

Disengagement Danger: **Israeli Attempts to Separate Gaza from the West Bank**

Briefing Paper
Gisha: Center for the Legal Protection of Freedom of Movement
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Summary:

This briefing paper describes the ways in which Israel has acted to separate the Gaza Strip from the West Bank by restricting access between the two territories and establishing a domestic legal framework apparently aimed at sealing off Gaza from Israel and from the West Bank. Those efforts contradict Israeli commitments, in signed agreements and in military orders, to treat Gaza and the West Bank as a single territorial unit. Severing Gaza from the West Bank threatens the viability of economic, cultural, and social life in the Occupied Territories, especially in Gaza, and it undermines Palestinian institutions, including the Palestinian educational and health systems, which are spread throughout Gaza and the West Bank.

The completion of Israel's disengagement from the Gaza Strip – its withdrawal of Israeli settlements and military installations – has the potential to remove obstacles to Gaza's development and to the freedom of movement of its residents, but only if Gaza's borders, including crossings to the West Bank, are opened.

Gisha calls upon Israel to respect and to facilitate the familial, economic, cultural, social, and educational ties between the Gaza Strip and the West Bank. Allowing passage between the West Bank and the Gaza Strip will allow Palestinian civilians to access family members, education and training, medical care, and professional opportunities. Movement of goods and people between the West Bank and Gaza will facilitate investment in the Palestinian people and in Palestinian institutions, including the health and educational systems. It will respect Palestinians' rights to freedom of occupation, access to education and health care, economic and social development, and family unity. It will ease tensions caused by the travel restrictions, reducing incidents of violence between the two neighboring peoples, Palestinians and Israelis.

The purpose of this briefing paper is to make relevant parties, including international entities, aware of actions that work to separate Gaza from the West Bank, in violation of Israel's international obligations. While Gisha states its opposition to these actions, this briefing paper is primarily informational. Gisha's position will be set forth in greater detail in future documents to be released.

Gisha believes that facilitating the growth of a peaceful, prosperous society throughout Gaza and the West Bank advances the shared interests of Palestinians and Israelis.

1. Introduction

In the September 28, 1995 Interim Agreement signed between Israel and the Palestinian Liberation Organization, Israel agreed to recognize Gaza and the West

Bank as a single territorial unit¹ and to permit access between the two regions by way of a "safe passage"². That political commitment became part of the internal law of the Occupied Territories via military orders implementing the Interim Agreement.³ The commitment reflects the social, familial, economic, and cultural ties between Gaza and the West Bank, and it is consistent with the principles of the peace process, including the 1991 Madrid Convention. As a matter of fact, however, access between Gaza and the West Bank (two areas which are noncontiguous, separated from each other by Israel) continues to be severely restricted.

2. Israel Restricts Access Between the West Bank and the Gaza Strip

A. Palestinians are restricted from traveling between Gaza and the West Bank.

With the capture of the West Bank and Gaza Strip in 1967, Israel declared both areas to be closed military zones and required Palestinians to obtain permits to leave them.⁴ In 1972, Israel issued a general exit permit for Palestinians, allowing them to leave the areas.⁵ In 1991, Israel revoked the general exit permit and required Palestinians seeking to leave the West Bank and Gaza to obtain individual permits from the military.⁶ Travel between the West Bank and Gaza became highly restricted.

As part of its commitment under the Interim Agreement, Israel opened a "safe passage" route between Gaza and the West Bank in October 1999. The route permitted Palestinians greater freedom to cross through Israel in order to reach both sides of the territories. In late September 2000, with the outbreak of the second Intifadeh or uprising, the safe passage was closed, and travel between the West Bank and Gaza again became extremely limited. In particular, the restrictions posed problems for Gazans seeking to access medical care and educational and economic opportunities in the relatively more prosperous West Bank. Israel prohibits Palestinians whose registered address is in Gaza from entering the West Bank through the Allenby crossing with Jordan, so even travel to the West Bank via Egypt and Jordan (an extremely long and expensive route) is not possible for Gazans. Israel has

¹ Article 11 of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, signed Sept. 28, 1995, Washington, D.C (hereinafter: "Interim Agreement"); Israel's High Court has affirmed the integrity of Gaza and the West Bank as a single territorial unit. *See* H.C. 7015/02 Ajuri v. West Bank Military Commander, P.D. 56(6) 352 (*available in English at* www.court.gov.il).

² Article 10 of Annex I of the Interim Agreement.

³ Order Regarding Implementation of Interim Agreement (Judea and Samaria) (No. 7) 1995 [West Bank]; Order Regarding Implementation of Interim Agreement (Gaza Area) (No. 5), 1995; H.C. 7957/04 Mara'abe v. Prime Minister at para. 20 (English translation *available at* www.court.gov.il); H.C. 1661/05 Gaza Beach Regional Council v. Knesset of Israel at para. 11 (unpublished). *See also* H.C. 7015/02 Ajuri v. West Bank Military Commander, P.D. 56(6) 352 (*available in English at* www.court.gov.il).

⁴ Military Order Closing Area (Gaza Strip and Northern Sinai) (No. 1), 1967; Order Regarding Closing of Territory (West Bank Area) (No. 34), 1967.

⁵ General Exit Permit (No. 5) (Judea and Samaria), 1972 [West Bank]; Corresponding Permit for the Gaza Strip.

⁶ Order Regarding Suspension of the General Exit Permit (No.5) (Temporary Order) (Judea and Samaria), 1991 [West Bank]; Corresponding order for the Gaza Strip.

completely banned students from Gaza from traveling to their studies in West Bank universities.⁷

B. Palestinians are prohibited from changing their registered address from the Gaza Strip to the West Bank

Under the Interim Agreement, the Palestinian Authority is to record changes of address in the population registry and to inform Israel of those changes.⁸ In practice, prior to 2000, Israel ignored many of these announced changes and did not update the computerized registry. Beginning in 2000, Israel categorically refused to record changes in residence from the Gaza Strip to the West Bank.⁹

Although the population registry is just a statistical compilation, Israel uses it to control the movement of Palestinians within the West Bank (through checkpoints situated between West Bank cities) and movement in and out of the West Bank and Gaza. Israel's population registry is the basis for a regime of travel restrictions that limit a person's ability to travel far from his or her registered address – regardless of where he or she actually lives.

C. Palestinians whose registered address is in Gaza are banned from being in the West Bank.

Beginning approximately in 2003¹⁰, Israel began to prohibit Palestinians whose registered address is in Gaza from being in the West Bank – even if they had been living in the West Bank for years. Israel began to arrest Palestinians whose registered address is in Gaza – including those whose homes, families, and jobs are in the West Bank – and to bring them to Gaza against their will.¹¹ Those arrests included people whose only suspected "wrongdoing" was being in the West Bank. Israel bases this policy on the 1967 order declaring the West Bank to be a "closed military area."¹²

The result is that estimated thousands of Palestinians, whose registered address is in Gaza, live in hiding in the West Bank.¹³ These people, almost all of whom entered the

⁷ See letter from Avi Biton, Office of the Coordination of Operations in the Territories, Defense Ministry, Nov. 25, 2004 (on file). Since 2000, the numbers of students from Gaza studying at West Bank universities has plummeted. At Birzeit University: 350 students from Gaza attended in Fall 2000; 35 students from Gaza attended in Fall 2004 (90% reduction); at Bethlehem University: 11 students from Gaza attended in Fall 2000; 0 students from Gaza attended in Fall 2004; at Al Quds University Medical School: one out of 90 enrolled Gazan medical students is currently attending studies in Abu Dis; at Najah University in Nablus: 10 out of 10,000 students (.1%) are from Gaza as of Fall 2005 (previous figures unavailable). All data are from the universities.

⁸ Article 28 of Annex III of the Interim Agreement.

⁹ See letter from Avi Biton, Office of the Coordinator of Operations in the Territories, of Nov. 17, 2004; H.C. 5504/03 Kachlut v. West Bank Military Commander, State's Response of Feb. 25, 2004, para. 4 (on file).

¹⁰ There were incidents prior to 2003, but a broad policy of forbidding people from Gaza from being in the West Bank became readily identifiable in 2003.

¹¹ See, e.g. H.C. 5504/03 Kachlut v. West Bank Military Commander; H.C. 4465/05 Gdili v. West Bank Military Commander; H.C. 3519/05 Ward v. West Bank Military Commander, cases brought by the Center for the Legal Defence of the Individual (petitions available at www.hamoked.org.il).

¹² Order Regarding Closure of Areas (West Bank Area) (No. 34), 1967.

¹³ See H.C. 11595/05 Najar v. IDF Commander in the West Bank (petition available at www.gisha.org); Amira Hass, "The Obstacle Course to School," *Haaretz*, Jan. 11, 2006; Amira Hass, "Expressing the 'Closure of Thought,'" *Haaretz*, Jan. 10, 2006.

West Bank legally, via permits to cross through Israel, cannot travel freely between West Bank towns, because of the credible fear that soldiers at one of the 50-plus checkpoints¹⁴ within the West Bank will arrest them and bring them to Gaza against their will. They cannot travel abroad, because Israel will not allow them to leave the West Bank through the Allenby bridge crossing into Jordan. Those who live in West Bank cities entirely surrounded by Israeli checkpoints are trapped, unable to travel more than a few kilometers in any direction. Many have not seen their families in Gaza since 2000.

Gisha has challenged this policy before Israel's High Court, arguing that the military does not have the authority to prevent Palestinians from being in the West Bank and enjoying full residency rights there, regardless of whether they are originally from Gaza.¹⁵ The Israeli human rights NGO Hamoked has also challenged this policy on behalf of its clients, arguing that the military lacks authority to "deport" Palestinians, whose registered address is in Gaza, from the West Bank to the Gaza Strip.¹⁶

D. Palestinians from the West Bank can be forced to live in the Gaza Strip.

Under certain circumstances, and for security reasons, the military can "assign the residence" of a Palestinian, from the West Bank to the Gaza Strip, forcing that person to move to Gaza.¹⁷ Assignment of residence must be accompanied by procedural protections, including a hearing.¹⁸

3. Israel is seeking to change the status of Gaza under domestic law in ways that deprive Gazans of a right to travel to the West Bank.

A. Israel has signed two orders that change the way entrance to Israel from Gaza is treated, with the effect of broadening Israel's "discretion" to refuse Gazans passage through Israel.

These orders are: (1) an order treating crossings from Gaza into Israel as international border crossings; and (2) an order authorizing the Interior Ministry, rather than the army, to issue permits to Gaza residents to enter Israel.

On September 20, 2005, the Interior Minister signed an order adding the Erez, Kerem Shalom, Sufa, and Karni crossings between Israel and Gaza to the list of international border crossings for purposes of the law regulating entry into Israel.¹⁹

On September 21, 2005, the Interior Minister signed a temporary order authorizing the Director of the Population Registry or other designee to grant permits to Gaza

¹⁴ See Btselem, the Israeli Information Center for Human Rights in the Occupied Territories at www.btselem.org for continuously updated statistics on checkpoints within the West Bank.

¹⁵ H.C. 11595/05 Najar v. IDF Commander in the West Bank (petition available at www.gisha.org).

¹⁶ H.C. 3519/05 Ward v. West Bank Military Commander. See also Center for the Legal Defence of the Individual Position Paper, "Safe Passage Between Gaza and the West Bank," Nov. 11, 2005 (available at www.hamoked.org.il).

¹⁷ H.C. 7015/02 Ajuri v. West Bank Military Commander, P.D. 56(6) 352 (available in English at www.court.gov.il).

¹⁸ *Id.*

¹⁹ Entrance to Israel Order (Border Stations) (amendment), 2005.

residents to enter Israel.²⁰ In an accompanying letter, the Interior Minister wrote that with the abolition of the military government in Gaza, the Defense Minister no longer has authority to grant permits to Gaza residents to enter Israel, and Gazans would need to enter Israel in the same way that foreign citizens enter Israel, by displaying a passport or laissez passer and receiving a visa. The Minister of Interior therefore signed the order, which was to be in effect for six months, authorizing civilian authorities to issue permits exempting Gaza residents from the requirement of receiving a visa. The letter notes an intention to maintain the procedures that had been in place prior to the disengagement, including permitting passage for humanitarian and medical purposes, work permits, and other reasons, for the six-month trial period.²¹

As a formal matter, the Interior Ministry now issues entrance permits to Israel for Gaza residents, but the army continues to administer the system and to decide who receives permits to enter Israel, including in order to cross to the West Bank, by virtue of authorization given to military officers by the Interior Minister.²² Officials in the Interior Ministry have told Gisha that this system was put into place in order to provide a solution to a legal vacuum created by the abolition of the military government in Gaza, which had been authorized to grant entrance permits to Israel.

In this way, the domestic legal framework has been established for making it more difficult for Gazans to receive permission to enter Israel, for the purpose of crossing to the West Bank. Currently, Gaza residents can receive a permit, rather than a visa to enter Israel (including for purposes of crossing to the West Bank) because of the temporary order authorizing the Interior Minister to issue special permits to Gaza residents. That order is now due to expire within the three months following the Israeli elections, scheduled for March 28, 2006. The distinction between a permit and a visa is important because the Interior Minister has broad discretion to refuse to grant a visa to a foreigner, while under the military permit system, granting an entrance permit to Israel for the purpose of crossing to the West Bank was supposed to be restricted for security reasons only. As a matter of fact, however, Israel has already made access between Gaza and the West Bank extremely limited, as outlined below.

B. Israel has stated that it no longer considers Gaza to be occupied territory and that Gazans have no right to enter the West Bank.

On September 12, 2005, Israel completed its plan to "disengage" from the Gaza Strip by removing Israeli settlements and evacuating military installations there. Israel declared an end to the military government that had administered the Gaza Strip since Israel's capture of the territory in 1967.²³ Three days later, in a speech before the United Nations General Assembly, Israeli Prime Minister Ariel Sharon declared "the end of Israeli control over and responsibility for the Gaza Strip."²⁴

²⁰ Entrance to Israel Order (Exemption For Residents of the Gaza Strip) (Interim Order), 2005.

²¹ Letter from Interior Minister Ofir Pines-Paz, to Chair of Knesset Interior Committee, M.K. Ralab Majadla, Sept. 18, 2005.

²² See Letter from Director of Population Registry Sasi Katzir to Gisha's attorneys, Sept. 28, 2005 (on file); Protocol of Knesset Interior Committee hearing of Nov. 16, 2005, p. 7 of protocol.

²³ Order Regarding End of Military Government, Sept. 12, 2005.

²⁴ Sept. 15, 2005 Speech by Israeli Prime Minister Ariel Sharon before the United Nations General Assembly. Text available at www.mfa.gov.il.

Since that time, Israel has taken the position that Gaza is no longer occupied territory. In response to three High Court cases, the state has argued that Israel no longer holds Gaza through belligerent occupation and that international humanitarian law governing occupied territory therefore no longer applies.²⁵

Israel claims that it bears no obligation to permit the provision of humanitarian aid in Gaza, including by permitting people and goods to cross between Gaza and the West Bank. The state made that argument in its response to Israeli High Court petitions brought by Gisha and two Gaza community groups, Gaza Community Mental Health Programme and Bituna, on behalf of ten occupational therapy students from Gaza seeking to reach their studies at Bethlehem University.²⁶ The petitions (*Hamdan et al*) challenge the sweeping ban on travel by students from Gaza to the West Bank and ask that the requests of all students to travel to the West Bank be evaluated individually, such that the travel would be limited only if specific evidence exists that a particular person poses a security risk. The petitions argue, *inter alia*, that Israel owes obligations, under the Fourth Geneva Convention and other rules governing the obligations of an occupying power, to permit the supply of humanitarian assistance, including health services which can only be studied in the West Bank, to the civilian population of Gaza.

In the *Hamdan* petitions, the state expressed the position that Gaza has been handed over to full Palestinian control,²⁷ that passage between the West Bank and Gaza is a political issue for Israel to decide in the context of U.S.-brokered negotiations with the Palestinian Authority, and that Gaza residents have no vested right to cross into the West Bank.²⁸ The state claims broad discretion to allow or disallow access. While it acknowledges "a certain connection between the Gaza Strip and Judea and Samaria [the West Bank] ... that connection does not give Gaza residents a right to enter Judea and Samaria."²⁹ The state compares passage from Gaza to the West Bank to passage from Syria to Israel – something to which Gaza residents have no right.³⁰

Israel justifies its ban on travel by students, in particular, with the argument that West Bank universities "serve as 'hothouses' for growing terrorists."³¹

²⁵ H.C. 10265 Physicians for Human Rights v. Defense Minister, State's Submission of Nov. 13, 2005, para. 30 (on file) (petition brought by Physicians for Human Rights and the Gaza Community Mental Health Programme, challenging the practice of creating sonic booms over the skies of Gaza) (on file); H.C. 769/02 Public Committee against Torture in Israel v. Government of Israel, State's Submission of Dec. 5, 2005, para. 5 (brought by the Public Committee Against Torture in Israel and LAW, challenging the practice of targeted assassinations) (on file); H.C. 11120/05 Hamdan v. Southern Military Commander and related cases, State's Response of Jan. 19, 2006 (brought by ten occupational therapy students, Gaza Community Mental Health Programme, Bituna, Our Home for Community Development, and Gisha, challenging the ban on Gaza students studying in the West Bank) (available at www.gisha.org).

²⁶ H.C. 11120/05 Hamdan v. Southern Military Commander and related cases (available at www.gisha.org).

²⁷ H.C. 11120/05 Hamdan v. Southern Military Commander, Para. 8 of State's Submission of Jan. 3, 2006.

²⁸ H.C. 11120/05 Hamdan v. Southern Military Commander, Para. 16 of State's Response of Jan. 19, 2006 (available at www.gisha.org).

²⁹ *Id.*, para. 54.

³⁰ *Id.*, para. 28.

³¹ *Id.* para. 43.

Gisha opposes these claims and will submit a response to the Court by the end of February.

It is noted that Israel interprets its obligations under the U.S.-brokered agreement on access between Gaza and the West Bank³² to be limited to running a "test" or "pilot" bus route that would allow Gazans to visit the West Bank for up to 10 days only.³³ No one between the ages of 16 and 35 will be allowed on the buses.³⁴ That decision was made in consultation with Prime Minister Ariel Sharon (prior to his illness) and Defense Minister Shaul Mofaz.³⁵ The start of the pilot has been delayed indefinitely.³⁶

In the *Physicians for Human Rights* case, the state has been given additional time to explain its position to the court, and the court has indicated interest in hearing detailed arguments on the status of Gaza.

4. Gisha's Position

Gisha believes that Israel is obligated to respect the integrity of Gaza and the West Bank as a single territorial unit, within which there must be freedom of movement for persons and goods. This obligation reflects Israel's commitments under the Interim Agreement, commitments which have not been repudiated and which are legally binding, in part through military orders implementing them. It protects the integrity of Palestinian institutions, which were set up by agreement, including the creation of a single Palestinian Authority, operating in both the West Bank and the Gaza Strip. The obligation to respect the integrity of Gaza and the West Bank is consistent with international law, which protects the rights of Palestinians to freedom of movement, freedom of occupation, access to education, access to humanitarian aid including health services, human dignity, and the maintenance of normal civilian life.

Gisha also believes that Israel continues to owe obligations to the residents of Gaza, under international humanitarian law, including the obligation to permit movement of people and goods between Gaza and the West Bank and the provision of humanitarian services in Gaza. These obligations flow from the status of Gaza and the West Bank and the arrangements concerning control of Gaza, which include Israeli incursions and Israeli control of major aspects of Gaza's borders (including complete control of the air space and naval border, a designated zone in the northern Strip, and the entrance of foreigners and goods into Gaza). The details of Gisha's position regarding the status of Gaza are beyond the scope of this position paper, and they will be outlined separately in future documents to be released.

Gisha notes that Israel has not implemented the Nov. 15, 2005 agreement providing for the start of bus convoys between Gaza and the West Bank by December 15, 2005, even according to its extremely limited interpretation of its obligations.

³² Agreement on Movement and Access, Nov. 15, 2005.

³³ H.C. 11120/05 Hamdan v. Southern Military Commander, State's Response of Jan. 19, 2006, para.

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³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

The separation of Gaza from the West Bank and the ban on students from Gaza studying at West Bank universities are particularly worrisome given that critical professions – such as medicine, public health, and occupational therapy – can only be studied in the West Bank. Barring young Gazans from reaching these institutions prevents them from becoming doctors, occupational therapists, and public health workers. It prevents the people of Gaza from benefiting from the services that these students would have provided upon graduation. Gisha views universities not as "hothouses for growing terrorists" but rather as opportunities for young people to develop, acquire skills and training, and pursue their professional aspirations.

In its Government Decision approving the withdrawal plan from the Gaza Strip, Israel pledged to help develop Gaza economically and to promote "institution-building, and improvements in the economy and welfare of the Palestinian residents." **Students from Gaza need to enter the West Bank, in order to learn the skills required to build a peaceful, prosperous society.** Gisha believes that helping young people obtain those skills and strengthening Palestinian health, educational, and economic institutions will advance a shared interest of Israelis and Palestinians: investing in a robust Palestinian civil society that lives in peace with its neighbors.

For more information: visit www.gisha.org