



26 January 2010

Mr. Eli Yishai
Minister of Interior
Ministry of Interior
2 Kaplan Street
Jerusalem

Mr. Menachem Mazuz
Attorney General
Ministry of Justice
29 Salah al-Din Street
Jerusalem

Mr. Isaac Herzog
Minister of Social Affairs
Ministry of Social Affairs
2 Kaplan Street
Jerusalem

Re: The cessation of issuing work visas to employees of international NGOs operating in the West Bank and East Jerusalem

Dear Sirs,

I am writing to you to request the immediate termination of the Ministry of the Interior's policy of refusing to issue work visas to employees of international non-governmental organizations (NGOs) operating in parts of the West Bank and East Jerusalem, for the following reasons:

1. We have received recently reports which indicate that for approximately six months, the Ministry of the Interior has been rejecting requests by employees of international NGOs – recognized and registered in Israel and operating in the West Bank and East Jerusalem – to renew their work visas (B1). Instead, they have been issued with tourist visas (B2) that forbid them from working within the territory of Israel.

See: Amira Hass, "Israel restricting the work of international aid organizations in East Jerusalem and the West Bank," *Haaretz*, 20 January 2010.¹

2. Most of the international NGOs are primarily humanitarian aid and development organizations that operate in the West Bank and East Jerusalem. The employees of these organizations will be prohibited from working, opening offices, managing and developing projects or even attending meetings in many parts of the West Bank, including East Jerusalem, Area C (which is under Israeli civil and security control according to the Oslo Accords), as well as the Palestinian Territories located between the Separation Wall and the Green Line.
3. **This policy of the Ministry of the Interior will severely harm more than 500,000 protected residents in various areas of the West Bank and East Jerusalem, who suffer from ongoing violations of their fundamental rights to life, dignity, housing, property, freedom of expression, education, employment, etc.² This population is highly dependent on assistance from international aid organizations.**

¹ <http://www.haaretz.co.il/hasite/objects/pages/PrintArticle.jhtml?itemNo=1143886> (Hebrew) [see also <http://www.haaretz.com/hasen/spages/1143854.html> (English)]

² See the reports by the Office for the Coordination of Humanitarian Affairs (OCHA) in the Occupied Palestinian Territories: <http://www.ochaopt.org/>

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4. Therefore the availability, accessibility, and the physical presence of these organizations and their employees are essential conditions, inherent to their work for the facilitation of their aid operations on behalf of the civilian population. This work entails identifying the humanitarian needs directly and providing the necessary services at the appropriate time and circumstances.
5. The new policy puts humanitarian aid workers at risk by invalidating their legal standing as employees of aid organizations registered in Israel. It will make it difficult for them to travel within and between the West Bank and East Jerusalem, and to perform their work as coordinators of activity between Israel and these regions, and their work with the UN aid organizations, most of which are located in East Jerusalem. This situation is liable to deter the employees from delivering the vital services they provide to the Palestinian population.
6. The Ministry of the Interior's decision to convert the work visas to tourist visas, thereby preventing them from working in large parts of the West Bank, including East Jerusalem, is disproportionate. It draws an arbitrary distinction between the humanitarian needs of the residents of areas in which these employees are prohibited from working, and the needs of residents of other areas of the West Bank. This distinction is vague and lacks any factual basis.
7. On the humanitarian level the needs of Palestinians in East Jerusalem and in Area C are identical to the needs of the Palestinians in the other parts of the West Bank. Thus, denying the humanitarian aid to residents of East Jerusalem is extremely problematic.
8. The issue is particularly urgent in light of the fact that most of these organizations have been working in the region for decades, and no significant change has occurred to justify this distinction. On the requirement that an administrative decision be predicated on a factual basis, see the words of the Honorable [Supreme] Court in the **Euronet Golden Lines** case:

[...] the law does not tolerate a decision that lacks a basis. The rule is that an administrative decision must be based on a foundation of facts. [...] More than once this court has rejected an administrative decision because it was not based on facts as required.

HCJ 987/94, *Euronet Golden Lines (1992) Ltd. v. Ms. Shulamit Aloni*, Piskei Din 48(5) 412, 423 (1994).

9. This decision was made without conducting an in-depth examination of its far-reaching ramifications for the Palestinian population, most of which is supported by the services of the international aid and development organizations. Moreover, the court is very critical of the revocation of work visas once they have been issued in the absence of any proven, substantial and factual change that would justify its non-renewal. See, HCJ 113/52, *Zaks v. Minister of Trade and Industry*, P.D. 6 696, 700 (1952).
10. Under international law and according to the Advisory Opinion of the International Court of Justice on the Separation Wall, East Jerusalem is considered Occupied Territory.³ The same is true with regard to Area C. The division of the territory of the West Bank into Areas A, B and C under the Oslo Accords did not alter its status as

³ See Paragraph 87 of the International Court of Justice's Advisory Opinion on "The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory;" and UN Security Council resolutions: 242 (1967), 252 (1968), 298 (1971), 476 (1980) and 673 (1991).

Occupied Territory. Thus the Palestinian population that lives in these areas is a protected civilian population.

11. It is a principle of international humanitarian law that an Occupying Power must ensure the defense of the protected citizens in an Occupied Territory and provide for their humanitarian needs. This principle is anchored in Article 43 of the *Hague Conventions (1907)*:

... [the occupant], the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

See also, H CJ 201/09, *Physicians for Human Rights v. Prime Minister* (decision delivered on 19 January 2009), para. 21 of Chief Justice Beinisch's ruling; H CJ 9132/07, *Al-Basyouni v. Prime Minister* (decision delivered on 30 January 2008), para. 13-15 of Chief Justice Beinisch's ruling; and H CJ 4764/04, *Physicians for Human Rights v. Commander of IDF Forces in Gaza*, P.D. 58(5) 385 (2004).

12. Moreover, Article 30 of the Fourth Geneva Convention (1949) states that protected civilians are entitled to maintain contact with the outside world and with aid organizations that seek to lend them assistance:

Protected persons shall have every facility for making application to the Protecting Powers, the International Committee of the Red Cross, the National Red Cross (Red Crescent, Red Lion and Sun) Society of the country where they may be, as well as to any organization that might assist them.

13. In this matter, see also Article 27 (the principle that protected persons are entitled to humane treatment); Article 33 (the prohibition on collective punishment), articles 55 and 59 (the obligation to facilitate the provision of essential food products and medicine to the population); articles 142 and 143 of the Fourth Geneva Convention (1949) and articles 20, 51 (1)-(2), 70, 75(2)(d) and 81 of the First Additional Protocol to the Geneva Conventions (1977). In addition, see Orna Ben Naftali and Yuval Shani, *International Law, Between War and Peace*, Ramot, 2006, pp. 178-183; and International Review of the Red Cross for 2005, Vol. 87 No. 857 (March 2005), p. 203.⁴

14. According to Article 30 of the Fourth Geneva Convention (1949), Israel is violating international law in two ways, first by not fulfilling its humanitarian obligations toward the protected Palestinian population, and second by preventing aid organizations from fulfilling these obligations. The Israeli Supreme Court attributes great importance to the humanitarian activity of these organizations. As the honorable former Chief Justice Barak stated in *Physicians for Human Rights*:

The obligation belongs to the military commander, and the receipt of assistance from external entities does not relieve him of this obligation (see Article 60 of the Fourth Geneva Convention). However, this external assistance is liable to facilitate the fulfillment of this obligation in practice.

H CJ 4764/04 *Physicians for Human Rights v. Military Commander of IDF Forces in Gaza*, P.D. 58(5) 385, 398 (2004).

⁴Available at: [http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p0860/\\$File/ICRC_002_0860.PDF](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p0860/$File/ICRC_002_0860.PDF)

In light of the above, we request that you immediately reinstate the procedure according to which work visas (B1) are issued to employees of international NGOs, in order to enable them to work in the West Bank and East Jerusalem.

We would appreciate your prompt response.

Yours respectfully,

Haneen Naamnih, Advocate