

Excerpts from the April 25, 2010 State of Israel's response to Gisha's petition pursuant to the Freedom of Information Law

Unofficial translation by Gisha – questions should be directed to: info@gisha.org or +972-3-6244120

A.P. 274/09 (Tel Aviv) Gisha-Legal Center for Freedom of Movement v. State of Israel – Defense Ministry

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5. An inquiry by the Coordinator of Government Activities in the Territories found that there are four **main** documents that are relevant to the Petitioner's request:

- a. The procedure for admitting goods into the Gaza Strip;
- b. The procedure for monitoring and assessing supply in the Gaza Strip;
- c. A list of humanitarian products approved for admission into the Gaza Strip;
- d. A presentation entitled: "Food Needs in Gaza – Red Lines".

6. "**The procedure for admitting goods into the Gaza Strip**" is a procedure that regulates policy-making regarding the admission of goods into the Gaza Strip, processing requests for admitting goods into the Gaza Strip and the delegation of responsibility between the various administrative bodies in this regard. The procedure also regulates the updating of the list of products allowed into the Gaza Strip, and the appendix to the procedure includes the format for the aforementioned list of products. Formally speaking, the procedure is a draft. However, the authorities follow it in their operations.

7. "**The procedure for monitoring and assessing stocks in the Gaza Strip**" is a procedure that regulates one of the ways of monitoring the level of stocks in the Gaza Strip of various staples, to allow effective warning of expected or existing shortages in the Gaza Strip and allow Israel to fulfill its obligations towards the Gaza Strip concerning safeguarding the essential humanitarian needs of the population. Formally speaking, the procedure is a draft. However, when necessary, the authorities use it as one of the elements of monitoring.

8. "**A list of humanitarian products approved for admission into the Gaza Strip**" is a base list including the products approved for admission into the Gaza Strip (it is not a list of products whose admission into the Gaza Strip is forbidden). The list is updated periodically according to the policy. It is a basic list, but it is not an exhaustive list of all goods that are admitted into the Gaza Strip. The reason is that the relevant COGAT authorities examine each request individually and make a case-by-case decision on admitting each product.

9. **The presentation "Food Consumption in Gaza – Red Lines"** was presented as a draft as part of discussions to develop and manage conduct regarding the Gaza Strip. The document was presented as part of internal staff work, and at no stage did it serve as a basis for decision-making.

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15. Thus, the law establishes that the authorities shall not provide "**information, the disclosure of which, could threaten national security, foreign relations, public security or the security or well-being of a person**" (Article 9(a)(1)).

16. This is the place to stress that when information falls in the aforementioned category, the authorities are not permitted to provide such information at all, and that the standard test set forth in the article of the law is a soft test, according to which if there is **concern** the information may harm national security or its foreign relations, it cannot be revealed.

17. It is the Respondent's position that the first three documents cited in section 5 above are documents that must not be provided under Article 9(a)(1) of the law, whereas the additional document, the presentation, is a document that also falls under the restrictions set forth in Article 9(b)(4) because it constitutes internal material, a draft, which was not formulated into procedure or into a binding provision and which is not even used by the Respondent.

20. We should also add that as part of the present response we are presenting all of the arguments and facts that can be disclosed. **The Respondent wishes to present the Honorable Court, ex parte (according to the provisions of Regulation 13(b) of the Regulations of the Court for Administrative Matters (Procedural Rules) 2000), through the declarant on its behalf, facts and reasons that cannot be disclosed and which will clarify why the aforementioned documents must not be provided to the Petitioner.**

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24. According to the aforementioned Cabinet Decision [ed: September 2007 Israeli Cabinet Decision], in addition to armed conflict, in which Israel employs military and preventative operations, Israel also imposes restrictions on the transfer of goods into the Gaza Strip, while maintaining the humanitarian needs of the civilian population in the Gaza Strip.

25. Thus, since the aforementioned decision, **Israel has taken various military measures against the Palestinian terrorist organizations, and primarily Hamas**, with the main military operation being Operation Cast Lead (for information about the operation and its background, see for example: H CJ 201/09 **Physicians for Human Rights v. the Prime Minister**).

26. Alongside its military operations, **Israel also imposes other restrictions on the Gaza Strip**. Thus, various kinds of restrictions have been imposed on the movement of people through the crossings. Furthermore, restrictions have been imposed on the transfer of goods into the Gaza Strip and out of it and restrictions have been imposed on the supply of fuel and electricity to the Gaza Strip. **All this is done while carefully**

preventing the development of a situation that could lead to a humanitarian crisis, as per the undertakings of the State of Israel.

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29. As will be clarified below, the documents requested by the Petitioners concern **the very heart of this policy**. In other words, **the Petitioners are requesting documents that detail the implementation of this policy, which constitutes a material part of the armed conflict between Israel and Hamas.**

Harm to national security and foreign relations

30. As detailed above, **the requested documents concern the management of the restrictions on the transfer of goods that Israel imposes on the Gaza Strip**. This is done while all the while fulfilling Israel's obligations as to the essential humanitarian needs of the civilian population.

31. **There is concern that the disclosure of these documents will harm national security and possibly even Israel's foreign relations**. This is the position of the officials who have professional responsible for the matter.

32. **Israel's conduct toward the Gaza Strip, including the restrictions on transferring goods, is a central pillar in the measures at Israel's disposal as part of the armed conflict between it and Hamas**, which is a hostile entity whose goal is to destroy the State of Israel.

33. As noted, **it is the Respondent's position that there is concern that the disclosure of the documents that are the subject of this Petition will harm Israel's national security**. Obviously, for reasons of confidentiality, the Respondent cannot present its detailed arguments as part of this response, and therefore the Respondent requests to complete its arguments ex parte.

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35. **This document [ed: "Red Lines"] remained a draft. Its main points were not accepted by the decision-makers, and it never served as a basis for the authorities' policy.**

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