



Lawyers for Palestinian Human Rights' briefing on how Israel's Supreme Court has sanctioned the closure of Gaza (outlining Gisha's analysis)

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About Lawyers for Palestinian Human Rights (LPHR)

LPHR is a lawyer-based charity in the UK that works on projects to protect and promote Palestinian human rights. We distinctly provide a legal and human rights perspective on issues affecting Palestinians. Our trustees include leading human rights lawyers, Sir Geoffrey Bindman QC and Tessa Gregory.

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1. In December 2017, the Israeli human rights organisation, Gisha, published '[10 Years 10 Judgments: How Israel's courts sanctioned the closure of Gaza](#)'. Their report examines ten significant Israeli Supreme Court judgments made after Israel's disengagement from Gaza in August 2005 and the tightening of its closure of the territory in June 2007.
2. This briefing outlines each of these ten cases that, individually and cumulatively, illuminate how Israel's Supreme Court has enabled the closure policies imposed for over a decade by successive Israeli governments, with a severe impact on the basic human rights of Palestinians in Gaza.

HCJ 11120/05 Asma Mahmoud Hamdan et al. v. GOC Southern Command et al. (August 7, 2007)

3. The Hamdan case centred on Israel's refusal to let Gazan students travel through Israel to attend university in the West Bank. Israel applied a blanket travel ban on all students in September 2000, asserting that they constituted a particular risk group. This case was brought by ten occupation therapy students and Gisha in 2007.
4. Israel's Supreme Court upheld the blanket ban on travel from Gaza to the West Bank for students, ruling that the state's policy on travel from Gaza was justified given security conditions. The Court reached this ruling despite the fact that Israel's policy on travel from Gaza provides for a sweeping a blanket ban, rather than an examination of individual applications.
5. The Court avoided deliberation over the status of Gaza, its residents and Israel's obligations toward them. In doing so, it sidestepped identifying the source of rights available to Palestinians in Gaza and analysing whether these rights are being met.
6. The blanket ban on travel from Gaza to the West Bank for higher education remains in force to this day, violating Gaza residents' rights to freedom of movement and access to education.

HCJ 9132/07 Jaber al-Bassiouni et 11 al. v. Prime Minister (January 30, 2008)

7. The Bassiouni judgment was the first to discuss Gaza's legal status after Israel had removed its physical presence from the Strip in 2005 but continued to control many aspects of life there.
8. In 2007, Israel decided to decrease the amount of electricity and fuel supplied to Gaza (a decision that it would repeat ten years later). The severe humanitarian impact of such



reductions conflicted with Israel's humanitarian obligations towards Gaza residents, the scope of which depend on Gaza's legal status. A petition was filed against Israel's decision.

9. Israel's Supreme Court ruled that Israel was obligated to supply fuel and electricity to a degree that meets the essential humanitarian needs of Gaza's residents, on the basis that Israel bears "humanitarian obligations" towards Gaza residents. However, it also held that Israel's occupation of Gaza had ended and that the laws of occupation, as a whole, ceased to apply. Gisha, LPHR and the vast majority of the international community (international organisations, the International Court of Justice, states, human rights organisations and jurists) does not accept this flawed position, and determines Gaza to still be under Israel's occupation following the 2005 disengagement.
10. The scope of Israel's obligations towards Gaza residents depend on Gaza's legal status, but the judgment avoided specifically identifying Gaza's status whilst troublingly finding that the laws of occupation are not applicable. The resulting legal ambiguity around the extent of Israel's obligations enables Israel to continue its punitive closure policies towards Gaza residents; only allowing them to enter Israel or receive goods for "exceptional humanitarian needs", which Israel has given a very narrow interpretation and, moreover, is a standard which does not exist under international law.

HCJ 1169/09 The Legal Forum for the Land of Israel v. The Prime Minister et al. (June 15, 2009)

11. This judgment arose out of a petition brought by the Legal Forum for the Land of Israel, an organisation supportive of Israeli settlements. The petition argued that the Israeli government's transfer of the salaries of Palestinian Authority employees through Israeli territory was tantamount to funding terrorism, prohibited under Israeli law. Israel's Supreme Court dismissed the petition, ruling that the law was not meant to apply to government actions that are intended "to serve the public interest in Israel... and to uphold Israel's obligation to the residents of the area on the humanitarian level, in the context of international law."
12. The judgment elaborated on Israel's obligation to meet the humanitarian needs of Gaza residents, ruling that it includes the accommodation of monetary transactions. According to the ruling, the obligation to ensure basic means of subsistence for Gaza's civilian population include the transfer of funds for Palestinian Authority employees' wages. The Court indicated that Israel's obligations stem from its control over the ability to transfer funds between the West Bank and Gaza and from Gaza's dependence on Israel's facilitation. The Court indicated that this obligation is not diminished by the security situation or because the government in Gaza, Hamas, has been defined by Israel as a terrorist organisation.



13. This judgment stands in isolation amidst other judgments that have ruled that Gaza residents are foreign nationals for all intents and purposes and that Israel's obligations towards them are limited to humanitarian assistance. Gisha asks why, if the transfer of funds for salary payments was recognised as a humanitarian issue, other types of activity such as entry into Israel for urgent medical treatment or travel to the West Bank for marriage, have not been recognised as humanitarian by the Court.

HCJ 5268/08 Anbar et al. v. GOC Southern Command (December 9, 2009)

14. In 2008, a petition was issued against Israel's blanket ban on Gaza residents visiting their relatives incarcerated in Israel. The Court dismissed the petition, holding that Israel had a right to institute a blanket ban preventing all Gaza residents from entering Israel for prison visits.

15. The judgment reasoned that residents of Gaza were foreign nationals living in a hostile entity and that visiting imprisoned relatives does not constitute humanitarian grounds for entry into Israel. The Court ruled that Gaza residents have no legal right to enter Israel and that the laws of belligerent occupation no longer applied. Additionally, the Court found that Israel's obligations toward the civilian population of Gaza had changed since Israel's 2005 disengagement but refrained from explaining what the obligations were. The result is that no clear judicial ruling exists as to what kinds of policy choices Israel may or may not make in relation to Gaza residents.

16. The blanket ban on Gaza residents visiting their relatives incarcerated in Israel constitutes a violation of the right to family life and unlawful collective punishment of Gaza's population. Given that Israel has chosen to imprison Palestinian residents within its own territory, it is obligated under international law to enable routine visits from relatives residing in the Palestinian territory. These provisions are binding irrespective of Israel's military withdrawal from Gaza.

17. Israel reinstated prison visits under restrictive conditions in 2012. Gisha notes that the procedure governing the visits provide that entry into Israel is enabled as part of the international conventions to which Israel is signatory, contradicting Israel's own position before the Court in the Anbar case where it claimed exclusive discretion in the matter. It appears that where the rights of Palestinians living in Gaza are concerned, Israel's courts and government apply international law in an inconsistent and arbitrary manner.

HCJ 9329/10 Anonymous v. Minister of Defense et al. (March 8, 2011)

18. This case concerned a resident of Gaza who was forbidden to return home after entering Israel with a valid permit. According to Israel, the state had the power to hold the man



on its soil because like all Gaza residents, he was not an “ordinary tourist” visiting Israel or a “protected person” under the laws of belligerent occupation.

19. Gisha argued that the decision violated the resident’s right to freedom of movement and the universal right to return to one’s home. Israel claimed that the prohibition was instituted for reasons pertaining to the man’s personal safety and national security. Israel argued that the laws of belligerent occupation did not apply since Israel’s effective control over the Strip had ended with its disengagement in 2005. The applicability of human rights law was also rejected. Israel maintained that only the laws of war applied to its relationship with Gaza residents. Additionally, Israel indicated that the laws of war also apply to the state’s actions within its territory, both in times of relative calm and during combat.
20. The Court accepted Israel’s position, ruling that the foreignness of Gaza residents was “unique,” and so Israel could limit them from returning to their homes in Gaza. The Court found that due to this uniqueness, Gaza residents are not entitled to the protections offered under the laws of belligerent occupation, or under international human rights law. The obligations Israel has towards Gaza residents in this a “unique” framework were not specified.
21. The resulting ambiguity around the legal status of Gaza residents allows Israel flexibility in justifying restrictive measures which could not be imposed on normal foreign nationals. When it suits its purposes, Israel refers to Gaza residents as foreign nationals, denying them any rights. In this case, however, Israel claimed Gaza residents are in a unique classification that justifies control over their lives and special arrangements restricting their movement. Gisha asserts this case illustrates the depth of Israel’s control over Gaza residents post-disengagement.

AP 2744/09 Gisha v. Ministry of Defense (March 22, 2011)

22. Gisha petitioned Israel's Supreme Court, demanding that Israel’s Ministry of Defense disclose several documents which guided Israel’s policy of restricting the entry of food items into Gaza between 2007- 2010. Of particular interest was a document entitled “Food consumption in the Gaza Strip – Red Lines”.
23. The Court ordered the disclosure of the documents. Following a three and a half year legal battle, Gisha received the “Red Lines” document. According to the document, Israel had determined that Gaza residents need no more than 2,279 calories per day, on average. Calculations made by the authors of the document found that 106 trucks entering Gaza every day during the working week would suffice in order to supply residents with the “daily humanitarian portion”.



24. When Hamas won control of the Gaza Strip, a number of punitive measures were enforced against Gaza's residents collectively. The official purpose of these measures was "economic warfare," aimed at making life difficult for residents and mounting pressure on the Hamas regime. Along with extremely severe restrictions on travel in and out of Gaza, Israel imposed restrictions on the entry of goods into Gaza, including limiting types of food.
25. For example, the entrance of fresh meat was prohibited. The "Red Lines" document revealed Israel had calculated the "humanitarian minimum" required by Gaza residents for sheer survival.
26. Following the Mavi Marmara flotilla incident in May 2010, Israel altered its policy toward Gaza residents, and no longer imposes direct restrictions on the entry of food into the Strip. However, Israel still imposes various restrictions on the entry of goods into Gaza, by setting strict technical requirements and charging high fees for the entrance of trucks, and by broadly defining many goods as "dual military-civilian use."

AAA 4620/11 Umayma Qishawi v. Minister of Interior (August 7, 2012)

27. The case concerned Israel's policy of denying Muslim residents of Gaza travel permits for religious worship. Gaza's Christian community receive permits to travel for religious worship.
28. In 2011, Gisha and six Muslim women from Gaza filed a petition against Israel's decision to deny the women entry into Jerusalem for worship on a religious holiday. The petition argued that the decision breached Israel's obligation to respect residents' freedom of movement and religious worship; constituting wrongful discrimination.
29. The petition was rejected. Israel's Supreme Court ruled that Israel's policy on travel, which denies Muslims exit from Gaza for religious worship, was reasonable and legitimate. The Court adopted the state's position without criticism. The Court ruled that Gaza residents are foreign nationals and have no vested right to enter Israel; that Israel's policy regarding movement by Gaza residents is legitimate; that exercising freedom of religious worship is not a humanitarian need; and that issuing permits for Christian residents of Gaza while barring Muslims does not constitute wrongful discrimination.
30. Israel continues to exert a great degree of control over Gaza residents' lives, making the classification of Gaza residents as foreign nationals appear arbitrary and legally invalid given that they are people still living under Israeli occupation, and designed to circumvent various rights, including freedom of movement and religious worship.

HCJ 495/12 Azza Izzat et al. v. Minister of Defense (September 24, 2012)



31. A petition was filed on behalf of five women from Gaza who wished to complete their postgraduate studies at university in the West Bank. Prior to 2000, the women had begun but not completed postgraduate studies in the West Bank due to a ban on student travel that was enacted in 2000. They were readmitted to university in 2012. However, Israel refused to grant them exit permits, in line with its blanket ban on allowing Gaza residents to travel to the West Bank for the purpose of academic study.
32. Unusually, there was dissent among the judges, with one judge arguing that the petition should be accepted. However, the majority ruling found that Israel's policy of banning Palestinian students in Gaza from travelling to the West Bank should remain intact. The majority opinion reiterated that education should not be considered a humanitarian need.
33. Israel is compelled by its obligations under international law to establish a policy that respects Palestinians' right to freedom of movement. Subject to individual security assessments, the policy should allow all residents of Gaza passage, at the very least to the West Bank, an inextricable part of the Palestinian territory.
34. The restrictions on freedom of movement caused by the closure of Gaza also violate other rights which require freedom of movement, including the right to health, education, family life and to access economic opportunities. For more information about the severe impact of the closure, you can read LPHR's Legal Q&A on the closure of Gaza [here](#).

HCJ 2088/10 HaMoked: Center for the Defence of the Individual et 12 al. v. Military Commander of the West Bank (May 24, 2012)

35. A petition was issued against the effective prohibition on Gaza residents from moving to the West Bank in order to settle there, except in exceedingly rare cases. Family ties, including marriage, do not constitute a "humanitarian ground" qualifying an individual for a permit to settle in the West Bank.
36. The petition argued that the prohibition should be revoked because it is unlawful and unreasonable, as it is in violation of the rights to freedom of movement and family life. The then president of Israel's Supreme Court dismissed the petition, holding that there was no cause for intervention.
37. Remaining vague about the legal sources that informed its discussion of Israel's obligations towards Gaza, the Court noted that it believed Israel no longer had effective control over Gaza and held that there was no need to elaborate on "the scope of the obligations and the source of the rights" of Gaza's residents. The judgment reflects the



Court's tendency to avoid intervening in Israel's policies regulating the movement of Gaza residents.

38. The ruling effectively sanctioned Israel's separation policy which prevents movement between Gaza and the West Bank, splitting families apart and damaging the social, cultural, and economic ties between the two parts of the Palestinian territory.

HCI 4047/13 Nijmeh Hadri et 12 al. v. Prime Minister et 2 al. (June 14, 2015)

39. The case concerned a 2008 Israeli government resolution banning Gaza residents from entering Israel for the purpose of residing there following marriage. A petition against the ban was rejected by the then president of Israel's Supreme Court, who determined that the ban was justified on the basis of security conditions in Gaza. The Court further ruled that applying the ban to Palestinians who live in the West Bank but are registered as Gaza residents was legitimate, as was the retroactive application of the ban beginning in 2007.
40. The "Citizenship and Entry into Israel Law (Temporary Order) – 2003" severely impedes Palestinian spouses of Israeli citizens from living in Israel. The law empowers Israel's Minister of Interior to deny a Palestinian who marries an Israeli citizen what is referred to as a "stay permit" if the Palestinian or a member of his/her family are under a 'security block.' Israeli law further provides that a permit can be denied if the applicant's place of residence is considered "dangerous". In 2008, the government published a resolution which, for the purposes of this specific provision, named Gaza as a dangerous place. The effect is that no application for family unification made by those living in or registered as residents of Gaza is likely to be accepted.
41. Gisha maintains that Israel is obligated to protect and uphold the right to family life, under both Israeli constitutional law and under the law of belligerent occupation, which continue to apply due to Israel's control over Gaza.

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42. The above-mentioned judgments indicate that Israel's Supreme Court has almost unquestioningly accepted the government of Israel's legal positions on implementing its punitive closure policy upon Gaza's population. By repeatedly taking a permissive stance on the implementation of such measures, Israel's highest court has performed an instrumental role enabling the state of Israel to perpetuate the illegal closure of Gaza, and its accompanying array of serious human rights violations.