, even if the public was not, and yet the decision to ban entry was announced only in late July 2015. If the security situation did in fact change as a result of Mr. Mengistu’s alleged capture by Hamas, why did the policy change only now?
19. The circumstances raise serious concerns that the widely publicized diplomatic-security situation is being exploited to advance the security establishment’s policy and to reduce movement between Israel and the Gaza Strip, at the expense of Israeli citizens and the humanitarian aid provided by staff members of international organization.

Unreasonableness and lack of transparency

20. The unreasonableness of the decision to impose a blanket ban is evidenced in its substance, the manner by which it was brought to the public’s attention and, even more clearly, the manner in which it is implemented.
21. Instead of the authorities issuing clear, binding directives and criteria for travel, as required by law and the principles of good governance, security officials resorted to general statements given to the press. According to press reports “only individual cases will be approved, following security screening”, completely ignoring the fact that **under existing policy only individual cases are approved, under humanitarian circumstances, and after a security screening.** Clearly, parents returning home, children returning to their families and to their schools where the academic year will begin in the end of August,

visits when there is an illness in the family or for family occasions, are patently humanitarian circumstances, and are recognized as such by COGAT itself, and yet, applications of this type have been refused.

A copy of the "Procedure for submitting a request to enter Gaza - for Israeli citizens", which lists the circumstances justifying entry into the Gaza Strip is attached hereto and marked C.

22. Despite our attempts to understand the new criteria as implemented, rather than through vague declarations, the officials responsible for implementing them were unable to explain what "humanitarian grounds" would henceforth justify approving applications. They could not explain what the new criteria are, and how long the stricter restrictions on entry into Gaza will be in effect. There were also some contradictions between how the policy was explained by Gaza DCO officials and how it was explained by COGAT officials, which raises concerns regarding arbitrary conduct and lack of coordination. These striking flaws in the implementation lend support to the conclusion that the entry ban is not predicated on pertinent considerations and that it is unreasonable.
23. Bringing the new policy to the public's attention through the press, rather than via official publication that is accessible to the large public of potential victims only serves to entrench our impression, gained over time, that the policies COGAT implements and the actions it takes are intended solely for the media and for public relations. For several months now, policy changes affecting Israeli citizens and Gaza residents have been publicized on social media rather than official channels, as if they address public opinion in Israel and abroad rather than those impacted by their policies.

Conclusion

24. As stated above, the decision to henceforth deny entry into Gaza to Israeli citizens/residents who are members of the three aforementioned groups for an unspecified period of time is a violation of their fundamental rights. It is disproportionate and unreasonable, and suffers from other flaws related to how it was made, how it was publicized and how it has been implemented. This decision defies HCJ rulings on the obligation the authorities have to enable the fulfillment of the right to family life, at the very least in the Gaza Strip, and unjustifiably aggravates an already restrictive and limiting policy. The decision must therefore be reversed immediately.
25. We note that over the past week, applications that present a clear, urgent humanitarian need to enter Gaza have already been refused and it is unclear if and when the severe restrictions described above will be removed. Given the grievous nature of the harm caused, and the urgency of the matter, **we request your response to this letter no later than August 11, 2015.** We hope that by then, the plight of

the thousands of civilians who are adversely affected by this policy will have been resolved without the need to file a large number of individual court petitions on their behalf.

26. Your prompt response is appreciated.

Sincerely,

Dr. Nomi Heger, Adv.

Director of the Legal Department

CC:

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