

Obstacle Course: Students denied exit from Gaza

July 2009



"The highest result of education is tolerance" - Helen Keller



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REPORT
تقرير

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Cover Photo: Palestinian students denied exit from Gaza by Israel hold a protest vigil in Gaza City, September 2008. Photo: Gisha

Introduction

Since June 2007, when Hamas seized control of the internal governmental institutions of the Palestinian Authority in the Gaza Strip, Israel has kept Gaza's borders almost entirely closed. The closure is part of a broader policy of collective punishment which Israel has imposed on the residents of the Strip.¹

The closure means that the 1.5 million residents of the Gaza Strip cannot leave the Strip or re-enter it. All travel for medical treatment, education, business, and family visits is denied to Gaza residents. The connection between Gaza residents and the outside world has been severed.

Among those trapped are hundreds of young men and women who have been accepted into academic programs abroad. Due to the closure, they have not been able to leave Gaza to pursue their studies.

Israel is able to implement this closure policy due to its ongoing control of the borders between Gaza and the outside world. This control continues despite implementation of the "disengagement" plan in September 2005, in which Israel removed permanent military installations and civilian settlements from Gaza. Israel maintains full control of the Gaza Strip's territorial waters and air space, as well as all overland border crossings between the Strip and Israel. In addition, Israel maintains substantial control of the overland border crossing between Gaza and Egypt, since it holds veto power over the opening of Rafah Crossing to regular traffic.²

With power come obligations. Israel's control over the movement of Gaza residents and other significant aspects of life in Gaza creates duties and obligations on the part of Israel under the laws of occupation and other provisions of international law.³

While Israel categorically denies bearing duties towards the civilian population in Gaza, it has been implementing punitive measures against the civilian population as a means of pressuring Hamas and armed groups in the Strip. Doing so violates various provisions of international law, including the prohibition against collective punishment.

The isolation of the Gaza Strip, which has become almost total over the past two years, is crippling Palestinian civil society. The higher education system is particularly hard hit,

The closure policy imposed by Israel since June 2007 Violates students' rights to freedom of movement and higher education

¹ The policy was explicitly expressed in the Security Cabinet's decisions of September 5 and 19, 2007. The texts of the decisions can be viewed on the website of the Prime Minister's Office at <http://www.pmo.gov.il>

² *Rafah Crossing: Who Holds the Keys?* (Gisha and Physicians for Human Rights-Israel, March 2009) pp. 35-57, available on Gisha's site at http://www.clink.co.il/gisha/Rafah_Report_Eng.pdf.

³ *Disengaged Occupiers: The Legal Status of Gaza*, (Gisha, January 2007), pp. 64-95. Israel continues to exercise governing powers in Gaza, such as control of the taxation system and the population registry (including the power to determine who is a resident of Gaza and who is entitled to live there). See pp. 30-58 at <http://www.gisha.org/UserFiles/File/Report%20for%20the%20website.pdf>.

due to increasing isolation from the academic community in the West Bank and the world as a whole, as well as the fact that many students are barred from traveling abroad to study. This restriction constitutes part of the broader closure policy, which allows only very few exit permit applications to be even considered, based on stringent criteria. This has resulted in sweeping violations of students' rights to freedom of movement and higher education.

This report is focused largely on the diplomatic escort requirement – one of the most restrictive conditions imposed by Israel on students seeking to leave the Gaza Strip to study abroad. Since June 2008, Israel has required that even students who comply with its rigid screening criteria, which will be described in this report, may only leave Gaza if escorted by a diplomatic envoy (usually an envoy of the destination country or the country that is sponsoring his or her studies). Students and their family members must be accompanied by this diplomatic envoy from the time they exit Gaza via the Erez Border Crossing, throughout their journey across Israel and the West Bank, until they reach the Allenby Bridge border crossing into Jordan.

This illogical and illegal requirement imposes a significant burden on diplomatic envoys and makes it impossible for many students to travel at all. Gisha – Legal Center for Freedom of Movement demands that Israel immediately abolish the restrictions on students leaving Gaza to study abroad, including the diplomatic escort requirement. Gisha also calls on foreign diplomats to ask Israel to explain the purpose of the requirement and exert pressure to have it abolished.

This report deals only with the restrictions on the movement of students traveling abroad via Israel. The difficulties faced by Palestinians wishing to pass through Rafah Crossing, including students leaving Gaza to study, have been addressed extensively elsewhere.⁴

⁴ *Rafah Crossing: Who Holds the Keys? Ibid.* pp. 73-81.

Background: Evolution of Israel's Policies on Students Leaving Gaza

The opportunities for higher education throughout the Palestinian territory are extremely limited. The higher education system within the Gaza Strip is particularly inadequate. The Strip's five universities offer an incomplete selection of undergraduate disciplines and a very narrow range of graduate programs. Doctorate level programs simply do not exist.

Due to the bleak and continuously deteriorating state of the higher education system within the Gaza Strip, many students must leave the Strip in order to pursue their education elsewhere. Since 2000, Israel has totally prohibited Palestinian residents of Gaza from studying in the West Bank⁵ and has banned Gaza residents accepted into Israeli academic institutions from entering Israel to study.⁶ Travel abroad is therefore the last remaining option for students wishing to pursue academic studies in the many fields not offered in the Gaza Strip.

This option has likewise been severely restricted, especially since June 2007. The inability to travel is hindering the intellectual advancement of young Gaza residents and stifling their dreams of making a contribution to the development and improvement of Palestinian society.

Despite the closure beginning June 2007, Israel permitted 480 students – about half of those who requested exit – to leave the Gaza Strip to travel abroad for study for the 2007-2008 academic year. The students were shuttled by buses from the Erez Crossing directly to the Nitzana and Kerem Shalom border crossings between Israel and Egypt. Most of the students arrived at their destinations late and missed the first semester of their studies. In January 2008, Israel announced that it would not allow any more students to exit the Gaza Strip and declared that it would permit Palestinians to leave only in "emergency humanitarian cases." Hundreds of students were left trapped.⁷

In May 2008, a public outcry was raised when seven Fulbright scholars were barred from leaving the Gaza Strip to pursue their studies in the United States. As a result of this media storm, as well as diplomatic pressure exerted by then-U.S. Secretary of State Condoleezza Rice and senior European Union officials,⁸ Israel was forced to reconsider its policies.⁹ The State informed the Supreme Court, during its hearing of the Abu Ajwa

⁵ *Position Paper: Limitations on Access to Higher Education for Palestinian Students* (Gisha, December 2006). This position paper is available on Gisha's website at <http://www.gisha.org/UserFiles/File/Students%20report%20Eng%20-%20Online%20Version.pdf>. Gisha has submitted ten petitions to the Israeli High Court of Justice against this sweeping restriction on behalf of 10 Gaza students who sought to study occupational therapy in the West Bank. The petitions were denied by the Court. See *HCJ 11120/05 Hamdan v. The Commander of the Southern Command* (unpublished, August 7, 2007).

⁶ *HCJ 4496/07 Madhoun v. Commander of the Southern Command* (unpublished, April 6, 2007).

⁷ *Held Back: Students Trapped in Gaza* (Gisha, June 2008) pp.6-9 where it cites the letter of Capt. Hussam Dagesh, Public Affairs Officer at the Office of the Coordinator of Government Activities in the Territories, to Gisha of February 21, 2008. Available on Gisha's site at <http://www.gisha.org/UserFiles/File/Students%20report%20Eng%20-%20Online%20Version.pdf>; See also the State's response of April 27, 2008, to the petition submitted by HaMoked- Center for the Defence of the Individual in *HCJ 3594/08 Abasi v. Commander of the Southern Command*.

⁸ *Frequently Asked Questions: Students Trapped in Gaza* (Gisha, November 2008). Available on Gisha's site at www.gisha.org. See also news reports on the Fulbright scholars affair, Ethan Bronner, *U.S. Withdraws Fulbright Grants to Gaza*, NEW YORK TIMES (May 30, 2008) available at www.nytimes.com/2008/05/30/world/middleeast/30gaza.html?_r=2&pagewanted=1&hp; Rice to check why US cancels grants to Palestinian scholars, AFP (May 30, 2008) available at <http://afp.google.com/article/ALeqM5iTK2IQKDQ1NyzLNfzQXCy7vDC77w>.

⁹ On June 30, 2008, then-Israeli Foreign Minister Tzipi Livni stated in a letter to MK Haim Oron that despite a general policy prohibiting the departure of students from Gaza "after an investigation of each case individually, a few special cases were

case, that it had decided to permit a limited number of Gaza students to travel abroad to study, subject to criteria it set and at the discretion of security officials.¹⁰

According to the criteria presented to the court, only applications from **holders of “recognized academic scholarships”** would be considered. These students would be considered only on the condition that they apply **via the Palestinian Civil Affairs Committee** (which is subordinate to the Palestinian Ministry of the Interior in Ramallah) **or through a representative of the international community**. In one of its letters to Gisha, the Office of the Coordinator of (Israeli) Government Activities in the Territories (COGAT) wrote that an application by a representative of the international community can be made by an embassy of a foreign country or by a recognized foreign organization.¹¹

In practice, the diplomatic escort requirement, which will be described below, undermines the Palestinian Civil Affairs Committee’s ability to submit applications on behalf of students, because the Civil Affairs Committee cannot commit to providing diplomatic escort. Thus, by default, only applications from scholarship holders submitted by a foreign mission or a “recognized” international organization willing to provide escort are considered. COGAT has not explained the reasoning behind the scholarship requirement or the requirement that requests be made by foreign actors, nor has it specified which scholarships or international organizations it “recognizes,” despite repeated requests for clarification from Gisha.¹²

Between July and September 2008, no more than 70 students managed to leave the Gaza Strip via Israel; Hundreds of students remained trapped

Furthermore, even if a student’s request to travel abroad is accepted in principle, COGAT insists that the student may only leave with a diplomatic escort. COGAT requires a diplomat from the country which is home to the university which has accepted the student, or the country that awarded the student his or her scholarship, to accompany the student from the Erez Border Crossing, across Israel and the West Bank, until the student reaches Allenby Bridge. From there, the student may cross the border to Jordan and continue on to his or her destination.¹³

This burdensome and unreasonable requirement, to be discussed at length below,¹⁴ was a new addition to an already exacting list of arbitrary conditions. It has made the matter of each student’s departure from Gaza complicated and tiresome. Most significantly, it

approved, following the request of international political bodies, among other reasons.” See also Griff Witte, *Israel Revisits Limitations on Gaza Students*, WASHINGTON POST (May 31, 2008) available at www.washingtonpost.com/wp-dyn/content/article/2008/05/30/AR2008053002873.html.

¹⁰ The State’s notice of June 24, 2008, during *H CJ 4385/08 Abu Ajwa v. The Minister of Defense*, available at http://www.gisha.org/UserFiles/File/Legal%20Documents%20Gaza%20students_/gaza%20students/Wisam%20Abuajwa/state_answer_4385-08%20_24-06-08.pdf.

¹¹ See the letter of Capt. Hussam Dagesh, Public Affairs Officer at COGAT, to Gisha dated July 15, 2008.

¹² In his letter dated July 15, 2008, mentioned above, Capt. Dagesh of COGAT wrote that it is not possible to create an exhaustive list of “recognized” scholarship and organizations and that the matter remained at the discretion of COGAT. On March 5, 2009, Gisha sent a letter to the Minister of Defense and COGAT, once again requesting a clarification of the purpose and nature of the procedures for entry to Israel for Gaza students on their way to universities abroad. In the absence of a response from the State, a reminder letter was sent on April 20, 2009, but it too went unanswered. On June 9, 2009, Gisha submitted a request to the Ministry of Defense for further clarification regarding the relevant procedures, pursuant to the Law of Freedom of Information.

¹³ The Consular Escort Requirement has been enforced since June 2008. It was first expressed in writing to Gisha as part of the State’s response on February 22, 2009, to the petition *H CJ 1238/09 Beseiso v. The Minister of Defense*.

¹⁴ See the discussion under the subheading “The Criteria for Evaluating Students’ Requests to Travel” on p. 17 of this report.

has made students dependent on the services of envoys of third-party states that bear no legal commitment or duty whatsoever to assist Gaza residents.

As a result of all this, between July and September 2008, no more than 70 students managed to leave the Gaza Strip via Israel, the vast majority of whom held prestigious scholarships to study in the U.S. and EU member states. Hundreds of students remained trapped in Gaza, including: students who had not been awarded scholarships; students who did not manage to secure diplomatic escort or who missed the beginning of their academic programs due to the long wait for an escort; and students bound for countries that do not have a diplomatic presence in Israel, and which therefore could not apply on behalf of the students or comply with the escort requirement.¹⁵ Some of the students managed to leave Gaza during the sporadic openings of Rafah Crossing, but the majority was unable to get out, because Rafah Crossing openings are rare, unpredictable, and far from adequate in meeting the needs of those wishing to leave Gaza.¹⁶

¹⁵ See question 4 of *Frequently Asked Questions: Students Trapped in Gaza*

¹⁶ *Rafah Crossing: Who Holds the Keys?* Footnote 2 above, pp. 35-57. The sporadic openings of Rafah Crossing enable an average of around 1,200 people to pass through each month. Before the closure, some 40,000 people passed through it per month. Consequently, Rafah Crossing is currently servicing only 3% of the demand. *Ibid* p. 46.

Situation Update, 2009

The year 2009 began on an ominous note, with the outbreak of an Israeli military incursion into the Gaza Strip. The carnage and destruction that the military operation left in its wake has been a crushing blow to the daily functioning of the civilian population of Gaza. The damage to civil infrastructure was immense.¹⁷ Local institutions of higher education were also damaged in the bombardment – both through direct hits to buildings and installations and indirectly through the damage to infrastructure, such as electricity, water and roads.

As a result of the destruction, the already limited study opportunities in the Strip's universities were further strained. For example, due to damage to the central lab building of the Islamic University, practical courses in the Faculty of Medicine and other faculties were cancelled. Restrictions on importing building materials and equipment for repair slowed down reconstruction work on the labs and forced the Faculty of Medicine to postpone further practical classes.¹⁸

Besides limiting the opportunities for higher education within the Gaza Strip, the war also impacted on those who sought to study elsewhere. The timing of the war worked against these students, since the conflict coincided with deadlines for submitting admissions and scholarship applications at some institutions. This was yet another setback to top off an almost insurmountable wall of obstacles, including the physical, economic and emotional trauma of the war, and the manifold difficulties presented by Israel's already restrictive exit policies, which were implemented the previous summer.

Moreover, since the end of the war and up to the date of publication of this report, Rafah Crossing has remained closed to regular traffic. Occasionally, the crossing is opened for a few days, and a small number of people, mostly the critically ill and other urgent humanitarian cases, are allowed to pass through. In some cases, students holding foreign visas are also allowed to leave, but their exit is not guaranteed, and there is little advance notice of such moments of grace. Many students have missed their academic programs following failed attempts to depart via Rafah Crossing.¹⁹

Anas Shamallakh has been trying to leave Gaza to pursue a bachelor's degree in Information Technology at RWTH Aachen in Germany since January 2008. Each time Rafah Crossing opened, Shamallakh immediately packed his bags and bid farewell to his family, hoping that this would be his chance to get out. Each time the telephone rang, he hoped that perhaps he

¹⁷ Gisha's report on Gaza infrastructure before, during and after the war (to be published in July 2009).

¹⁸ Telephone interview with Dr. Mofeed Al-Mukhalalati, Dean of the School of Medicine at the Islamic University in Gaza (June 22, 2009).

¹⁹ *Rafah Crossing: Who Holds the Keys?*, see footnote 2 above, pp. 73-81.

was about to receive the good news that he could leave. Shamallakh made sure to hold a valid German visa at all times even though this cost a fortune, on top of the €4,000 guarantee. To date, his efforts have failed.

“The waiting is tedious and just so frustrating. For the past year, my whole life revolved around trying to get to my university. I wasn't able to concentrate on my studies at the Islamic University, and I started to feel like a gambler betting on long odds. I now plan to complete my Bachelor's degree in engineering at the Islamic University and go abroad for my graduate degree. I hoping for better times, when there will be no more limits on my freedom to move, to learn and to dream. I hope that this is not just a fantasy.”²⁰



Based on past experience and in light of the worsening situation, an increasing number of students feel that there is no point in even applying to foreign universities, paying registration fees or submitting visa applications. Israel's policies are standing between young residents of Gaza, men and women, and their dreams of self-actualization and contribution to the development of an educated, well-functioning, and prosperous civil society in the Gaza Strip.

Moreover, some of the scholarship foundations that awarded grants to students from Gaza who could not make use of them - are considering discontinuing such support. In the summer of 2008, the U.S. announced that it would discontinue grants to students from Gaza since Israel would not allow them to reach their institutions of study. Only when Israel promised to change its policy due to pressure from high-ranking officials, did the U.S. reinstate the funding. The Hope Foundation, on the other hand, has suspended its program for the 2009-10 academic year, in light of the fact that its attempts to bring students out of Gaza over the past two years have failed.²¹

More than 1,000 students from Gaza apply to universities around the world every year. Currently, there is no official body that coordinates students' requests to study abroad. This is due to the fact there is no official channel via which all or most of the students can leave. Therefore, it is impossible to know exactly how many students want to study abroad this year. Furthermore, it should be noted that many students report that they have already lost their places, as described above.

²⁰ Telephone interview with Anas Shamallakh, October 23, 2008.

²¹ The Hope Foundation informed Gisha of this by email on May 13, 2009.

Despite the difficulties and restrictions that caused so many students to lose their places last year and, in some cases, the year before as well, there are those who refuse to give up. Once again, they are trying to find a way to leave Gaza. Israel's restrictive criteria and the diplomatic escort requirement may well place this goal beyond their reach again this year.

Wesam Kuhail, who was accepted into an MBA program at the University of Northern Virginia in the U.S. and missed his chance last year, said: "I still hope that ultimately I will manage to study in the U.S. I have been told that getting to the U.S. Consulate in Jerusalem is next to impossible, and that leaving Gaza via Rafah Crossing is no more likely." While the university is still willing to accept Kuhail as a student, he is wary of asking it to issue him the necessary documents for a third time. He is concerned that if he is again unsuccessful in his attempts to leave Gaza, the university will give up on him.²²

Ihab Naser, who holds a graduate degree in biochemistry from an Indian university, has been accepted into a doctorate program in Community Nutrition in the Faculty of Medicine at USM in Malaysia. Besides the fact that there is no option to study this field within Gaza, it is obviously an area of expertise that will allow him to be of vital service to the Strip's population. Naser holds a Malaysian visa and he must begin his studies by September 1, 2009. However, he has as yet made no progress in his efforts to leave Gaza. The Ministry of Interior in Gaza told him that it cannot add his name to the lists of people wishing to leave via Rafah, since these are already full. Naser's dream is to earn a PhD but in light of the restrictions and obstacles he seems almost resigned. "I am very concerned about my chances of getting out of here," he says.²³



²² Telephone interview with Wesam Kuhail (June 16, 2009).

²³ Interview with Ihab Naser (June 14, 2009).

The Diplomatic Escort Requirement

Since the summer of 2008, Israel has required diplomatic escort for students wishing to leave Gaza to study abroad. Despite the fact that security officials have not published the relevant procedures and have not given reasons for the escort requirement, this policy has been in force for nearly a year.²⁴ The implication of Israel's policy is that foreign envoys are asked to coordinate the departure of students with military officials, to dispatch escorts to the Erez Crossing, to pick up the students in their diplomatic vehicles and to transport them via Israel and the West Bank to the Allenby Bridge. From there, the students may cross to Jordan.

It must be emphasized that the diplomatic escort requirement is a new requirement. Until it was enacted, students who received a permit to leave Gaza departed without any escort. Even today, **the vast majority of Palestinians who are permitted to exit or enter Gaza, via Israel, do so without diplomatic escort.** Medical cases, business people, families moving from Gaza to the West Bank and others may receive permits from Israel's security officials to leave the Gaza Strip and to enter Israeli territory without an escort. The same is true of one-day entry permits to Israel (which are valid from morning till night). Students also receive one-day entry permits after being approved by Israeli security officials, but for some unknown reason Israel requires that students (unlike other Palestinian residents) be escorted from the Erez Crossing.

A Clumsy and Inefficient Requirement

For the diplomatic delegations, arranging such escorts involves extensive logistical preparations that can drag on for days and weeks. They must track the status of the permit application with COGAT, coordinate the departure time both with the Israeli Coordination and Liaison Administration at the Erez Crossing and with the students, and provide information about the escorts and their vehicles to COGAT.

Some of the foreign delegations also take care of visas for the students, both to their country of destination and to Jordan, which is the first stop of their journey. A transit visa to Jordan is issued only on the condition that the student has a visa for his or her country of destination, and the visas are only valid for a few months at a time. The rapidly expiring travel documents add yet another complication to this elaborate web of a procedure.

When the appointed day finally arrives, the escorts must arrive at the Erez Crossing in the early hours of the morning and wait there for the students to emerge. The envoys sometimes wait for hours in their diplomatic vehicles on the Israeli side of the crossing. The students may only cross after being approved by the Israeli Security Agency (ISA), even though this is meant to be done in advance. Nevertheless, quite often the students are investigated at the crossing itself, further delaying the process. On more than one occasion, diplomats had no choice but to return alone after long hours of waiting, since

²⁴ Israel changed its policy following the Fulbright uproar. See footnote 8 above.

the delays at Erez meant that there was no chance that they could reach the Allenby Bridge before it closed for the day.

If the students do manage to cross to the Israeli side of Erez, the diplomats are required to sign a written "commitment" whereby they undertake to ensure that the students proceed directly to the Allenby border crossing. If, when they arrive at Allenby Bridge, the students' entry to Jordan is not approved, the embassy or consulate will be "responsible for escorting these people back to the Gaza Strip on that same day."²⁵

The diplomatic escort requirement thus allows Israel to transfer its responsibility for the students' departure from Gaza to foreign diplomats. It effectively turns these envoys into gatekeepers and service providers on Israel's behalf – at their own expense! The quagmire of military bureaucracy that these diplomats must wade through on behalf of these students comes at a high price and wastes their valued time. Diplomatic officials have estimated the cost of such escorts, taking into account administrative and logistical preparations, at tens of thousands of dollars per year. As a result, the U.S. Department of State announced that it is not able to provide an escort to every student who wishes to study in the U.S. It will only escort those who have a U.S. **government** scholarship or privately funded students who already hold a U.S. visa – even though Gaza residents cannot apply for visas unless they are permitted to leave the Strip for east Jerusalem.²⁶ EU member states' policies are similar, and they will also only escort students who hold scholarships.



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Accessing Consular Services

To obtain the necessary entry permits, students must first overcome a whole range of obstacles and restrictions. In theory, students are eligible to apply for visas to enter and stay in the countries where they will study if they present documents proving that the university has accepted them. However, there are very few foreign countries with a diplomatic presence in the Gaza Strip,²⁷ and only some countries will provide consular services by mail.²⁸ Previously, Gaza residents accessed consular services in east Jerusalem and Ramallah, and many countries, including the United States, still consider these to be the authorized channels for providing consular services to all residents of the

²⁵ A copy of the "commitment" form is appended to this report as Appendix A.

²⁶ As will be explained below, students cannot get U.S. visas, because obtaining such a visa is conditional on an interview at the U.S. Consulate in East Jerusalem. They need to leave Gaza to attend the interview, but Israel won't let them do so without a diplomatic escort. The U.S. Consulate's policies in this regard are detailed in a letter from the State Department to U.S. Congressman James P. Moran dated May 2, 2009. Additionally, In an undated letter received by Amb. (ret.) Philip C. Wilcox, Jr., Foundation for Middle East Peace in early April, 2009, Acting Assistant Secretary of State Jeff Feltman explains that it is too costly for the U.S. to provide escort for all U.S.-bound students: "The Consulate General's policy of providing transit assistance only to those individuals traveling to the United States or a third country on U.S. government funded scholarships and programs is based on resource constraints." Mr. Feltman's letter was in response to a letter sent by Amb. (ret.) Philip C. Wilcox, Jr., President, Foundation for Middle East Peace, Debra de Lee, President and CEO, Americans for Peace Now, Dr. Ziad al Asali, President, American Task Force for Palestine, Warren Clark, Executive Director, Churches for Middle East Peace, James Zogby, President, Arab American Institute, M.J. Rosenberg, Director, Israel Policy Forum, and Steven Masters, President, Brit Tzedek V' Shalom. Letters on file with the author.

²⁷ Since Hamas rose to power in 2005, the vast majority of countries have withdrawn their envoys from Gaza.

²⁸ The U.S. and the Czech Republic, for example, do not provide consular services via mail and refuse to send consular representatives to Gaza.

Palestinian Authority, including those who live in the Gaza Strip. However, in reality access to these consulates is blocked.

Gaza residents cannot reach foreign consulates in Cairo either, since Rafah Crossing is opened only sporadically, and when it does, only medical cases and those already holding a foreign passport or visa are allowed to pass through. Visa-holders are shuttled by Egyptian security forces directly from the border to the airport, and they are not allowed to stay in Egyptian territory. Therefore, in the vast majority of cases, the only way to obtain a visa is by traveling through Israel. But, of course, this requires a request from a foreign mission and a diplomatic escort. If providing an escort to students wishing to travel overseas is hard for consulates, then the requirement for an additional escort to get them visas is indeed a double burden.

For example, the U.S. Consulate does not provide services remotely, yet it refuses to escort students (who do not hold a government scholarship) to receive consular services in Jerusalem. Consequently, students who have been enrolled in U.S. universities but who are not one of the very few awarded one of the rigorously selective U.S. government scholarships – are trapped in Gaza. They, and students bound for other countries who share their plight, find themselves caught in a Catch-22: **They can't leave Gaza because they don't have visas, and they can't get visas because they can't leave Gaza.**

Emad AlBitar is a Palestinian living in the Gaza Strip. AlBitar was accepted by a Prague university into its MBA program in 2005. In April 2006, AlBitar traveled to the Czech Republic and began his studies, but a few months later, he had to return to the Gaza Strip for personal reasons.

Ahead of the 2008-09 academic year, AlBitar sought to resume his studies, but to do so he was required to appear at the Czech Representative Office in Ramallah for a visa interview. For two months, AlBitar tried to arrange his exit from Gaza for the interview, but was unsuccessful. As a result, he missed an entire academic year. "I'm now 31 years old. For two years I have been vainly hoping that I'll be able to leave Gaza," says AlBitar. "I need to keep hoping in order to survive. But really, I know that my chances of getting to the Representative Office in Ramallah are zero, due to the strict Israeli policies regarding Gaza residents."²⁹

Yasser El-Aalem was accepted into an MBA program at the University of Northern Virginia in the U.S.. The university agreed to postpone the start of his studies until the second semester, but he failed to arrive by that time either. "I've wasted two years of my life waiting for Israel to allow me to attend an interview at the Consulate," says El-Aalem. "Last March I

²⁹ Telephone interview with Emad AlBitar (June 16, 2009).

informed the university in the United States that I wanted to give up my place. I can't hang on to hope anymore. I could have had my Master's degree by now. This would have assured me a brighter future, professionally and academically. I could have made a real contribution to various fields in Gaza, especially in the current situation."³⁰

The Escort Requirement: A Means That Serves No End

As described above, the diplomatic escort requirement extracts a high price from foreign missions, wastes diplomats' precious time and robs many students of their right to education, by making them dependant on the diplomatic policies of foreign states. What is the reason for this requirement? Israel will provide no answer. Despite repeated requests from Gisha, no Israeli official involved in determining or implementing these policies has provided an explanation for the diplomatic escort requirement.³¹

Although Israel refuses to make its motivations known to the public, discussions with diplomats and the conduct of security officials give the impression that the reasoning behind the requirement is security-related. Israel, it would seem, requires diplomatic escort in order to protect itself and its citizens – an important and worthy goal in every respect. However, if this is indeed the reason for the escort requirement, then the means employed (diplomatic escort) are unrelated to achieving its ends (Israel's security).

Despite repeated requests from Gisha, no Israeli official has provided an explanation for the diplomatic escort requirement

First of all, it must be noted that each Palestinian who applies to enter Israel is rigorously and thoroughly investigated by Israeli security officials, after meeting strict criteria set by Israel. People who pose any sort of security threat are not permitted to leave Gaza via Israel, even if escorted by consulates serving as guarantors. Any student who passes through Erez Crossing has certainly first passed the ISA's investigations and has been granted a permit to enter Israel. If there are flaws in the investigation process, does Israel expect foreign diplomats to fix them? Does Israel suppose that diplomats bear the duty or have the capacity to do so?

Diplomats are not trained to act as guard dogs in the service of the State of Israel. What exactly does Israel expect a diplomat or consular official to do, should a security threat materialize? Can they prevent students from fleeing their vehicles, should the students choose to do so?

The very idea of diplomats, who carry no weapons and have no military training, chasing after "security threats" inside Israeli territory or the West Bank, is ridiculous. In private conversations, diplomats have agreed that the requirement is absurd and noted that

³⁰ Telephone interview with Yasser El-Aalem (June 16, 2009).

³¹ On March 5, 2009, Gisha sent a letter to Defense Minister Ehud Barak and Acting COGAT Commander Brig.-Gen. (res.) Amos Gilad regarding the procedures for Palestinians seeking to leave the Gaza Strip to study abroad. Among other things, Gisha requested clarification regarding the purpose of the Consular Escort Requirement. On April 21, 2009, Gisha sent a reminder regarding this letter. Due to the lack of response, on June 9, 2009, Gisha submitted a request to the Ministry of Defense, pursuant to the Law of Freedom of Information. As of the publication of this report, no reply to the request has been received.

even if such a situation did materialize, they have neither the capacity nor the intention of stopping a student who decides to get out of the car.

If Israel is concerned that a particular student traveling abroad via its territory poses a security threat because of specific security information related to that particular student, why does it not escort that student via its own personnel, in accordance with its obligations under international law? Moreover, why does Israel require escort for students – and only for students – whose entry to Israel has already been approved by security officials?

The Escort Requirement: A Violation of International Law

The escort requirement does not serve Israel's security interests in any meaningful way. More importantly, it is a breach of various provisions of international law, in particular the laws regulating consular relations between countries.³² In general, it is the job of the "host" country (in this case, Israel) to protect the diplomats – it is not the job of the diplomats to protect the host country. Diplomats and consular delegates are granted special status under international law, and the host country is obligated to provide them with special protection. Israel must "take all appropriate steps to prevent any attack on the person, freedom or dignity" of diplomatic delegates.³³ If the diplomatic escort really were required for security reasons (and we doubt that it is), it would mean that Israel is putting the lives of diplomatic delegates at risk. That would be a clear breach of Israel's obligations under international law.

Moreover, the law expressly forbids the use of the facilities and property of a diplomatic delegation, including the delegation's vehicles, for purposes related to national defense or the public benefit of the host country.³⁴ Consequently, the required use of diplomatic vehicles is in itself a violation of an explicit provision of international consular law.

Diplomatic envoys bear no obligation to protect the security interests of the host country and, in fact, have no authority to do so. Consular relations between countries are based on the dispatching country's recognition of the sovereignty and jurisdiction of the host country – a well-entrenched principle in international law.³⁵ Were a diplomatic envoy to use force against a Palestinian resident while in Israeli territory or if s/he tried to stop a Palestinian

By requiring diplomatic escort, Israel is redefining the mission of diplomatic envoys - imposing a mission that is inconsistent with the goals and role of a foreign delegation

³² The Vienna Convention on Diplomatic Relations, April 18, 1961, 500 U.N.T.S. 95, ratified by Israel on August 11, 1979, 0 (hereinafter VCDR); Vienna Convention on Consular Relations, April 24, 1963, 596 U.N.T.S. 261, (has customary law status)(hereinafter VCCR); Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, 1035 U.N.T.S. 167, 13 I.L.M. 41, December 14, 1973, acceded to by Israel on July 31, 1980.

³³ See art. 40 of VCCR. See also art. 31 of VCCR and art. 22 of VCDR, which establish the duty of the host country to grant special protection to facilities serving the diplomatic or consular delegation. The International Court of Justice (ICJ) explicitly mentioned the special duty borne by a host country to protect the delegations and official envoys of foreign states in the US Embassy in Tehran case. The ICJ determined that the duty to prevent harm to envoys of foreign states "includes the adoption of positive measures in order to prevent any kind of harm to the envoys." *Case Concerning the U.S. Diplomats and Consular Staff in Tehran* (1980) ICJ 3. See also Luke Lee & John Ougley, *CONSULAR LAW AND PRACTICE*, (3d. 2008), pp. 417-418. See generally Franciszek Przetaczunik, *PROTECTION OF OFFICIALS OF FOREIGN STATES ACCORDING TO INTERNATIONAL LAW* (1983).

³⁴ Art. 31(4) of VCCR.

³⁵ See in particular art. 41 of VCDR and art. 55 of VCCR.

trying to leave a diplomatic vehicle, the envoy would be acting without authority and in breach of his/her duty with regard to the State of Israel.

Finally, the diplomatic escort requirement is inconsistent with the designated functions of a diplomatic envoy. The mission of a diplomatic delegation is to serve the interests of their own country in the host country, and diplomatic envoys are forbidden to use the delegation's facilities and property, including its vehicles, in a manner that is inconsistent with this goal.³⁶ The provision of the escort, which involves a commitment to the army to supervise the movement of students in Israeli territory and the West Bank, means that the envoys are effectively agreeing to cooperate in restrictions on the freedom of movement of Palestinian students. The conditions of this written "commitment,"³⁷ if followed, would effectively restrict the movement of students in Israel and the West Bank, above and beyond what is required by entry permits issued by Israel. These generally have no limitations of movement, only of time (since they are usually only valid for one day), and Palestinian students need no permit to move throughout the West Bank.

While the envoys bear no duty to serve as escorts, under these circumstances, their failure to do so is to the detriment of Palestinian students, since Israel will not allow them to leave otherwise. By presenting this condition to the diplomatic community, Israel is redefining the mission of diplomatic envoys – imposing a mission that is inconsistent with the goals and role of a foreign delegation.

³⁶ Art. 5 and art. 55 of VCCR; art. 3 and art. 41 of VCDR.

³⁷ See footnote 25 above and the text attached to it.

The Criteria for Evaluating Students' Requests to Travel

The diplomatic escort requirement is a significant obstacle preventing students from traveling abroad to study, but before students can even get to the stage of trying to arrange a diplomatic escort, they must first comply with a host of other unreasonable conditions. These conditions limit the number of students that Israel considers eligible to apply for an exit permit in the first place.

As mentioned above, Israel has determined that only applications from holders of "recognized" scholarships which were submitted by "recognized" international bodies will be considered. Security officials refused to provide a list of "recognized" scholarships and international bodies on the pretext that it is impossible to create an exhaustive list. They even declined to specify the criteria according to which a scholarship or body is considered "recognized." The nature of these criteria and their justification have not been explained, and Gisha's requests for clarification have hitherto gone unanswered.³⁸

The reasons for the need for a recognized scholarship are particularly inscrutable. First of all, if the goal is to show that the request is genuine by proving that the cost of the applicant's studies are covered, it is unclear what this has to do with the security of the State of Israel, which will simply serve as an overland route on the way to the airport in Jordan. Second, if this is indeed the reason for the condition, it is unclear why Israel does not allow each and every scholarship student to apply. Moreover, why can't students' capacity to fund their studies in other ways be taken into account? Besides being incompatible with any security benefit, this condition discriminates against anyone who has been accepted into an institution of higher learning somewhere in the world, but who has not been awarded a scholarship.

The second condition, which requires that an international organization submit the application on behalf of the student, also raises many questions. Why must the application come from a third party? How is this better than an application coming directly from a student or his or her representative? Moreover, a student's request to an international organization that it submit an application on their behalf usually requires an escort, and this again places the responsibility on the shoulders of the diplomats. In its written response to a request to leave Gaza for a visa interview at the U.S. Consulate, submitted by Gisha on behalf of one its clients, the Gaza District Coordination Office's representative stated that it would not even evaluate the request unless submitted by a U.S. diplomat: "Gaza Strip residents who hold scholarships are allowed to enter Israel for the purpose of consular interviews at the U.S. Consulate only in accordance with an appropriate request by the Consulate itself."³⁹ The DCO went so far as to refer the client to a contact person at the U.S. Consulate, even

The DCO went so far as to refer a Palestinian student to a contact person at the U.S. Consulate, even including his cell phone number

³⁸ See footnote 12 above.

³⁹ Letter for the Gaza DCO's Permit Center to Gisha (May 12, 2009). The letter is appended to this position paper as Appendix B.

including his cell phone number, as if to say: "this is not the army's job – it's up to the Consulate."

The fact that submitting a request on behalf of students involves a requirement of diplomatic escort has deterred more than one consulate from submitting such applications. As far as the army is concerned, this relieves them of the task of even evaluating the students' applications.

Both of these requirements, taken together or separately, effectively mean that students bound for countries which do not have diplomatic ties with Israel (including most Arab states, which are the destination for the largest number of students wishing to leave Gaza each year⁴⁰) cannot leave via Israel to pursue their studies. This is true even if they have already been accepted by the universities and even if they hold scholarships that will pay for their studies.

The consequence of Israel's policies is that most students who have been accepted by universities abroad cannot even apply for a permit to leave Gaza.

⁴⁰ *Israel Undermines Higher Education – and its Own Best Interest – in Gaza* (Gisha, October 2007) available at http://www.gisha.org/UserFiles/File/publications_english/Publications%20and%20Reports_English/Appendix%20to%20Press%20Release%2022.10.07_eng.pdf.

Conclusion and Recommendations

The restrictions that Israel imposed on the departure of students from Gaza in June 2008 are inconsistent with prevailing legal norms, not to mention simple common sense. The criteria under which Israel will consider students' applications to leave Gaza – that they hold a "recognized" scholarship and that their application be submitted by a "recognized" international organization – seem arbitrary and entirely irrelevant to their apparent goal, i.e. to protect the State of Israel. The diplomatic escort requirement also serves no security objective. Yet Israel insists on it, even though it is a significant burden on consular delegations and a violation of international law.

There is no doubt that diplomatic envoys have nothing to gain by serving as escorts. On the contrary, it is a cumbersome and costly procedure for them. It can be assumed that, given the choice, the foreign delegations would remove the diplomatic escort requirement. Without doubt, the diplomats and consular envoys only comply with the rigid conditions set by Israel, pointless though they may be, in an effort to help Palestinian students.

Nevertheless, the experience of the past year has raised concerns that the cooperation of diplomatic envoys with the escort requirement is, in fact, helping to perpetuate the restrictions and is contributing to Israel's continued breaches of its legal obligations. When diplomats agree to escort some, but not all, of the students, they effectively become the "gatekeepers" of the closure of Gaza. The small minority of students on whose behalf the diplomats agree to submit applications and act as escorts have a chance of reaching their places of study abroad. However, the majority of students remain trapped in Gaza.

In light of all of the above,

Gisha – Legal Center for Freedom of Movement demands that **Israel:**

- Immediately abolish the restrictions on the departure of students on their way to study abroad, including the diplomatic escort requirement, since they serve no legitimate security purpose;
- Allow every Palestinian student who has been accepted into an institution of higher education abroad to exit Gaza in order to pursue his or her studies, subject only to an individual security screening.

Gisha – Legal Center for Freedom of Movement urges **Foreign Delegations:**

- To ask Israel to clarify the reasons behind the criteria which limit students' ability to leave Gaza to study abroad;
- To make every effort to have the restrictive criteria abolished, particularly the diplomatic escort requirement;
- To call on Israel to respect Palestinian students' right to freedom of movement and education and to allow Gaza students to travel abroad to pursue their studies.

Appendix A: Declaration of responsibility



**Gaza District Coordination and Liaison
Administration**

Declaration of Responsibility

In the name of the _____ Consulate/~~embassy~~ in Israel,
the person signed below guarantees that all _____ citizens signed below,
who leave the Gaza Strip on _____ will be escorted by the
_____ consulate/~~embassy~~ from Erez Crossing directly to
Alenby Bridge Crossing, where it will see to it that they pass successfully
to Jordan, on the same day of _____

In addition, the signed below acknowledges that will there be citizens
who won't be crossing from Alenby Bridge, for whatever reason, the
consulate/~~embassy~~ is responsible to escort these people back to the Gaza
Strip, on the very same day.

Name: _____

Signature: _____

Date: _____

Appendix B: Letter from Gaza DCO to Gisha, May 15, 2009

(Translated from the original Hebrew letter)

Gaza District Coordination Office

Operations **Branch**

Telephone: 08-6741405

Fax: 08-6741601

Current 151331

Iyar 18, 5769

May 15, 2009

To: Tamar Feldman, Adv.

Gisha

**RE: Gisha's application to coordinate entry to Israel for ----- ID No. -----
in order to attend an interview at the US Consulate**

I hereby confirm the receipt of your letter relating to the above issue.

In your letter you requested coordination of entry to Israel for your client, Mr. -----, ID -----, a resident of the Gaza Strip who has been awarded an academic scholarship and stipend in the USA, so that he may attend an interview at the US Consulate in East Jerusalem, which is required so that he may receive a US visa.

To clarify, Gaza Strip residents who hold scholarships are allowed to enter Israel for the purpose of consular interviews at the US Consulate only in accordance with appropriate coordination requested by the Consulate itself.

Therefore, if your client wishes to enter Israel to attend the said interview, he must get in touch with the contact person at the US Consulate, Mr. -----, at Ph. 054-----.

We will be pleased to help you further in the future as required.

We recommend that before a response is sent to the applicants, it be referred to Arbel (International Organizations Department).

We remain at your service should any further questions or comments arise.

Sincerely,
The Permit Center, DCO Gaza