



COGAT Procedure for Entry and Residence of Foreigners Analysis

Background

- Following the commencement of Israeli belligerent occupation, the military government declared the oPt a "closed area" and obliged the Palestinian residents to obtain permits for entry to, and departure from, occupied territory. Throughout August and September 1967, the Israeli military conducted a census of the population physically present at the time.
- This census became the basis for the Israeli registry of the Palestinian population. Non-registered Palestinians had to obtain temporary visitor permits in order to enter the oPt and could not permanently reside there, unless a first-degree Palestinian relative applied for "family unification" for them.
- The military government (through COGAT) enacted [new procedures governing the entry and residency of foreign nationals in the West Bank](#), going into effect on 20 May 2022 for a pilot period of 2 years. The new policy will purportedly only apply to foreign nationals of countries that have diplomatic relationships with Israel and have visa-waiver agreements in effect, and amends a less restrictive [2016 procedure](#). Israel has delayed by 45 days the imposition of the procedure, in response to a letter sent by attorneys Yotam Ben-Hillel and Leora Bechor on behalf of Israeli NGO [HaMoked](#).
- The 2016 procedure, unlike the revised procedure, allows spouses of Palestinian residents, lecturers and consultants, and international organizations personnel hailing from countries that have visa-waiver agreements with Israel to apply for a three months visa on arrival through all crossings. Visas are renewable for periods of six to twelve months, and up to 27 months, with no mandatory intermission between visa periods.
- As would be shown, the 2022 procedure is increasingly restrictive and adversely affects the freedom of movement, access, and standard of living of Palestinians, writ large, and similarly has a detrimental effect on Palestinian academia, civil society, and national and international humanitarian and development organizations.
- It should be noted at the outset that the right to enter one's country, to stay in a country which one has legally entered, and to leave any country, including one's own, has been perceived as basic since the Universal Declaration of Human Rights was adopted in 1948.
- The rights of entry, sojourn, and exit are indivisible: the denial of any one makes the assertion of the others an illusion rather than a reality. Moreover, they flow inexorably from the right of freedom of movement and residence within the borders of a state. Further, these rights of mobility are inextricably intertwined with other human rights, including the right of peoples to self-determination and its manifestation in a politically independent and sovereign state.

The Procedure and its Impact

- The procedure enacted in February 2022 is "intended to define COGAT's policy in that regard, to the extent that it relates to foreigners [...] who wish to enter the Judea and Samaria area by means of a permit [...] for a short visit in the Area, lasting no more than three months; for various specific purposes; and for formalizing status in the Area and to the possibility of receiving permits for foreign

spouses of the Area's residents to reside together with their Palestinian spouses when an application that the foreign spouse's status be formalized has been submitted by the Palestinian Authority but rejected."



- The procedure does not cover foreign nationals who are citizens of countries that do not maintain diplomatic relations with Israel, and nationals of Jordan, Egypt, Morocco, Bahrein, and South Sudan subject to a different procedure enacted by the Israeli military government. The procedure does not apply to foreign nationals seeking to visit the oPt and Israel in parallel. The latter are subjected to the [procedures of the Israeli Population and Immigration Authority](#):

"The decision in the case of an alien seeking to enter the area [oPt] is with the authority of the relevant bodies in the IDF as aforesaid in security legislation and not under the authority of the Population and Immigration Authority. Hence, the border controller who is convinced that the alien is interested in entering the area [oPt], will not allow the alien to enter, but instruct him to contact the relevant body in the IDF for further processing [...] if the IDF decides to refuse the entry of the alien, the reason must not be stated, since the decision to refuse entry is within the aforesaid authority of the IDF. [...] If the border controller believes that the alien is interested in staying both in Israel and in Judea and Samaria or Gaza Strip (i.e.: mixed entry), his case will be examined by representatives of the Population and Immigration Authority after receiving a determination of the IDF."

- Three spheres of life – a corollary to the fundamental guarantees of international humanitarian law and inalienable human rights – will be particularly affected by the newly introduced procedure:
Civil Society and Humanitarian Organizations

- The procedure provides for 'Volunteer Permits' allowing not-for-profit/NGOs to employ a foreign volunteer for a period of up to 12 months, and limiting a return to the oPt after a year has passed since the expiration day of the volunteer permit, and subject to submitting a new application that will be assessed on its own merits. International NGOs and development enterprises wishing to employ professionals may request a permit for a period not exceeding 27 months and limited to renewal only after 9 months have elapsed since the date of exit of the said individual from the oPt.
- The procedure is both restrictive in relation to the duration and continuity of service, precluding long-term visas. Further, the criteria for an eligible host organization is unclear and entirely discretionary, raising concerns about the possible exclusion of national NGOs, including human rights organizations and think tanks.
- For INGOs, both the short duration of the visas and the mandatory break between deployments would make it particularly challenging to recruit and employ senior and specialized staff.

Academia

- The procedure provides that visiting lecturers and guest researchers in Palestinian universities will be for a period of 5 months, and may only submit a new application for a permit of this kind when at least 9 months have elapsed since the date of departure from the oPt. Further, no permit will be approved for a term longer than the calendar length of one course per academic year.
- The procedure severely restricts potential foreign hires and academic exchanges for the higher

education sector, and undermines the academic freedom, institutional independence and autonomy of Palestinian universities.



Family Life

- The bulk of the new procedure is designed to "regularize the procedure of assessing applications for formalizing the status of spouses or for receiving resident permits." It makes clear that "even if the minimum criteria as specified in this procedure are met, the individual permit application need not necessarily be approved [...] assessed with attention to all relevant considerations, including general policy considerations, humanitarian considerations, and political and security circumstances that may change from time to time."
- The procedure, beyond being patently discretionary and possibly arbitrary, draws a distinction between a 'Visitor Permit' which does not allow for long-term residence in the oPt, "nor for any other action tending to establish a center of living in the Area, such as registering for studies of any kind, working in the Area, leasing or purchasing or renting real estate in the Area," and the formalization of the status of spouses, subject to submitting an application to the Palestinian Authority.
- It should be noted that applications received from the Palestinian Authority will be "approved in keeping with a policy to be defined by the political echelon and involving quotas which, if set, may change from time to time in accordance with the interplay of relevant considerations, including the political/security situation."
- The procedure makes clear that as far as Israel is concerned, for Palestinians there is no basic right to family life. The military government retains an absolute and sole discretion to deny family unification on "general policy grounds" which *prima facie* appear capricious, arbitrary - and as will be demonstrated below - unlawful.

The Normative Framework

- In situations of occupation, international humanitarian law allows occupying powers to restrict the freedom of movement of protected persons in some instances, which must be determined taking into account relevant provisions of human rights law.
- The law of belligerent occupation is part of customary international humanitarian law, essential parts of it being codified in the Hague Regulations on Land Warfare of 1899/1907, relevant provisions of the Fourth Geneva Convention (Art. 27 et seq., 48 et seq. GC IV) grant additional protections to those contained in the Hague Regulations. Israel denies the applicability of GC IV to the oPt, a view which is rejected by the international community and by the ICJ.
- The basic provision concerning the rights and duties of the occupying power is [Art. 43 Hague Regulations](#), which imposes on this power the duty to restore and ensure public life, order, and safety, which in modern terms is understood as a duty to ensure good governance. It must do so

"respecting, unless absolutely prevented, the laws in force in the country". This amounts to a prohibition to extend the law of the occupying power to the occupied territory or to enact new laws unless they are necessary to ensure the wellbeing of the protected population of the occupied territory.

- In general terms, the duty of good governance means a duty to ensure and promote the well-being of the population. Whatever these responsibilities are, creating conditions which make the presence of many persons precarious is the contrary of promoting the well-being of the population. It is, therefore, a violation of the duty of good governance.

The Right to Receive and Provide Humanitarian Relief, including Development Assistance

Page 3 of 8



- Under [Article 59\(1\) of the GC IV](#), 'if the whole or part of the population of an occupied territory is inadequately supplied, the occupying power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal.' This provision embodies two separate obligations, pertaining to consent to relief operations and facilitation of the relief operation. The GC IV does not provide the occupying power any ground for rejecting relief. Accordingly, the occupying power cannot refuse access within its territory to material and humanitarian personnel if relief operations are offered by other states, international organizations, or NGOs who are impartial and humanitarian.
- The provisions of GC IV concerning relief are formulated in a way that relates to the consignment of goods only. But relief in this sense is not limited to such consignments, as is indicated by the words "in particular" in Art. 59 (2) GC IV. It has become a widespread practice, which amounts to the formation of a rule of customary international law, that relief operations are conducted by relief personnel, be it foreign or local.
- In the case of foreign relief operations, a duty of admission and working permission is reasonably implied in the duty to facilitate relief. The same duty also comprises a right to employ local personnel. Admission formalities, including visas, may be required, but they must be handled in a way that does not compromise the viability of relief actions. This is implied in the duty to "facilitate" relief schemes (Art. 59 GC IV). In particular, visa requests must be handled swiftly. Visas may not be denied on arbitrary grounds.
- According to [Art. 71 AP I](#) and the corresponding rule of customary law, relief personnel must be "respect and protected". This means that the occupying power must allow them to fulfill their tasks and may not unnecessarily prevent them from discharging their functions. This includes freedom of movement, and only in cases of "imperative military necessity" may their movement be temporarily restricted.
- Israel must allow relief consignments and personnel clothing offered by impartial states, international organizations, and NGOs, and refusal may be seen as a grave breach of the GC IV and war crime under Article 8(2)(b)(xxv) of the ICC Statute, which includes 'willfully impeding relief supplies as provided for under the Geneva Conventions.'

Higher Education

- While international humanitarian law focuses - almost exclusively - on the provision of primary and secondary education in conflict contexts, including the situation of belligerent occupation, the failure to protect higher education will likely result in losing a future generation of scientists, engineers, physicians, teachers and leaders among Palestinian society.
- Higher education should be protected because it primarily helps build human capital and growth and helps mitigate the risk and effects of conflict and prolonged occupation. The relevant IHL provisions on education continue to apply and are supplemented by rules of human rights law that provide additional protection, as explicitly addressed in the ICESCR, the CRC, and all three non-discrimination treaties (CERD, CEDAW, CRPD).
- Education of children and adults falls under the scope of the duty to restore and ensure public life under Article 43 of the Hague Regulations. Should Israel prevent the access to educational institutions, it would not be complying with the minimum standard of conduct (non-interference) required by Article 43. As noted above, human rights law is a source of more detailed obligations incumbent upon Israel. [Article 13 \(c\) of the ICESCR](#) recognizes that the right to education applies to everybody and that:

Page 4 of 8



"Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education."

- Since the right to education entails physical accessibility of educational facilities, Israel, as the occupying power, has the duty to facilitate the access of lecturers, researchers, and students on a non-discriminatory basis. Israeli refusal to grant permits to potential visiting academics is a violation of international law.

Family Rights

- [Art. 46 Hague Regulations](#) imposes on the occupying power the duty to respect certain basic rights of the population: in particular "family honour and rights" as well as "private property". The restrictions on the freedom of movement render the enjoyment of the rights impossible in a number of respects. The restrictions also prevent access to, and use of, a person's property. This amounts, for all practical purposes, to a violation of the right to private property.
- According to [Art. 27 GC IV](#), protected persons are entitled "to respect for their persons, their honour, their family rights..." As already noted with regard to Art. 46 of the Hague Regulations, the restrictions of the freedom of movement involved in the excessive limitations of residency rights render, in particular, the enjoyment of family rights impossible. Therefore, Art. 27 GC IV is violated.
- The obligation to respect family rights, already expressed in Article 46 of the Hague Regulations, is intended to safeguard the marriage ties and that community of parents and children which constitutes a family, "the natural and fundamental group unit of society". The family dwelling and home are therefore protected; they cannot be the object of arbitrary interference. Respect for family rights implies not only that family ties must be maintained, but further that they must be restored should they have been broken as a result of wartime events.

- The general prohibition of discrimination, as guaranteed by all human rights codifications, is applicable to the situation of occupied territories. In addition to Article 27 GC IV, [Article 75 AP I](#) has restated the ban on discrimination in a comprehensive manner. Accordingly, residents of an occupied territory enjoy protection by international humanitarian law 'without any adverse distinction based upon race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria' (Article 75, para. 1). Any discrimination for reasons of race, nationality, language, religions convictions and practices, political opinion, social origin or position, or similar consideration is unlawful (Article 27 GC IV; Article 75 AP I).
- [ICCPR Art. 17](#) protects everyone against "arbitrary or unlawful interference with his privacy, family, home or correspondence". Revocation of the right of residency is a denial of the right to home and family. Any measure preventing members of a family from living together, such as measures affecting the right of residency, constitute a violation of the right to family life. The denial of a residency permit deprives the addressee of any such refuge. Whether this is "unlawful" depends, on the applicability of the legislation mentioned above.
- The right of a person to enter his or her own country recognizes the special relationship of a person to that country. It also implies the right to remain in one's own country. It includes not only the right to return after having left one's own country; according to the jurisprudence of the Human Rights Committee it may also:

"Entitle a person to come to the country for the first time if he or she was born outside the country. The right to return is of the utmost importance for refugees seeking voluntary repatriation. It also implies prohibition of enforced population transfers or mass expulsions to other countries."

Page 5 of 8



- The UN Human Rights Committee stated in [General Comment No. 27](#) (at para. 20) that:

"The scope of "his own country" is broader than the concept "country of his nationality". It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien."

- The denial of residency rights may also constitute a violation of the equal protection clause of [Art. 26 ICCPR](#) providing that prohibiting any discrimination and guarantying to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- The Human Rights Committee considered the meaning of "arbitrarily" in [General Comment No. 27](#). It stated (at para. 21) that:

"[t]he reference to the concept of arbitrariness in this context is intended to emphasize that it applies to all State action...; it guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable."

- In sum, freedom of access and movement – including in establishing a family, seeking an tertiary education or gainful employment – are a precondition of adequate living conditions guaranteed by diverse provisions of international humanitarian law and of human rights law: the Hague Regulations, GC IV, ICCPR and ICESCR. Another important source is the right to a private sphere and family life, guaranteed by Art. 46 of the Hague Regulations and by Art. 17 ICCPR. Concerning the corresponding provision of the [ECHR](#), the [ECtHR held](#):

"(T)he decisions taken by States in the immigration sphere can in some cases amount to interference with the right to private and family life secured by Art. 8 § 1 of the Convention, in particular where the persons concerned possess strong personal or family ties in the host country which are liable to be seriously affected by the application of the measure in question."

The Applicability of the Interim Agreement

- The analytical departure point is that the legal status of the population shall not be infringed by any agreement concluded between the authorities of the occupied territories and the occupying power, nor by annexation of the whole or part of the territory. According to [Article 47 GC IV](#) this provision is intended to prevent local authorities, under pressure from the occupying power, from making concessions, to the detriment of the inhabitants of the territory and which may impair their legal status. Any such agreement is void.
- Likewise, protected persons cannot renounce their rights under the Fourth Geneva Convention. Article 8 GC IV provides that in no circumstances can inhabitants of an occupied territory renounce their rights under GC IV. Whether on their own initiative or as a result of coercion, such a renunciation would be null and void. This is to prevent the occupying authorities, acting from a position of strength, from exploiting the weak position of the inhabitants of the territories and thus to abrogate, apparently legally, the protection guaranteed by international law.
- Absent any formal denunciations, the agreement is a source of obligations both for the Palestinians and for Israel. As noted above, the law of occupation allows belligerents to conclude such agreements, which must not alter the protection offered by the GC IV and must be interpreted coherently with the principle of self-determination of peoples.

Page 6 of 8



- The 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, concluded between the Government of Israel and the Palestine Liberation Organization (PLO), provides pursuant to [Annex III Article 28](#) that:

"Powers and responsibilities in the sphere of population registry and documentation in the West Bank and the Gaza Strip will be transferred from the military government and its Civil Administration to the Palestinian side."

- *Prima facie*, the Interim Agreement provided the Palestinian Authority the power to issue certificates and documents of all types, while Israel was to maintain only a copy of the population registry, which it would update with information provided to it by the relevant Palestinian authorities. In practice, the Israeli military government retained control of the population registry after signing the Interim Agreement.
- In particular, Art.28 provides that the "Palestinian side has the right, with the prior approval of Israel, to grant permanent residency in the West Bank and the Gaza Strip to: (a). investors, for the purpose of

encouraging investment; (b). spouses and children of Palestinian residents, and (c). other persons, for humanitarian reasons, in order to promote and upgrade family reunification."

- Finally, Art.28 (14) provides that "persons from countries having diplomatic relations with Israel who visit the Gaza Strip and the West Bank shall either be required to obtain the aforementioned visitor's permit or to hold a valid passport and an Israeli visa, when required. Such visitors can enter Israel during the validity of their visit permit, without any need for another permit."
- In sum, the procedure is incompatible with the purpose, spirit, and language of the Interim Agreement, which is a binding treaty under international law as it was concluded between two subjects of international law, a State (Israel) and a national liberation movement (the PLO). Accordingly, the Israeli procedure is illegal under international law.

Conclusions and Recommendations

- Movement, access, and residence in occupied Palestinian territory is governed by a variety of international law rules and, in particular, by international humanitarian law, human rights law, the principle of self determination of peoples, and the agreements concluded between Israel and the PLO.
- Palestinians enjoy freedom of movement under the ICCPR, to be interpreted and applied in light to international humanitarian law. Israel can restrict freedom of movement only to restore and ensure public order, following the rules in force before the occupation. Any restrictions must be necessary, proportionate, temporary, reversible, and noncollective.
- The procedure enacted by the Israeli military government is in violation of the duty to restore and ensure public order and civil life in occupied territory. The restriction of freedom of movement disrupts the economic, social, and cultural life of the area with no justification.
- The Palestinian people, writ large, are directly injured in relation to the Israeli violations should the procedure be implemented, be it in part or in full. The Palestinian people, through the PLO, have a right to invoke Israeli responsibility, to demand cessation and reparation, and to adopt countermeasures.



- The fact that Israel is violating some [peremptory norms of international law](#) – including the basic rules of international humanitarian law, the prohibition of racial discrimination, and the right to self-determination - produce *erga omnes/ erga omnes partes* obligations, and has consequences for the regime of state responsibility. States not directly injured by Israeli violations and international organizations must not recognize as lawful the procedure and must cooperate to bring it to an end through measures permitted by international law. Under Common Article 1 to the GCs, all the states parties must cooperate to ensure that Israel complies with international humanitarian law.
- States not directly injured and international organizations can exercise political and diplomatic pressure, adopt measures of retortion, invoke Israeli responsibility before political, institutional (e.g.,

the Un Security Council, the EU Council), and judicial fora, as well as adopt countermeasures in compliance with the relevant rules of international law, to induce Israeli compliance with its international obligations and the rescinding of the procedure forthwith.

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Itay Epshtain

Itay Epshtain
Special Advisor
Association of International Development Agencies