



## Legal Framework: Higher Education Rights and Obligations under International and Israeli Law

May 2010

As the military occupier in Gaza and the West Bank<sup>1</sup>, Israel has an obligation to ensure the proper functioning of public life and public institutions in the Palestinian territory, including the educational system. These obligations accrue whether, as Gisha and others believe, Israel continues to owe obligations to Palestinian residents of Gaza under the law of occupation or whether, as Israel's Supreme Court has found, these obligations stem from the fact of Israeli control over Gaza's borders and dependence created by decades of direct military control<sup>2</sup>. There is no dispute that Israel's obligations under the law of belligerent occupation apply in the West Bank. Israel's Supreme Court analyzes these obligations under international human rights law<sup>3</sup>, as well, including the duty to respect the right to education and to ensure that higher education is "equally accessible to all on open to all, on the basis of capacity, by every appropriate means"<sup>4</sup>.

In the internationally brokered **Oslo Accords**, which were incorporated into the internal law of the Occupied Territory via military **orders**, Israel committed to view the Gaza Strip and the West Bank as a **single territorial unit** in which freedom of movement<sup>5</sup> was to be permitted, notably through a **safe passage**<sup>6</sup> in which Palestinians were permitted to travel between the West Bank and the Gaza Strip in private cars or buses that traveled via Israel. The safe passage was open for only one year, and closed in 2000 with the outbreak of the Second Intifada.

<sup>1</sup> Gisha, January 2007, "Disengaged Occupiers: The Legal Status of Gaza", available at [www.gisha.org](http://www.gisha.org)

<sup>2</sup> HCJ 9132/07 *Al-Bassiouni v. Prime Minister* (unpublished, Jan. 30. 2008), para. 12.

<sup>3</sup> See, e.g. HCJ 1890/03 *Bethlehem Municipality v. State of Israel*, PD 59(4), 736, 754.

<sup>4</sup> International Convention on Economic, Social and Cultural Rights (1966), art. 2(c).

<sup>5</sup> Israeli-Palestinian Interim Agreement, Sept. 28, 1995, Annex 3, art. 28(10)(a).

<sup>6</sup> *Ibid*, Annex 1, art. 10.

## Israeli military regulations and court decisions

Israeli military regulations, military procedures, and court decisions have limited movement between the West Bank and the Gaza Strip to nearly nonexistent, especially since the outbreak of the Second Intifada in 2000. The Gaza Strip was declared a "closed military zone" shortly after being captured by Israel in 1967, but between 1971 and 1991 residents were given a "general exit permit" that allowed them to leave Gaza for travel to Israel and the West Bank. Upon the cancellation of the general exit permit in 1991, residents were required to obtain an individual permit from the Israeli military as a condition for leaving Gaza. Regulations passed in the wake of the 2005 "disengagement" made technical modifications to the legal structure, but authority for granting permission to leave Gaza via Erez Crossing, the crossing through which travel to the West Bank via Israel is permitted, remained in the hands of military officials in the Gaza District Coordination Office (DCO), via a delegation of power from the Minister of Interior<sup>7</sup>.

As part of what was to be an interim arrangement, the Oslo Accords established a system of coordination in which a parallel Palestinian Authority District Coordination Office was established, ostensibly to reduce friction between the Israeli military and Palestinian civilians and to give the PA an opportunity to represent Palestinian residents vis-à-vis the Israeli military. In practice, the ability of the Palestinian District Coordination offices was limited to transferring requests to the Israeli side with no decision-making power as to whether a request would be granted. Residents generally preferred to approach the Israeli DCOs directly, as decisions were made there. In Gaza, however, residents have no direct access to the Gaza DCO which makes decisions on travel requests, as the office is located in Israel. The Gaza DCO does not accept faxes or other direct requests from Palestinian residents. In written documents, the Israeli military insists that requests be submitted via the Palestinian Civil Affairs Committee, but as a matter of practice, it also accepts requests from international organizations, lawyers and human rights groups, civil society actors in Israel, and others, although the procedures are irregular and unpredictable.

The Palestinian Civil Affairs Committee is limited in its ability to submit requests due to the restrictive criteria set by the Gaza DCO. Entire categories of requests are barred by the Israeli military, which dictates the types of requests it will consider from the Palestinian Civil Affairs Committee. Requests that do not meet the restrictive criteria set by the military are rejected automatically, without consideration of whether a security risk is claimed and without regard to the individual circumstances of the request.

Beginning in 2000, the Israeli military banned students from the Gaza Strip from studying in universities in the West Bank, by refusing all requests to travel for purposes of study, irrespective of the question of whether Israeli security officials

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<sup>7</sup> Entrance to Israel Order (Exemption for Residents of the Gaza Strip) (Interim Order), 2005, and subsequent extensions.

claimed to possess security information regarding any particular student. The military refuses to conduct individual evaluations of requests by students to travel from Gaza to the West Bank, claiming that young people between the ages of 16 and 35 in general, and students in this age group in particular, posed a general threat, because they belonged to a "risk profile". The military argued before the High Court that even if security officials determined that a student posed no security risk at the time he or she chose to travel from Gaza to the West Bank, the student may change his or her mind upon arrival:

"[S]ecurity officials appraise that even in cases when a Gaza Strip resident leaving the Strip has no intention of taking action against the State's security at the time that they leave, this intention can crystallize during their stay in the Judea and Samaria area"<sup>8</sup>.

The military characterized universities in the West Bank as "greenhouses for growing terrorists", citing special risks inherent in permitting students – even more than other young people – to travel from Gaza to the West Bank.

The Israeli Supreme Court adopted the military's position and rejected two court petitions challenging the ban – both brought on behalf of ten students from the Gaza Strip seeking to access the only certified occupational study program within the Palestinian system of higher education, located at Bethlehem University in the West Bank<sup>9</sup>. In rejecting the second petition in August 2007, brought by Gisha, the Israeli Supreme Court accepted the military's argument that even where a particular student clears a security check by Israeli security officials, his or her passage to the West Bank must be barred, because perhaps upon reaching the West Bank, he or she will decide to engage in activities that threaten the security of Israel or the West Bank. In rejecting Gisha's petition asking for individualized security checks of those seeking to study in the West Bank, the Court chose not to apply case law regarding the obligation to conduct individualized security evaluations, accepting the State's position, articulated as follows:

"The information available to security officials indicates that universities in the Judea and Samaria area serve as 'greenhouses' for breeding terrorists. In other words: the intelligence information accumulated from past experience shows that universities in the territories in many cases constitute fertile ground for the cultivation of the terrorist infrastructure and the recruitment of new people to carry out terrorist and hostile activities"<sup>10</sup>.

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<sup>8</sup> HCJ 11120/05, *Hamdan v OC Southern Command* Respondents' response from March 20, 2007, para. 53.

<sup>9</sup> HCJ 7960/04 *Al-Ghazi v. Gaza Military Commander* (unpublished, Feb. 29, 2004) and HCJ 11120/05 *Hamdan v. Southern Military Commander* and nine related petitions (unpublished, Aug. 7, 2007).

<sup>10</sup> HCJ 11120/05, *Hamdan v OC Southern Command* Respondents' response from March 20, 2007, para. 53.

Justice Elyakim Rubinstein, who wrote the verdict, chose not to apply court precedent establishing an obligation to conduct individualized security evaluations, and stated:

"We therefore did not find, with all our goodwill that the considerations of the respondents who oppose it suffer from extreme unreasonableness"<sup>11</sup>.

The Court did, however, ask the State to consider allowing students from Gaza to study in the West Bank in cases which would have "positive humane implications". To the best of Gisha's knowledge, since that time, no requests have been approved.

### Additional sources

- Gisha, February 2006, Disengagement Danger: Israeli Attempts to Separate Gaza from the West Bank, available at [www.gisha.org](http://www.gisha.org).
- Gisha, January 2007, Disengaged Occupiers: The Legal Status of Gaza, available at [www.gisha.org](http://www.gisha.org).
- Gisha, November 2009, Restrictions and Removal: Israel's Doublebind Policy for Palestinian holders of Gaza ID's in the West Bank, available at [www.gisha.org](http://www.gisha.org).

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<sup>11</sup> HCJ 11120/05 *Hamdan v. Southern Military Commander* and nine related petitions (unpublished, Aug. 7, 2007), para. 17.