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INFO SHEET  
صفحة معلومات

## Restrictions on the transfer of goods to Gaza: Obstruction and obfuscation

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### Introduction – restrictions not about security

Beginning in September 2007, Israel openly stated that it would restrict the movement of goods into and out of Gaza not in order to protect against security threats stemming from the transfer, but rather as part of a policy to apply "pressure" or "sanctions" on the Hamas regime. Until 2007, Israel had stated that its restrictions on the entrance of goods into Gaza stemmed from security concerns – either threats to the crossings themselves which would result in preventing passage, or security concerns stemming from the nature of the goods entering (i.e. "dual use" goods which have both a civilian as well as a military use). With the passage of a September 2007 [Security Cabinet decision](#)<sup>1</sup> authorizing restrictions on the movement of goods and people into and out of the Gaza Strip, Israel declared that the entrance of goods would be limited to a "humanitarian minimum"<sup>2</sup>. Israel declared an intention to block goods beyond what is deemed "essential for the survival of the civilian population", halting export, economic activity and production and preventing the passage of items deemed to be a "luxury" (including, at various points, items like tea, sesame, shoes, paper, and school supplies)<sup>3</sup>.

In the following paper, Gisha examines the policy restricting the passage of goods between Israel and the Gaza Strip, including its stated rationale, developments since its 2007 instatement, and implications for the civilian population of the Gaza Strip.

### Rationale for restrictions: economic warfare or collective punishment?

Israel claims that its restrictions on the movement of goods into Gaza constitute "economic sanctions" or "economic warfare" designed to weaken the economy in Gaza as part of its warfare against the Hamas regime<sup>4</sup>. Israel is able to carry out its policy because of its complete control over the commercial crossings between its territory and Gaza, through which goods enter and exit the Strip, total control over the airspace and territorial waters, and indirect but substantial control over the Rafah Crossing between Egypt and Gaza. At the same time, Israel sees itself required to permit no more than the entrance of goods "essential to the survival of the civilian population" and restricts

<sup>1</sup> See

<http://www.mfa.gov.il/MFA/Government/Communiques/2007/Security+Cabinet+declares+Gaza+hostile+territory+19-Sep-2007.htm>

<sup>2</sup> See [www.mfa.gov.il](http://www.mfa.gov.il).

<sup>3</sup> Letter on file with authors, Coordinator for Government Activities in the Territories (COGAT) to Gisha, January, 13, 2010.

Gisha briefing paper "Briefing: Israeli High Court Decision Authorizing Fuel and Electricity Cuts to Gaza", available at [www.gisha.org](http://www.gisha.org).

passage for reasons unrelated to security concerns emanating from threats to the crossings or from the possibility of the goods being used for military activities (dual use).

Gisha addressed the September 2007 Security Cabinet decision and restrictive policy on goods in a December 2008 position paper, "[Gaza Closure Defined: Collective Punishment](#)"<sup>5</sup>, the first part of which looks at the stated rationale behind the restrictions and includes statements by Israeli officials linking restrictions on the supply of civilian goods to rocket fire by militants and/or failure of the Hamas regime to prevent such rocket fire (i.e. passage of goods used as a pressure point)<sup>6</sup>. The state's explanation of this policy (including its articulation of a "humanitarian minimum") is described in documents submitted in response to a court petition brought by Gisha and a coalition of Israeli and Palestinian human rights groups challenging restrictions on fuel and electricity to the Gaza Strip (HCJ 9132/07 Al Bassiouni v. Prime Minister)<sup>7</sup>. Gisha's January 2008 [briefing paper](#)<sup>8</sup> summarizes the arguments made by the State for restricting goods supply to Gaza and analyzes the court's decision.

### **Restrictions apply to food supply, despite promises to the contrary**

The policy restricting goods includes limitations on food supply, although Israel refuses to provide details. We recall the "pasta" fiasco, in which, upon visiting Gaza, United States Senator John Kerry discovered that Israel had banned macaroni from entering Gaza because it was not considered "humanitarian" (as opposed to rice). In the wake of that incident, and ensuing reproach from U.S. Secretary of State Hillary Clinton, Israel promised, in a March 20, 2009 Cabinet decision, to allow food into Gaza on an unlimited basis. When nothing changed on the ground, Gisha wrote to the army for clarification, which the army provided as follows:

"on March 20, 2009 the government passed Resolution 4559, according to which the unlimited passage of food products should be allowed into the Gaza Strip. However, it should be clarified, that the **resolution did not intend to lift the restrictions imposed in the past on allowing equipment and food into the Gaza Strip** and by doing so, ignore Israel's overall policy toward the Gaza Strip, as stated in the Cabinet decision from September 19, 2007, following Hamas's violent takeover of the Gaza Strip, but rather to expand the list of food products whose admission into the Gaza Strip would be permitted in order to adequately meet the needs of the Palestinian population that is not involved in terror" (emphasis added)<sup>9</sup>.

Israel's Supreme Court also provided a clarification in a decision rejecting a petition to permit the import of calves into Gaza:

"Government Resolution 4559 indeed could be interpreted **as removing all the restrictions** that were imposed in the past on the entrance of equipment and food into the Strip. However, it has been given a **restrictive interpretation** by the authorized government officials" (emphasis added)<sup>10</sup>.

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<sup>5</sup> See

[http://www.gisha.org/UserFiles/File/publications\\_english/Publications%20and%20Reports\\_English/Gaza%20Closure%20Defined%20Eng\(1\).pdf](http://www.gisha.org/UserFiles/File/publications_english/Publications%20and%20Reports_English/Gaza%20Closure%20Defined%20Eng(1).pdf)

<sup>6</sup> Gisha report "Gaza Closure Defined: Collective Punishment", available at [www.gisha.org](http://www.gisha.org).

<sup>7</sup> Judgment and related documents, available at [www.gisha.org](http://www.gisha.org).

<sup>8</sup> See

[http://www.gisha.org/UserFiles/File/publications\\_english/Publications%20and%20Reports\\_English/Gisha-Preliminary%20Analysis%20Fuel-Electricity%20Decision-final.doc](http://www.gisha.org/UserFiles/File/publications_english/Publications%20and%20Reports_English/Gisha-Preliminary%20Analysis%20Fuel-Electricity%20Decision-final.doc)

<sup>9</sup> Letter on file with authors, COGAT to Gisha, May 18, 2009.

<sup>10</sup> HCJ 2650/09 Mitral v. Minister of Agriculture, not yet published.

A June 2009 *Haaretz* investigative report, entitled "[Gaza bonanza](#)", alleges arbitrariness and corruption in the Gaza goods policy<sup>11</sup>.

### **Lack of clarity about what qualifies as "humanitarian"**

Since Karni Crossing, the main commercial lifeline into Gaza, was closed on June 14, 2007, followed by the closure of the Sufa and Nahal Oz crossings in 2008 and 2010 respectively, passage takes place through a smaller, alternative crossing: Kerem Shalom. In addition, the grain conveyer belt, which moves grain and animal feed from the Israeli side to the Palestinian side at Karni is occasionally operational, as it does not require the opening of the crossing for trucks. Imports are currently at approximately 25% of what Gaza needs, or about 2,500 truckloads of goods per month (including grain and animal feed transferred not on trucks but rather via the conveyer belt), as opposed to the 10,400 truckloads/month entering before the June 2007 closure began.

Goods entering Gaza are limited to "humanitarian" items – approximately 70 items of foodstuffs, medicines, and grocery items (i.e. detergent, soap, etc.). Goods enter via coordination with the Palestinian Ministry of National Economy, international organizations, or some direct coordination via private importers on a more limited basis. The Palestinian Coordination Committee, operating in Gaza and subject to the authority of the Ramallah-based Palestinian Authority, composes lists of permitted goods, based on its experience with Israeli military officials.

In October, Gisha filed a Freedom of Information Act petition<sup>12</sup> asking for transparency regarding the Gaza goods policy, including lists of permitted and prohibited items, following failed attempts to receive information via correspondence with relevant authorities<sup>13</sup>. One week before the date of the hearing in the petition (January 21, 2010), COGAT responded<sup>14</sup> to our original request for information (sent in March 2009). The response did not clarify how Israel defines which items are "humanitarian" and denied the existence of lists of permitted or prohibited items. The military refused to produce the so called "Red Lines" document, alleged to contain calculations made by the military as to the caloric needs of Gaza's civilian population. Gisha is concerned about the apparent practice of the military in determining a minimum standard to which it may deliberately reduce the 1.5 million people living in Gaza. During the hearing, the court instructed the state to provide further information and relevant documents in response to our request within 30 days.

### **Dual use goods: A small part of the story**

In addition to the goods prohibited as part of the "economic sanctions" against Gaza, there are also goods that have been prohibited or restricted for years, because they are considered to be "dual use" – both civilian and combative. The primary legislation in this regard is the [Defense Export Control Law, 5766-2007](#)<sup>15</sup> which refers to the [Wassenaar Arrangement](#)<sup>16</sup> and its control lists. Israel is not a party to this agreement, but has nonetheless incorporated the lists through legislation. By virtue of this

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<sup>11</sup> See <http://www.haaretz.com/hasen/spages/1092196.html>

<sup>12</sup> See <http://www.gisha.org/index.php?intlLanguage=2&intlItemId=1618&intSiteSN=113&OldMenu=113>

<sup>13</sup> For more information, see Gisha news release, "Gisha's Petition Under the Freedom of Information Act: Lack of Public Oversight Raises Questions of Corruption, Impropriety in Transfer of Goods to Gaza", October 28, 2009, available at [www.gisha.org](http://www.gisha.org).

<sup>14</sup> See [http://gisha.org/UserFiles/File/COGAT\\_response\\_130110English.pdf](http://gisha.org/UserFiles/File/COGAT_response_130110English.pdf)

<sup>15</sup> Israel Defense Export Control Law, 5766-2007. Office of the General Counsel, Ministry of Defense, 2007 (English). See [http://www.exportctrl.mod.gov.il/NR/rdonlyres/7B53DDE6-AEE8-47BC-AEFA-1AF325FB96D0/0/Defense\\_Export\\_Control\\_Law.pdf](http://www.exportctrl.mod.gov.il/NR/rdonlyres/7B53DDE6-AEE8-47BC-AEFA-1AF325FB96D0/0/Defense_Export_Control_Law.pdf)

<sup>16</sup> The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. WA Secretariat, Vienna, 2004. See <http://www.wassenaar.org/controllists/index.htm>

law, the Minister of Defense, instituted two deriving directives relevant to the occupied Palestinian territory (oPt): the [Directive on Defense Export Control \(Monitored Dual Use Equipment\), 2008](#)<sup>17</sup>, which simply refers to the relevant lists in the Wassenaar Arrangement, and the [Directive on Defense Export Control \(Monitored Dual Use Equipment Transferred to the Territories under PA Responsibility\), 2008](#)<sup>18</sup>, which expands the list in regard to the oPt and includes certain pipes, vehicles and communication equipment. No control list includes cement, glass, wood or paper, let alone foodstuffs, as these are not goods that are compatible for military use.

### **Ban on construction materials despite needs**

Israel's ban on the entrance of construction materials (except for very narrow exceptions) should be viewed in context of the overall policy of what Israel calls "economic sanctions" and what human rights groups call "collective punishment". Occasionally, government spokespersons speak generally about "threats" stemming from the entrance of construction materials, but the rationale for preventing their entrance is the desire to apply pressure on the Hamas government by preventing reconstruction. Most construction materials have no "dual use" – there is nothing inherently dangerous about them, and they are not "compatible for military use" according to the guidelines of the Defense Ministry. Rather, the desire to prevent their entrance is related to the overall policy of pressure and preventing "normal life". This policy has been articulated informally by Israeli officials as one of "[no development, no prosperity, no humanitarian crisis](#)"<sup>19</sup> – allowing the minimum needed for survival, but no more<sup>20</sup>. The ban means that hundreds of millions of dollars pledged by the U.S. government in the wake of the December 2008-January 2009 military operation and \$4.5 billion pledged by the international community at that time, all for reconstruction – are going unspent. Humanitarian projects designed to rebuild after the war cannot take place, and an estimated 20,000 people are still displaced, unable to rebuild their homes. [Damage to the private sector](#)<sup>21</sup> alone is estimated to be \$45 million<sup>22</sup>.

On the other hand, the Hamas government is able to obtain construction materials through an estimated 600-1,000 tunnels<sup>23</sup> between the Egypt-Gaza border, because unlike the international organizations engaged in reconstruction – it does not require receipts and can purchase the goods smuggled into Gaza<sup>24</sup>. The UN has suggested mechanisms to receive construction materials via the Israeli-controlled crossings and ensure that they reach the appropriate recipients, but thus far Israel has refused, other than with the case of glass, which beginning in late December, 2009, has been allowed into Gaza.

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<sup>17</sup> Directive on Defense Export Control (Monitored Dual Use Equipment), 2008 (Hebrew). See [http://www.exportctrl.mod.gov.il/NR/rdonlyres/06332F79-41F1-463C-BD85-2D254C050606/0/tsav\\_pikuah\\_dou\\_shimushi.pdf](http://www.exportctrl.mod.gov.il/NR/rdonlyres/06332F79-41F1-463C-BD85-2D254C050606/0/tsav_pikuah_dou_shimushi.pdf)

<sup>18</sup> Directive on Defense Export Control (Monitored Dual Use Equipment Transferred to the Territories under PA Responsibility), 2008 (Hebrew). See [http://www.exportctrl.mod.gov.il/NR/rdonlyres/BB3673BA-6C12-4044-9B12-5A2F0A6A5363/0/tsav\\_pikuah\\_palastine.rtf](http://www.exportctrl.mod.gov.il/NR/rdonlyres/BB3673BA-6C12-4044-9B12-5A2F0A6A5363/0/tsav_pikuah_palastine.rtf)

<sup>19</sup> See <http://www.gazagateway.org/2009/09/no-development-no-prosperity-no-humanitarian-crisis/comment-page-1/>

<sup>20</sup> Statement made by Peter Lerner, Spokesman for the Coordinator of Government Activities in the Territories. For more information see [www.gazagateway.org](http://www.gazagateway.org).

<sup>21</sup> See <http://www.gazagateway.org/2009/10/can-gaza%e2%80%99s-stagnant-economy-be-%e2%80%9creactivated%e2%80%9d/>

<sup>22</sup> For more information on damage to the private sector see [www.gazagateway.org](http://www.gazagateway.org).

<sup>23</sup> See <http://www.gazagateway.org/2009/10/a-non-economy/>

<sup>24</sup> For more information see [www.gazagateway.org](http://www.gazagateway.org).

## Impact on the economy

The policy is explicitly designed<sup>25</sup> to prevent the functioning of Gaza's economy<sup>26</sup>. Export is banned (with the exception of a few dozen truckloads of flowers and strawberries as part of a Dutch-sponsored project) and the import of raw materials is banned. According to Amr Hamad, Deputy Secretary-General of the Palestinian Federation of Industries, about 90% of Gaza's factories are closed or are functioning at less than 10% capacity because of the inability to obtain raw materials and the inability to export finished goods<sup>27</sup>. Unemployment has risen to well over 40%. Over 80% of Gaza residents are dependent on food assistance.

To give an example of how the crossings policy is aimed at preventing economic development: Israel permits Gaza residents to receive small packets of margarine, considered a consumption item. Israel bans, however, the transfer of large buckets of margarine, because the buckets are designed for industrial use, rather than home consumption, meaning that they could be used to allow a local factory to produce biscuits – and thus engage in economic activity. Similarly, requests to permit empty cans into Gaza – intended for the preservation and marketing of Gaza-produced tomato paste – have been refused, but requests to transfer prepared, Israeli-made tomato paste are permitted.

At the same time, an informal economy via the tunnels provides the Hamas government with a source of tax revenue and control over the entrance of goods. The unpredictability and lack of standardization of supply, the dangers of closure or attack, the high costs of transfer, the damage caused by the transfer route, and the low quality of purchased goods render the tunnels inadequate for importing raw materials or exporting finished goods for Gaza's manufacturing sector.

## Questions raised by the policy

Israel has explained its policy as one of "economic sanctions". Gisha disagrees (see, e.g., our position paper, "Gaza Closure Defined: Collective Punishment")<sup>28</sup> and argues that the policy violates Israel's obligations to Gaza residents under international law<sup>29</sup>. We have shown elsewhere how detrimental the closure is for the well-being of Gaza residents and why it is incompatible with protection of their rights<sup>30</sup>. However, even according to Israel's analysis, viewing the policy in terms of economic sanctions, a number of questions arise, including: What are the goals of the "sanctions"? Are the goals being obtained? What are the indicators to evaluate whether the goals are being obtained? What is the "timeline" for obtaining these goals? How do the restrictions on the passage of goods intersect with U.S. policy goals to strengthen moderates within Gaza? What is the effect of the restrictions on the health of a future Palestinian economy, integrated within Gaza and the West Bank?

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<sup>25</sup> See

[http://www.gisha.org/UserFiles/File/publications\\_english/Publications%20and%20Reports\\_English/Formatted-Deleting%20Gaza%20Economy%20from%20the%20Map.doc](http://www.gisha.org/UserFiles/File/publications_english/Publications%20and%20Reports_English/Formatted-Deleting%20Gaza%20Economy%20from%20the%20Map.doc)

<sup>26</sup> See Gisha report, "Deleting Gaza's Economy from the Map" (July 2007), available at [www.gisha.org](http://www.gisha.org).

<sup>27</sup> Phone conversation between Gisha and Amr Hamad, Deputy Secretary-General of the Palestinian Federation of Industries, January 18, 2010.

<sup>28</sup> See

[http://www.gisha.org/UserFiles/File/publications\\_english/Publications%20and%20Reports\\_English/Gaza%20Closure%20Defined%20Eng\(1\).pdf](http://www.gisha.org/UserFiles/File/publications_english/Publications%20and%20Reports_English/Gaza%20Closure%20Defined%20Eng(1).pdf)

<sup>29</sup> See Gisha report, "Gaza Closure Defined: Collective Punishment" (December 2008), available at [www.gisha.org](http://www.gisha.org).

<sup>30</sup> See Gisha report, "Red Lines Crossed: Destruction of Gaza's Infrastructure" (August 2009), available at [www.gisha.org](http://www.gisha.org).

Requiring the Israeli government to answer these questions would not make the closure policy less violative of the rights of the 1.5 million people, but it might be helpful in evaluating and subsequently unraveling the internal "logic" of a policy that is causing so much hardship for the residents of Gaza.

**Recommendations:**

- ⇒ Gisha asks Israel to permit the free transfer of goods into and out of the Gaza, subject only to reasonable security checks.
- ⇒ Gisha asks Israel to respect the right of Palestinians to engage in normal life, including trade and dignified, productive work.
- ⇒ Gisha asks the international community to raise questions with Israel about its policy blocking passage of goods into and out of the Gaza Strip, especially for donor-invested projects and aid.
- ⇒ Gisha asks the international community to take responsibility for the effectiveness of its aid to Gaza by insisting Israel provide access for donor-invested projects, especially development projects, in order to protect the right of Palestinian residents of the Strip to engage in trade and productive, dignified work.

**For more information, please contact us:** [info@gisha.org](mailto:info@gisha.org), +972-3-6244120.

Gisha is an Israeli human rights organization whose goal is to protect the freedom of movement of Palestinian residents of the West Bank and Gaza Strip. Please visit us at [www.gisha.org](http://www.gisha.org).