

Al Mezan Centre for Human Rights



Students from Gaza: Disregarded Victims of Israel's Siege of the Gaza Strip

**A Report on Israel's Prevention of Gazan Students from Studying at the West
Bank Universities**

**Gaza
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Introduction:

The Palestinian National Authority's (PNA) educational system is an integrated national system that has been designed to meet the educational needs of Palestinian students in the occupied Palestinian territory (oPt). Accordingly, the various Palestinian universities have, over the years, developed particular specializations. Thus, specializations that are available in the Gaza Strip may not be available in West Bank universities and vice versa. The close geographical proximity of the Gaza Strip and the West Bank has always facilitated the education system in the oPt. In the absence of Israeli movement and access barriers, Gazan students can, for example, reach a university in Ramallah City in the West Bank by car in approximately one hour. As some major fields of study are not available in Gazan universities, thousands of Gazan students, particularly those who seek to obtain post-graduate degrees in medicine, dentistry, veterinary studies, radiology, medical engineering, environment protection, law and democracy, and human rights used to travel to the West Bank to study there.

Since the beginning of the second Intifada, which started in the oPt in the year 2000, Israel has imposed increasingly tight restrictions on movement between the Gaza Strip and the West Bank. These movement restrictions include the imposition of a blanket ban on Palestinian students from the Gaza Strip enrolling at Palestinian universities in the West Bank to continue their education. This ban is not based on security needs – which if certain conditions are met can be legitimate in the context of belligerent occupation and armed conflict – but rather on belonging to a specific ‘category’ of persons. That is, students are prevented from accessing the West Bank *because* they are students.

This policy of prohibiting students from the Gaza Strip from studying in the West Bank is an arbitrary policy. It is part of a wider policy of restrictions imposed by Israel on the movement of people into and out of the Gaza Strip and as such, it constitutes a policy of collective punishment.¹ Students from Gaza who are accepted at West Bank universities cannot leave the Gaza Strip via Erez crossing² without applying to the Israeli security authorities to obtain permission. Applications are always examined by the General Security Service (GSS or “Shabak”). At current, *all* applications from students in Gaza who wish to study in the West Bank are rejected by the Israeli authorities³.

¹ See ICRC **Gaza closure: not another year!**, 14 June 2010, available online at <http://www.icrc.org/web/eng/siteeng0.nsf/html/palestine-update-140610>, last visited on 20 August 2010.

² Erez crossing is the only pedestrian terminal crossing that connects the Gaza Strip and Israel.

³ For more details see the information sheet on the damages to higher Palestinian education as a result of the separation between Gaza and the West Bank, Gisha: Legal Centre for Freedom of Movement, May 2010.

By preventing Gaza students from studying at West Bank universities, students are being deprived of their right to pursue their education within the available Palestinian universities and academic programs. They are also deprived of their right to pursue their aspirations to develop and enhance their knowledge and skills. This situation has broader consequences on society in Gaza which is left without the training and skills that are critical in terms of advancing human development. Through this policy, Israel, as the Occupying Power, violates its international obligations under international human rights law. The State of Israel is also in breach of international humanitarian law (IHL); including, inter alia, the Fourth Geneva Convention Relative to the Protection of Civilians in Times of War, of 1949 (GC4). GC4 ensures freedom of movement and travel and the right to education to individuals who live under occupation.

This Report aims to draw to the attention of the international community, civil society organizations, UN agencies and the media, the arbitrary Israeli measures that impact on Palestinian students in oPt. It highlights the consequences on students of the Israeli closure policies. These closure policies were imposed on the Gaza Strip at the start of Second Intifada in 2000; an almost total siege (or closure) was imposed in July 2007.

This siege of Gaza constitutes part of an explicit policy that aims to separate – geographically and socially - the West Bank (including Jerusalem) from the Gaza Strip. These closure measures escalated after Israel implemented its unilateral disengagement plan on 12 September 2005. This plan was designed to maintain Israel's effective control over the Gaza Strip while enabling Israel to claim that it had been absolved of its obligations vis-à-vis the life and welfare of the population of the Strip.

The Report attempts to highlight the various consequences of the siege policy on one particular group of Palestinians in Gaza: students seeking to study in West Bank universities.

- **International law and the rights to education and freedom of movement**

Israel's policy and practice toward Palestinian students violate Israel's obligations under international human rights and humanitarian law. These obligations arise from international customary law as well as from Israel's status as a signatory to a number of widely-ratified international human rights treaties.

Israel's responsibilities towards the population of the oPt are grounded in Israel's status as the Occupying Power.⁴ The occupying authorities have a duty to ensure that public facilities, including the educational facilities, work properly in the oPt.

Given the prolonged nature of Israel's effective control of the Palestinian territory – an occupation which has now been in place for over four decades – Israel has clear human rights obligations towards the Palestinian population. These obligations include those stipulated in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on the Civil and Political Rights (ICCPR).

As a State Party to several human rights treaties, Israel is obliged to respect the right to education and to ensure access to education, including higher education, in all possible ways. These responsibilities are codified in articles 13 and 14 of the ICESCR (1966) which provide that “[T]he States Parties to the present Covenant recognize the right of everyone to education,” and that “[E]ducation shall be directed to the full development of the human personality.” Article 4 of the same covenant restricts the conditions that states might invoke to limit the rights protected by the covenant. It states that “[T]he States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to *such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society*” (emphasis added).

The arbitrary restrictions that Israel imposes on access to higher education within the oPt violates international law. It cannot be viewed as being *compatible with the nature of the right to education*, which loses its core content in the absence of the effective ability to access the educational institutions. Moreover, it cannot be argued that the restriction on the access to education *promotes students' welfare*.

Article 12 of the International Covenant on Civil and Political Rights states:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, which are necessary to protect national security, public

⁴ Article 43 of the Convention (IV) respecting the Laws and Customs of War on Land of 1907 states: “The Authority of the legitimate power having in fact passed into the hands of 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.

order (order public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 5 of the same Covenant prohibits the ‘restriction upon’ or ‘derogation from’ any of the fundamental human rights recognized in the Covenant.

International humanitarian law and particularly ‘the law of occupation’⁵, is also relevant here. Several provisions of IHL are concerned with the protection of the right to education. According to article 50 of the 1949 GC4, States must facilitate the good work of educational institutions and ensure the right of the residents of occupied territories to education.

It is important to reiterate that Israel’s policy concerning the freedom of Gaza students to travel to the West Bank should be viewed in a wider context; in the context of the broader policy of pursuing complete geographic separation between the West Bank and the Gaza Strip, as Israeli officials expressed.⁶

This policy presents a serious danger to the ability of the Palestinians to establish a geographically contiguous independent state in the oPt; this policy therefore also constitutes a violation of the right of Palestinians to self-determination. This is one of the most fundamental rights of all: indeed, it has a peremptory role in international law. The International Court of Justice, in its advisory opinion on the legal consequences of the construction of a wall, affirmed this right. In this Opinion, the Court constructed its argument and analysis around the notion that the wall destroys Palestinian self-determination, thereby violating basic principles of international law. The Court’s analysis therefore deemed the construction of a wall in Palestinian territory illegal. Building on this analysis, any such measures or policies that may result in similar effects – i.e. the destruction of Palestinian self-determination – is a violation of the self-determination doctrine.

Furthermore, international law does not allow the imposition of restrictions on the movement and access of the residents of occupied territory outside the boundaries it has determined. This applies to the Gaza Strip. Hence, students and other categories of civilians who live under occupation must not be subject to punishment, such as by restricting their movement and access, for political or unjustified security reasons. International law absolutely prohibits the imposition of collective punishment on

⁵The Law of Occupation constitutes a group of legal principles that the occupying state should uphold as a result of its effective control and unlawful existence in the occupied territories. This regulation represented by the Convention respecting the Laws and Customs of War on Land of 1907, the Fourth Geneva Convention on the Relative to the Protection of Civilian Persons in Time of War of 1949, and the First Additional Protocol to the Geneva Convention on 10 July 1977 on the international armed conflict.

⁶ See Al-Haq’s Legal Analysis of Israeli Military Orders 1649 & 1650: Deportation and Forcible Transfer as International Crimes, available, page 7, available online at <http://www.alhaq.org/etemplate.php?id=522>.

civilians; a position restated by the International Committee of the Red Cross on the third anniversary of the imposition of the siege on Gaza in June 2010.⁷

Palestinian residents of oPt movement between Gaza and West Bank under Israeli military orders and regulations:

The IOF has effectively controlled the Gaza Strip and the West Bank, including East Jerusalem, since June 1967 by means of belligerent occupation. In 1968, the Israeli Military Commander for the Southern Area issued Military Order 144. Under this order, the Gaza Strip and northern Sinai areas were declared closed military zones and the residents of the Gaza Strip were prohibited from traveling without obtaining permission from the Israeli military commander. Article 2 of this order states: “[n]o one shall enter or leave the area without personal permission issued by me or any person appointed by me to do so or in accordance with the provision of the general permission issued by me.”⁸

This order organized the movement of the population of Gaza into and out of Gaza between 1971 and 1991. Gazans were allowed to enter Israel and the West Bank in accordance with ‘general leave permission’ from the military commander. In 1991, this order was abolished and Gazans started to have to apply for permission on an individual basis in order for them to be allowed to exit Gaza by the Israeli forces.

In September 2005 – and after the redeployment of the IOF around the Gaza Strip in the context of the unilateral disengagement plan – the IOF issued regulations to organize the passage of people from the Gaza Strip to the West Bank through Erez Crossing. These regulations stipulate that Gazans have to submit applications to the Palestinian Civil Affairs Committee in Gaza which passes the applications to the Israeli District Coordination Office at Erez Crossing for processing.

The root of this mechanism of processing applications goes back to the agreements made between Israel and the Palestine Liberation Organization (PLO) in 1995 in the interim self-government arrangements under the Oslo Accords. Under the Accords, the West Bank and the Gaza Strip are considered an integral geographic unit. A ‘safe passage’ linking Gaza and Jericho was created in 1999. However, when the second Palestinian Intifada started in September 2000, the passage was closed and Israel imposed a comprehensive closure on the oPt.

The movement of Palestinians between Gaza and the West Bank was thereon in conditioned upon obtaining written permits from the IOF; including for the purpose of studying in the West Bank. Until the year 2000, the IOF rejected a majority of the

⁷ Supra, note 1.

⁸For more details see the military order about the closure of the Gaza Strip published on the Gisha website, a previous reference.

permit requests made by Gazans whose purpose for moving to the West Bank was education. The IOF rejected the permits for alleged security reasons; however, no details about these reasons were ever provided to the applicants. From as early as 1991, the IOF started to harass the thousands of Gazan students who were already studying in the West Bank, searching for them, arresting them, and forcibly transferring them to Gaza after brief spells of imprisonment and the imposition of fines.

Since 2000, there has been a change in policy: the IOF imposed a blanket ban and started to reject all permission requests submitted by students from the Gaza Strip who were seeking to pass through Erez crossing to access the West Bank and study in its universities. Requests for permission were rejected regardless of whether any security reasons existed; the IOF refused to carry-out security checks for persons aged 16 and 35 years old, even when there were no security reasons that might prevent them from obtaining travel permits to go to the West Bank.⁹

The denial of Gazans of their right to move freely between Gaza and the West Bank is not restricted merely to those seeking to reach the West Bank by passing through Erez Crossing. It extends to those students attempting to enter the West Bank through the Al Karama (Allenby) Bridge. This bridge connects Jordan and the West Bank. Entering the West Bank through Al Karama Bridge does not require passing through Israeli territory. This effectively proves that the aim of this Israeli policy extends beyond legitimate security concerns presented by Palestinians passing through its territory. In fact, hundreds of Palestinian students, including young students, have been allowed to enter Israel for the purpose of travelling abroad via Al Karama Bridge and then Jordan. It is when their final destination is the *West Bank* that these students are prohibited from passing through Erez crossing. This lends further weight to the argument that this Israeli policy is intended to entrench the separation of Palestinians in the Gaza Strip from Palestinians the West Bank. This policy is part of a broader strategy which has included the creation of Jewish-only settlements and constructing a separation wall inside the West Bank. In pursuing these political objectives, Israel has blatantly violated international law and the most basic human rights of Palestinians.

The Israeli declared reasons behind preventing Gaza students from accessing the West Bank

⁹ On March 2005, Gisha submitted an appeal no. 11120/50 to the Israeli High Court of Justice. The appeal was submitted on behalf of ten students from the Gaza Strip (Hamdan's case and others). In the appeal, Gisha asked for enabling students to travel to the West Bank to study medication at the Bethlehem University. The Israeli authorities refused to initiate individual check for each student. The Israeli authorities also said that the ban imposed on travelling is because students are "dangerous category" and universities in the West Bank are "greenhouses for growing terrorists". For more details see the Fact Sheet on the damage to higher Palestinian education as a result of the separation, May 2010, a previous source.

Israel's policy is an arbitrary policy because it rejects Gazan students' requests for permits without even running a security check on the applicants. Students are rejected as a *category* of persons. The Israeli security authorities allege that students who are between 16 and 35 years old present a 'security danger,' as they make up a 'dangerous category', even if the students *as individuals* are not found to constitute a danger when security checks are carried-out. Allegedly, the threat posed by this category of people remains even when they are at the West Bank universities, which are considered a 'fertile environment for practicing hostile activities'.¹⁰

In light of these allegations towards students and Palestinian universities in the West Bank, the Israeli High Court of Justice (HCJ) recommended in August 2007 that a mechanism 'to deal individually with cases that might have positive humane impacts/reflections' be established¹¹. This meant that the security authorities in Israel should run a security check on each applicant and then decide whether or not to grant or reject the requests for permits. However, since August 2007, not a single permit application made by a Gazan student to study in the West Bank has been accepted. The Israeli security authorities have refused to carry-out the security checks and have continued to categorically reject *each and every* application made by students in Gaza who wish to study in the West Bank.

This policy is in-line with a dangerous view – held by the State of Israel and its security forces – which appears to consider every Palestinian in the Gaza Strip as representing a 'potential security risk.' As a result, Palestinians from Gaza are not only prohibited from travel: they also constitute a 'legitimate' object of Israeli military attacks. The population of the Gaza Strip experienced the devastating consequences of this dangerous view during Operation Cast Lead (carried out in Gaza in December 2008 – January 2009) and since then, during the frequent IOF attacks against civilians and civilian objects in Gaza. The Israeli military command is using to the maximum the enormous benefit of doubt when they restrict the movement of students and other categories, as they are faced with *walking potential risks*, not protected civilians. This is in itself a serious violation of the letter and spirit of IHL. Its consequences and implications are grave violations of IHL and IHRL.

The implications of this policy on Palestinian society should not be underestimated: especially when seen in the context of the broader restrictions placed on the academic

¹⁰ Paragraph no. eight of the Israeli High Court decision regarding appeal no. 50/11120 states: "travel from Gaza to Judea and Samaria, the West Bank, is allowed for senior Palestinian Authority employees, who are not affiliate to Hamas, senior businessmen, senior employees who work for international organizations, residents of the West Bank who want to return to their places, and humanitarian exceptional case but not for those who are between 16 and 35 years old including university students as they are of high danger degree. In the "danger criteria" and upon Israeli intelligence information, it is alleged that terrorist activities are taken by persons who are between 16 and 35 years old and particularly university students. It is also alleged that the West Bank universities form greenhouses for growing terrorist and students who study there and have no intent to carry out terrorist acts will be affected by the surrounding environment." For more details see www.gisha.org

¹¹ For more details see position paper about the legal framework of high education

community in Gaza. For years now, Gaza universities have not been able to organize academic conferences with their counterparts in other countries. Nor have they been able to send academics for research and/or training abroad. This policy seriously hampers efforts to develop and advance education, knowledge and culture in the Gaza Strip.

The Case of Fatma Al-Sharif

On 1 July 2010, one of Al Mezan's human rights lawyers, Ms. Fatma Al-Sharif, submitted – through Gisha – the Legal Center for Freedom of Movement – a petition to the Israeli High Court of Justice against the Commander of the Southern Command.¹² In the petition, Gisha requested an injunction to enable Ms. Al-Sharif to travel from Gaza to the West Bank. The petition was submitted to the court after the Israeli authorities had rejected Ms. Al Sharif's request for permission, which she submitted on 8 June 2010, to the office of the Coordinator of the Israeli Government for the oPt in Tel Aviv and the Israeli District Coordination Office (DCO) at Erez crossing. She requested the permission in order to leave Gaza via Erez crossing to enroll in a Master's degree program in human rights and democracy at Birzeit University in the city of Ramallah in the West Bank. The Israeli security authorities rejected her request on the grounds that she did not meet the criteria set by the Israeli government for the exit of people from the Gaza Strip. The Israeli authorities also refused to carry-out an individual security check to determine whether Ms. Al-Sharif *as an individual* poses a security threat.

On 7 July 2010, at the petition hearing, the HCJ rejected the petition and adopted the security authorities' argument in refusing of Ms. Al-Sharif's request. The response to the appeal by the Israeli security authorities, represented by the Military Advocate General (MAG), to the HCJ referred to the decision by the Israeli government concerning the Gaza blockade on 20 June 2010. The government decision, MAG stated, did not alter the policy regarding the movement of people and did not expand the current policy, which restricts the movement of people to humanitarian cases only and especially urgent medical cases. It clarified that this decision does not expand the criteria, and it certainly does not permit passage for purposes of Master's degree studies, it added.¹³

During the hearing, MAG admitted that the Israeli military has not allowed any students from the Gaza Strip to travel to the West Bank to study there, even after the decision of the HCJ regarding petition no. 11120/05, which granted the military the power to examine the requests of Gazan students individually. In its ruling, the court

¹² Petition No 10/4609, Miss Fatma Al Sharif against the Commander of the Southern Command.

¹³ to see the response of the Ministry of Defense before the HCJ, visit the link http://gisha.org/UserFiles/File/HiddenMessages/Shariff_petition_eng.pdf

granted this power to the military, but also urged it to examine “cases that have positive impacts on the humanitarian situation” after conducting the security check. However no security checks have been conducted since 2007.

In its response to the petition, the HCJ supported the military’s decision and accepted that there were no new policies concerning the easing of restrictions imposed on the movement of people as a result of the government decision of 20 June 2010. The HCJ further stated that this policy applied to humanitarian cases only - and therefore not applicable to students. While more commercial and humanitarian goods and commodities are to be allowed to enter the Gaza Strip, studying in West Bank universities is not included in these criteria. This exemplifies, yet again, how the Israeli judiciary condones policies and practices that violate human rights and international law. The Court in essence decided to take a political position in support of the government of Israel, rather than a legal position that guarantees justice and upholds law.

On 1 July 2010, Al Mezan submitted, on behalf of Ms. Al Sharif, an urgent appeal to Mr. Vernor Muñoz Villalobos, the *UN Special Rapporteur on the Right to Education*. Al Mezan asked the Special Rapporteur to intervene to assist Ms. Al Sharif to access Birzeit University in Ramallah.

On 17 July 2010, Ms. Al Sharif sent a letter to Baroness Catherine Ashton, the High Representative of the European Union for Foreign Affairs and Security Policy, during her visit to the Gaza Strip. This letter of appeal was sent to Ms. Ashton after the Israeli government decision was issued on 20 June 2010 concerning easing the movement restrictions in and out of the Gaza Strip.¹⁴

In her letter, Ms. Al Sharif appealed to Baroness Ashton to use all the power and leverage she has to bring to an end the blanket ban imposed by the IOF since 2000 on the freedom of movement of students who live in the Gaza Strip and wish to study in the West Bank universities. The letter informed Ms. Ashton of the Israeli HCJ ruling, which upheld this blanket ban which presents Ms. Al Sharif, along with thousands of other Gazan students, from accessing the West Bank for the purpose of education. It highlighted that this decision came amid claims by the Israeli Government that it would ease the siege and restrictions on movement and travel imposed on the Gaza Strip.

Al Mezan Centre for Human Rights is gravely concerned about Israeli policies and measures that restrict the right to free movement and access of Gaza’s population; including that of students who wish to study in another region of their own country in the West Bank. The State of Israel, as the Occupying Power, is in violation of its international obligations as it continues to deny Palestinians under its occupation from

¹⁴ See the joint press release by Al Mezan and Gisha about the letter of Miss Al Sharif, http://www.mezan.org/en/details.php?id=10499&ddname=crossings_education&id2=9&id_dept=31&p=center

their basic rights and protections, including the rights to education and to free movement.

Therefore, Al Mezan calls on the international community to uphold its legal and moral obligations to take steps to ensure that Israel respects its obligations under international law. In particular, Israel must immediately cease imposing collective punishment on persons protected under international law and allow students from Gaza to access the West Bank to pursue their education. Israel is under an obligation to ensure the Palestinians' right to freedom of movement and access and to freely choose the place of their study.

Al Mezan also calls on the international parties involved in discussions at the political level on ending the unlawful Israeli siege of Gaza to exert pressure on Israel to allow Gaza students to travel to the West Bank to study there, and to respect students' right to education and free movement. These parties include:

- The UN Secretary General, Mr. Ban Ki Moon
- The UN Special Coordinator for Middle East Peace Process Mr. Robert Serry
- The High Representative of the European Union for Foreign Affairs, Ms. Catherine Ashton,

Taking action now is critical as high school '*Tawjihi*' students in Gaza have finished their school year and are looking for appropriate higher education opportunities. West Bank universities must be on their list of options in 2010; a decade after the imposition of a blanket ban which denies them this opportunity. This issue is of even greater importance after a decade or more of de-development in Gaza which needs all the skills of its population to ameliorate its humanitarian situation and advance development for its population.

End