

Legal Framework: Merchants and the Economy Rights and Obligations under International and Israeli Law

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As the military occupier in Gaza and the West Bank¹, Israel has an obligation to ensure the proper functioning of public life and public institutions in the Palestinian territory, including a properly functioning economy². As for the Gaza Strip, these obligations accrue whether, as Gisha and others believe, Israel continues to owe obligations to Palestinian residents of Gaza under the law of occupation or whether, as Israel's Supreme Court has found, these obligations stem from the fact of Israeli control over Gaza's borders and dependence created by decades of direct military control³. There is no dispute that Israel's obligations under the law of belligerent occupation apply in the West Bank. Israel's Supreme Court analyzes these obligations under international human rights law⁴, as well, which protects the right to work, the right to ensure a decent living for oneself and one's family, and the right to the continuous improvement of living conditions.

In addition, through the internationally brokered **Oslo Accords**, which were incorporated into the internal law of the Occupied Territory via military **orders**, Israel committed to view the Gaza Strip and the West Bank as a **single territorial unit** in which freedom of movement was to be permitted. Special provisions were made for economic cooperation, with the stated goal of "strengthening the economic base of the Palestinian side and ... exercising its right of economic decision making in accordance with its own development plan and priorities"⁵.

¹ Gisha, January 2007, "Disengaged Occupiers: The Legal Status of Gaza", available at www.gisha.org.

² See, e.g. HCJ 69/81 *Abu Ita v. Regional Authority of Judea and Samaria*, PD 36(2) 197, 228.

³ HCJ 9132/07 *Al-Bassiouni v. Prime Minister* (unpublished, Jan. 30. 2008), para. 12.

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

⁵ Israeli-Palestinian Interim Agreement, Protocol on Economic Relations, Preamble, Israel and the PLO, Paris, April 9, 1994.

Israeli military regulations and governmental decisions

Since the Hamas takeover of Gaza in June 2007, Israel has limited the movement of goods into and out of Gaza to "goods essential to the survival of the civilian population". It does so pursuant to a governmental policy, outlined in a September 19, 2007 Cabinet Decision to restrict the movement of people and goods as a means of applying pressure on the Hamas regime. Israel characterizes this policy as "economic warfare" or sometimes as "sanctions" against the Hamas regime, claiming that it may deliberately restrict the entrance of exit of goods, so long as shortages do not rise to the level of a humanitarian crisis. The express purpose of this policy is to block all economic activity in Gaza. Gisha and other human rights groups characterize this policy as collective punishment, because it punishes civilians, over whose lives Israel exercises control, for acts that they did not commit⁶. The Israeli Supreme Court upheld this policy in the context of a court petition, brought by Gisha and a coalition of Israeli and Palestinian human rights organizations, challenging the restriction of fuel and electricity supplies to Gaza as part of the implementation of the Cabinet Decision⁷.

The policy blocks, among other things, the transfer of goods from Gaza to markets in the West Bank, and it blocks the entrance of raw materials into Gaza from the West Bank, contributing to the crippling of Gaza's economy and the halting of its manufacturing sector.

The Cabinet Decision also calls for restricting the movement of people into and out of Gaza, including traders and merchants whose requests to travel do not qualify as the "exceptional humanitarian circumstances" that justify, in the eyes of the Israeli military, a permit to travel from Gaza to the West Bank.

These restrictions on the ability of Gaza residents to enter the West Bank are not due to concerns about the use of Israel as a transfer point between Gaza and the West Bank, but rather apply even where residents of Gaza seek to enter the West Bank without crossing through Israel. Thus, Palestinian residents whose addresses are registered in Gaza are also forbidden to enter the West Bank via the Israeli-controlled Allenby Crossing between Jordan and the West Bank. Israel bases this policy on a military order, issued with its conquest of the West Bank in 1967, declaring the West Bank to be a "closed military zone", entrance into which would be by permit only. Israel claims that this order allows it to restrict entrance into the West Bank for anyone whose registered address is not in the West Bank, despite the numerous legal changes that have taken place since the order was first issued. For example, the Oslo Accords mandate the opening of a "safe passage" between Gaza and the West Bank, and they give the Palestinian Authority control of the Palestinian population registry. These measures would seem to give Palestinian residents listed in the population registry – irrespective of their registered address – the right to be present in the West Bank or Gaza Strip, as they see fit. In addition, the recognition of Gaza and the West Bank as a single territorial unit would seem to provide protection, under the International Covenant on Civil and Political Rights⁸, for the right of Palestinian

⁶ Gisha, December 2008, "Gaza Closure Defined: Collective Punishment", available at www.gisha.org.

⁷ HCJ 9132/07 *Al-Bassiouni v. Prime Minister* (unpublished, Jan. 30, 2008).

⁸ International Convention on Civil and Political Rights (1966), art. 12(1).

residents to choose their place of residence in either part of the Palestinian territory. In practice, however, since 2000, Israel has blocked Palestinians whose addresses are registered in Gaza from entering the West Bank, irrespective of travel through Israel.

So, even if a Palestinian resident of Gaza is able to leave Gaza via Rafah Crossing, he or she will not be permitted to enter the West Bank by traveling via Egypt and Jordan. Indeed, Rafah Crossing has been closed to regular traffic since the June 2006 capture of an Israeli soldier by Hamas, after which Israel kept the crossing closed most of the time as a means of exerting pressure for the soldier's release. Since June 2007, Israel has refused to participate at all in the US-brokered Agreement on Movement and Access that provides for the crossing's opening, and it remains closed to regular traffic. The PA also opposes opening Rafah Crossing so long as Hamas controls the Palestinian side, and Hamas has indicated its opposition to allowing passenger traffic via alternative crossings by firing at the Kerem Shalom Crossing when it was suggested as an alternative. Under those circumstances, Egypt permits the opening of Rafah only on an exceptional humanitarian basis. In practice, the crossing opens only sporadically, for short periods of time that meet approximately 12% of the need for travel.

An additional impediment to passage between the West Bank and Gaza is the requirement by Hamas regime, instituted in November 2009, that Palestinian residents receiving permits from Israel register with Hamas government and receive its permission in order to leave Gaza via Erez Crossing. A police checkpoint established outside Erez Crossing checks the identities of those seeking to leave, and police belonging to Hamas regime have in some cases refused to allow people to leave Gaza for travel to the West Bank, including in cases in which members of the rival Fatah party⁹ or even medical patients¹⁰ sought to leave.

Additional sources

- HaMoked and Gisha, New Procedure: Israel Bars Palestinians in Gaza from Moving to the West Bank, June 2009, available at www.gisha.org
- Gisha, Gaza Closure Defined: Collective Punishment, December 2008, available at www.gisha.org.
- Gisha, Commercial Closure: Deleting Gaza's Economy from the Map, July 2007, available at www.gisha.org.

⁹ See The Independent Commission for Human Rights - Palestine, Monthly Report on Violations of Human Rights and Freedoms in the PNA-Controlled Territory, May 2009, para. 6, available at www.ichr.ps.

¹⁰ See Palestinian Centre for Human Rights, Press Release, Dec. 7, 2009, Ref. 123/2009, "Ministry of Interior's Decision, Palestinian Police Obstruct of Travel of Patients Receive Medical Treatment in Hospitals outside Gaza; PCHR Calls on Gaza Government to Immediately Cancel Such Measures" available at www.pchrgaza.org.