



AL-HAQ

PALESTINIAN EDUCATION UNDER ISRAELI OCCUPATION

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According to the UN Commission on Human Rights' Special Rapporteur on the right to education, “military occupations are another appreciable curb on the human right to education, the most egregious example being the Israeli-Palestinian conflict”.¹ Indeed, Israeli occupation threatens the education of new generations of Palestinians living in the Occupied Palestinian Territories (OPT) and consequently endangers the future of a people. The problem is deepened by the fact that more than half of the Palestinian population is less than 18 years old. This paper will examine, from the perspective of international law, Israeli curbs and attacks on education in the OPT during the current *intifada* (since 29 September 2000).

Both international human rights law and international humanitarian law (IHL) protect education. Israel's obligation to apply these bodies of law in the OPT is almost universally accepted, Israel itself being a notable exception, and has recently been confirmed by the International Court of Justice (ICJ).² Under IHL, Israel is in effective control of the OPT and therefore has the rights and duties of an Occupying Power. Under international human rights law, Israel can be held responsible for ensuring respect of human rights because it exercises *de facto* jurisdiction over the OPT. Whereas IHL protects educational institutions, international human rights law focuses on the individual person's right to receive an adequate education.

The UN Committee on Economic, Social and Cultural Rights (CESCR) – the monitoring body of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – has clarified that education at all levels must be, *inter alia*, available, accessible and acceptable.³ In stark contrast to this, Israel is in the process of making education in the OPT *inaccessible* through the imposition of severe movement restrictions, *unavailable* through attacks on educational institutions, facilities and personnel, and *unacceptable* by allowing the quality of education to dwindle as an indirect effect of the two other trends. Finally, security concerns do not legalise these facts.

¹ “Report of the Special Rapporteur on the Right to Education”, UN Doc. E/CN.4/2005/50, 17 December 2004, para. 124.

² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ (2004) 61, para. 101, 111-113, <http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm> (all web sites referenced in the present study were accessed in April 2005).

³ CESCR, *General Comment No. 13 – The Right to Education*, para. 6, <http://www.ohchr.org/english/bodies/cescr/comments.htm>.

MAKING EDUCATION INACCESSIBLE

The main problem with regard to the right to education in the OPT flows from violations of the right to freedom of movement. Israeli movement restrictions in the OPT take many forms, notably physical barriers, curfews and travel prohibitions.

Movement Restrictions in and from the OPT

Movement restrictions within the OPT are known as 'internal closures'. Since the beginning of the current *intifada*, the internal closure system has become increasingly institutionalised, culminating on 14 May 2002 in the division of the West Bank into eight isolated territorial units based around major Palestinian population centres. Simultaneously, a new permit system was introduced whereby Palestinians in the West Bank were required to obtain special permits from the Israeli authorities to travel from one Palestinian city to another, including occupied East Jerusalem. These movement restrictions are enforced by a complex system of checkpoints and other physical barriers.

Physical barriers

In November 2004, the UN Office for the Coordination of Humanitarian Affairs (OCHA) recorded a total of 61 checkpoints, six partial checkpoints, 102 roadblocks, 374 earth mounds, 28 earth walls, 48 road gates, 61 trenches and 39 observation towers throughout the West Bank. This amounts to a total number of 719 physical barriers to movement. Similarly in July 2004, OCHA recorded in the Gaza Strip a total of five checkpoints, nine roadblocks, 12 earth mounds, 10 road gates, 46 military posts, 67 observation towers and five commercial entries, totalling 154 physical barriers to movement in the Gaza Strip.⁴ In addition, the Israeli occupying forces continued to establish 'flying checkpoints', which are manned mobile roadblocks. At all checkpoints, whether permanent or 'flying', Palestinians must present identification and potentially be subject to searches and long delays.

This system has a severe impact on the exercise of the right to education. For instance, from April 2001 to December 2003, with only two brief interruptions, a permanent Israeli military roadblock on the road from Ramallah to Birzeit (Surda Roadblock) made access to Birzeit University very difficult for students and faculty. The time necessary to reach the university was multiplied and became unpredictable. Some days no access was possible. During the second semester of the 2001/2002 academic year, two-thirds of the scheduled teaching days were lost and consequently the academic year prolonged by two months, at the expense of the summer session. Even after the dismantling of the roadblock, 'flying checkpoints' sometimes unpredictably block the road to the University.⁵

Even when checkpoints and other obstacles are not set up near an educational institution, they may hamper the access to education for students coming from afar. This is particularly a problem for teachers of all levels and students at secondary and higher

⁴ OCHA, "West Bank Closures Map", November 2004; and "Gaza Strip Closures Map", July 2004.

⁵ Birzeit University, "Violations Against the Birzeit University Community (2001-2002)", Violations Report, December 2002; "Violations Against the Birzeit University Community (2003)", Violations Report, 17 January 2004; "Impact of the Surda Roadblock", Overview, 21 March 2003; Skip Schiel, "Two Thirds of Students Unable to Reach Birzeit University", *Birzeit University Right to Education Campaign*, 22 September 2004; all available from <http://right2edu.birzeit.edu/news>.

educational institutions, all of whom tend to travel a greater distance than do pupils at primary schools.⁶ This has resulted in dramatic demographic changes in the student population of Birzeit University, including an almost total elimination of students from Gaza or Jenin.⁷

According to Machsom Watch, in Nablus in May 2004 only students attending institutions that had agreed with Israeli occupying forces representatives to prohibit all political activity on campus were allowed to pass through the checkpoints. Students at universities that had refused to do so were denied passage at the checkpoints.⁸

The Annexation Wall

A specific kind of physical barrier that deserves to be examined separately, the Annexation Wall is a durable physical restriction on the freedom of movement both within and from the OPT. Palestinians seeking to enter the area between the Wall and the Green Line⁹ - notably including East Jerusalem - must obtain a permit to do so.

Sometimes, the Wall separates a locality from its school, or a professional school from an institution where the students go to get practical experience, such as nursing students at a hospital.¹⁰ A survey of the Palestinian Central Bureau of Statistics (PCBS) on the impact of the Annexation Wall on the Palestinian localities that it passes through, found that a very small percentage of the people surveyed left their education as a direct consequence of the Wall (0.1 percent). However, it also found that the one most common reason given for abandoning their education (26 percent) was economic hardship, to which the Wall is likely to have been a significant contributing factor, most notably by the confiscation of agricultural land, the uprooting of olive trees and the disruption of commercial flows. Moreover, members of 81 percent of the households surveyed had experienced absences from university or college as a result of the closure. Since the single most common method of coping with the Wall is using alternative roads (81.5 percent), the number of people forced to leave or change their place of education is likely to rise considerably as the Wall is completed and alternative roads become inaccessible.¹¹

Curfews

Curfew is the most extreme form of closure, confining inhabitants of the area under curfew to their homes for extended periods of time. The practice of curfew was heavily

⁶ Save the Children UK, "Education Under Occupation", March 2002, pp. 11, 31, http://www.savethechildren.org.uk/temp/scuk/cache/cmsattach/611_educunderocc.pdf; Rita Giacaman *et al.*, The Ramallah/al-Bireh/Beitunia Urban Center, 6 December 2002, pp. 5-6, <http://electronicintifada.net/cgi-bin/artman/exec/view.cgi/4/950>.

⁷ Birzeit University, "Barriers to Education", *Right to Education Monitor*, July 2004, pp. 5-6, <http://right2edu.birzeit.edu/downloads/pdfs/BarrierstoEducation.pdf>.

⁸ Daphna Banai, "Harassment of Nablus Students at Checkpoints", Machsom Watch, 10 May 2004, para. 1, <http://right2edu.birzeit.edu/news/article154>. On the legality of this specific practice, see Articles 1(1)(a) and 3(a) of the Convention against Discrimination in Education, to which Israel is a State Party.

⁹ The 1949 armistice demarcation line between Israeli and Arab forces.

¹⁰ For the example of Al-Quds University, *supra* note 7, pp. 8-9.

¹¹ PCBS, "Impact of the Expansion and Annexation Wall on the Socioeconomic Conditions of Palestinian Households in the Localities in which the Wall Passes Through, July 2004", 24 October 2004, http://www.pcbs.org/press_r/pres_re.aspx.

relied upon during the Israeli military incursions of 2002 into the West Bank.¹² From 2 April to 10 May 2002, Bethlehem was under a total 24-hour curfew, with one or two hours of relief every few days. Similarly, between 16 June and 15 August 2002 the cities of Jenin and Nablus spent roughly 1,000 and 1,300 hours under curfew, respectively.

During curfews, it is impossible for students to access their educational institutions. In areas and during periods where curfews are common, this has an extremely disruptive effect on education, as illustrated by the situation in Bethlehem in 2002,

The Directorate of Education in Bethlehem has put an emergency plan in place to follow up the attendance of the Twelfth Secondary Grade (*Tawjihi*) in centres identified by the Directorate. These centres are not publicised for fear that the Israeli army discovers them and disrupts the centres. In this context, nine centres have been opened for the *Tawjihi* students in areas under curfew. There are 2,150 *Tawjihi* students in the Governorate, and of them approximately 900 students who live in areas under curfew have started to receive their education in these centres.

This matter was not easy because the students and teachers were subjected to risk of the curfew. Students started to study in schools which were not theirs, and with students whom they do not know coming from different schools. Despite that, the education of *Tawjihi* students went on secretly and in a semi-regular way. Attendance at these centres took place even on holidays, in addition to two additional periods of study everyday. Moreover, the semester was extended from 23 December to 31 December 2002 to make up what the students lost during the curfews. This will be reflected on the annual vacation.

Extract from Al-Haq Affidavit No. 1055/2002

Given by: Sami Kamel Muhammad Mrawi (Deputy Director of Education in Bethlehem and a resident of al-Doha, Bethlehem Governorate)

As a result of such movement restrictions, the United Nations Children's Fund (UNICEF) estimated in November 2004 that in the OPT over "226,000 children in 580 schools find going to school impossible, irregular or very risky."¹³

Travel prohibitions

Israeli authorities place substantive restrictions on Palestinians in their ability to travel. Internally, since the beginning of the current *intifada*, Palestinians are not allowed to go between the Gaza Strip and the West Bank. This completely blocks the movement of students from Gaza to attend universities in the West Bank, and vice versa.¹⁴ Internationally, students must, often with great difficulty, obtain special travel documents from the Israeli authorities, and obtain a re-entry visa prior to their departure, without

¹² See the Palestine Red Crescent Society curfew tracking slides at:

http://www.palestinercs.org/Presentation%20PowerPoint%20Curfew%20Tracking%20July%202002_files/frame.htm.

¹³ "UNICEF Humanitarian Action, Occupied Palestinian Territory, Donor Update", 10 November 2004, p. 2, http://www.unicef.org/oPt/OPT_DU_10_Nov_2004.pdf.

¹⁴ For the example of Birzeit University, see "Violations Against the Birzeit University Community (2001-2002)", *supra* note 5, p. 1.

which they will not be allowed to return. The exit and entry visa requirement is used by the Israeli authorities to impose conditions on Palestinians; those who do not accept them are denied visas. In the first six months (April-October 2004) of the closure of Rafah Terminal on the Palestinian-Egyptian border to all Palestinians between 16 and 35 years of age, at least 1,500 university students from the Gaza Strip were prevented from travelling to attend their universities abroad.¹⁵ In November 2004 four Birzeit University students from Gaza were forcibly transferred to the Gaza Strip and thus forced away from their place of learning. They have since been allowed to return.

Women

Girls and women suffer certain specific consequences of these movement restrictions. Their families sometimes perceive the long detours to reach their educational institution as a threat to their safety and honour. The prospect of a young woman living alone at the place of her university, away from her parents, is also likely to be culturally unacceptable. Consequently, females are more prone than males to withdraw from education.¹⁶ For instance, there are no institutions of higher education and/or sciences inside the al-Mawasi area in the Gaza Strip. All access to and from al-Mawasi passes through a single Israeli checkpoint. In 2005, due to the restrictions on travel and fear of harassments and humiliating security searches, only 15 girls (out of 689 registered female students) chose to take science classes outside al-Mawasi, while only 56 female students attend any form of higher education.¹⁷

Movement restrictions & education under international law

The most immediate negative impact of movement restrictions on the right to education concerns its physical accessibility:

education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a “distance learning” programme).¹⁸

In light of the lack of distance learning programmes, Israel’s severe movement restrictions constitute a breach of its obligation under international law to “avoid measures that hinder or prevent the enjoyment of the right to education.”¹⁹ The ICJ Advisory Opinion on the Wall specifically found that the construction of the Wall and its associated laws impede the liberty of movement of Palestinians in the OPT, and – consequently – also the exercise of their right to education.²⁰

¹⁵ Palestinian Centre for Human Rights, “Hundreds of Gazan Students Are Still Prevented from Traveling Abroad to Attend Their Universities”, 23 October 2004, <http://www.pchrgaza.org/files/PressR/English/2004/131-2004.htm>.

¹⁶ Amnesty International, “Conflict, Occupation and Patriarchy – Women Carry the Burden”, MDE 15/016/2005, 31 March 2005, p. 15, <http://web.amnesty.org/library/index/engmde150162005>; Save the Children, *supra* note 6, p. 25.

¹⁷ Information from Palestinian Centre for Human Rights Fieldwork Unit, cited in Al-Haq, the Palestinian Centre for Human Rights, and the Women’s Centre for Legal Aid and Counselling, “NGO Alternative Report in Response to the ‘List of Issues and Questions with regard to the Consideration of Periodic Reports’”, May 2005, p. 12.

¹⁸ CESCR, *supra* note 3, para. 6(b)(2).

¹⁹ CESCR, *supra* note 3, para. 47.

²⁰ ICJ, *supra* note 2, p. 61, para. 134.

As for IHL, Article 50(1) of the Fourth Geneva Convention provides that the “Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.” According to the International Committee of the Red Cross’ (ICRC) authoritative interpretation of this provision,

the occupying authorities are bound not only to avoid interfering with [the activities of children's institutions], but also to support them actively and even encourage them if the responsible authorities of the country fail in their duty.²¹

Preventing access to these institutions can only be characterised as ‘interference’ by the Israeli authorities, and therefore breaches Article 50(1) of the Fourth Geneva Convention.

MAKING EDUCATION UNAVAILABLE

Not all Israeli violations of the right to education take the form of movement restrictions. Sometimes, the educational institutions themselves come under direct assault. These acts contradict the requirement that education has to be *available* for the right to education to be fulfilled, as noted by the CESCR.²²

Direct assaults on education in the OPT

Israeli assaults on educational institutions in the OPT include raids on their premises, physical attacks with destruction of facilities, targeting of teachers and closure or occupation of buildings.

Invasions and disruption of education

The Ministry of Education and Higher Education (MEHE) has so far reported 1,125 cases of school disruption and 50 cases of school evacuations.²³ For instance, on 8 February 2005 at 7:50 am, two Israeli soldiers broke through the gate of the al-Khader Boys Secondary School and began searching in classrooms for a boy who had allegedly thrown stones at them.

The two soldiers then entered ninth grade B in which there were 40 students aged 16 years old. The officer was carrying the stick of a broom and behaved nervously in front of the students. The students began laughing. The soldier shouted at the students and hit the stick on one of the tables and the stick broke. This caused the students to break out into chaos and immediately the soldier aimed his gun (a M-16) towards the students, which made the students shout and the teachers gather

²¹ ICRC, *Commentary on the IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, Geneva, 1958, p. 286.

²² See *supra* note 3.

²³ Ministry of Education and Higher Education, Assessment “15” – The Effect of the Israeli Occupation on the Palestinian Education 28/9/2000 – 13/03/2005, p. 3, <http://www.mohe.gov.ps/textdoc/assE.doc>.

together. The officer felt that the situation had become complicated and so he calmed himself and threatened to close the school if the student does not give himself up. At 8:30 he left the school with the other soldier.

Extract from Al-Haq Affidavit No. 2215/2005

Given by: Theeb 'Abd-al-Hamid Theeb Najajra (educational counselor in al-Khader Boys Secondary School and a resident of Nahhalin, Bethlehem Governorate)

Attacks on educational institutions & destruction of their property

Attacks on schools are a common occurrence. According to MEHE, there have been over 300 physical attacks on buildings devoted to education since the beginning of the current *intifada*.²⁴ Such attacks also target United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) schools²⁵ and MEHE itself. On 4 April 2002, the Israeli military attacked the Ramallah headquarters of the Palestinian Ministry of Education and proceeded to damage or confiscate vast amounts of property.²⁶ Such attacks and instances of destruction have an obvious disruptive effect on the educational process.

[T]wo military jeeps passed by the school and there were not any confrontations. Then suddenly from the two jeeps a gas canister was thrown at the first classroom. A soldier got out of the jeep and threw that canister through the window of the classroom. The students would have suffocated but for the teachers' efforts, which helped the small children of six years old.

Extract from Al-Haq Affidavit No. 87/2001

Given by: 'Adel Khalil Hushiyya (teacher in al-Zir Basic School for Boys and a resident of Yatta, Hebron Governorate)

Targeting teachers

Killing, injury, detention or expulsion of teachers primarily raise questions of their right to life, liberty and security of person, but such acts also concern the right to education of their students. According to MEHE, as of March 2003 there had been 32 teachers killed, 176 teachers detained and 54 teachers injured.²⁷ In addition, Birzeit University reports that two of its foreign faculty were denied visa renewals and were consequently unable to re-enter the country.²⁸ At approximately 7:30 in the morning on 27 March 2004, Israeli soldiers at the barrier at the entrance to al-Ramadin village stopped 11 UNRWA teachers on their way to their school located inside the village. They proceeded to severely beat, without provocation, one of the teachers. The teacher reported that, after the beating,

²⁴ *Ibid.*

²⁵ "UNRWA Condemns Rafah School Shooting", Press Release, UNRWA, 2 June 2004, <http://right2edu.birzeit.edu/news/article163>.

²⁶ Dr. Naim Abu Hommous, "Military Attack on Ministry of Education Headquarters in Ramallah", *Ministry of Education and Higher Education*, 4 April 2002, <http://right2edu.birzeit.edu/news/article166>. The Ministry of Education was since combined with the Ministry of Higher Education to form MEHE.

²⁷ Ministry of Education and Higher Education, *supra* note 23, p. 1.

²⁸ "Violations Against the Birzeit University Community (2003)", *supra* note 5, p. 4.

My colleagues helped me and took me to the Municipality clinic in al-Dhahriyya which was around five kilometres away. There, I had an X-ray and some medicine, and thank God that there were no fractures but only severe bruises. I returned home and since then I have not returned to work.

Extract from Al-Haq Affidavit No. 1711/2004

Given by: 'Ala' Younes Muhammad Battat (UNRWA teacher and a resident of al-Dhahriyya, Hebron Governorate)

Occupation or closures of educational institutions

According to MEHE, 43 schools have been turned into military bases.²⁹ This includes several UNRWA schools.³⁰ Furthermore, there have been numerous closures of educational institutions, sometimes only for the day, sometimes for many months. For instance, Birzeit University has been subject to multiple *ad hoc* closures of its campus.³¹ According to MEHE, 10 schools and two universities have been subjected to lengthy closures since the beginning of the current *intifada*.³² The universities that were closed are Hebron University and the Palestine Polytechnic University, both situated in Hebron.³³ The closures lasted from January to August 2003.³⁴ In case of occupation or long-term or permanent closure of educational institutions, these become unavailable for educational purposes and the students will have to be re-directed towards other schools, which are almost certainly further away. Students will then confront movement restrictions.

Direct assaults on education & international law

These actions run contrary to the object and purpose of Article 50(1) of the Fourth Geneva Convention. Under the ICRC's authoritative interpretation of this provision,

the occupying authorities are bound not only to avoid interfering with [the activities of children's institutions], but also to support them actively and even encourage them if the responsible authorities of the country fail in their duty.

The Commentary goes on to specifically condemn acts of requisitioning: "The Occupying Power must therefore refrain from requisitioning staff, premises or equipment which are being used by such establishments."³⁵ This covers occupying school premises and using them as military camps or detention facilities.

²⁹ Ministry of Education and Higher Education, *supra* note 23, p. 3.

³⁰ "UN Slams Israeli Raids on Palestinian Schools", News Report, *Geneva*, 4 October 2004, <http://right2edu.birzeit.edu/news/article222>.

³¹ "Violations Against the Birzeit University Community (2001-2002)", *supra* note 5, p. 2.

³² Ministry of Education and Higher Education, *supra* note 23, p. 3.

³³ "Barriers to Education", *supra* note 7, p. 12.

³⁴ Greg Rollins, "Hebron University and Palestine Polytechnic University Reopened", *CPTNET*, 16 August 2003, <http://right2edu.birzeit.edu/news/article35>.

³⁵ ICRC, *supra* note 21, p. 286.

Acts of destruction and occupation are furthermore explicitly outlawed by Article 56 of the Hague Regulations. This provision, which reflects customary law, holds that the property of institutions dedicated to education, “even when State property, shall be treated as private property,” and forbids “all seizure of, destruction or wilful damage done to institutions of this character.” Schools, as well as the Palestinian Ministry of Education are institutions dedicated to education. All Israeli acts of occupation and destruction of educational facilities hence violate this provision.

As for human rights law, these assaults on teachers and educational buildings eliminate institutions that are vital to education. This is problematic in terms of the availability requirement of the right to education. According to the CESCR, students should have at their disposal adequate educational facilities such as shelter from the elements, competent teachers, teaching materials and, for institutions of higher learning, special facilities such as libraries, laboratories and computers.³⁶ The CESCR has specifically cited as an example of a violation of the right to education “the closure of educational institutions in times of political tension in non-conformity with article 4.”³⁷ As discussed below, such Israeli closures are not in conformity with Article 4 and they therefore violate human rights law.

MAKING EDUCATION ‘UNACCEPTABLE’

The CESCR has noted that for the right to education to be fulfilled, the education has to be of an *acceptable* quality.³⁸ However, Israeli restrictions of, and attacks on, education cannot help but have a negative effect on the overall quality of the education that is still being provided.

Declining quality of education in the OPT

Many factors contribute to the declining quality of the education offered. Inaccessibility or unavailability of educational facilities, such as classrooms, scientific laboratories, etc., eliminates essential support structures for teaching.³⁹ On 14 October 2003, over 100 Birzeit students and faculty members held a makeshift class at the checkpoint on the Ramallah-Birzeit Road which remained closed for the seventh consecutive day.⁴⁰ Educational materials such as books and equipment may also be held up.⁴¹ Finally, movement restrictions disrupt exams⁴² and have a negative impact on the intellectually stimulating atmosphere of institutions of higher learning. For instance, by early 2003 extracurricular activities at Birzeit University had nearly disappeared.⁴³

The violations also have a harmful effect on the educators. Rather than hiring teachers on the basis of their competence, UNRWA now has to emphasise geographic proximity

³⁶ CESCR, *supra* note 3, para. 6(a).

³⁷ CESCR, *supra* note 3, para. 59.

³⁸ CESCR, *supra* note 3.

³⁹ For the example of two Universities in Hebron, see Greg Rollins, *supra* note 31.

⁴⁰ “Learning at the Checkpoint: Birzeit University Students Protest the Continued Closure”, Report, Birzeit University, 14 October 2003, <http://right2edu.birzeit.edu/news/article45>.

⁴¹ For the example of Birzeit University, see “Impact of the Surda Roadblock”, *supra* note 5.

⁴² On this topic, see DCI/PS, “The Road to Higher Learning Blockaded by Israeli Tanks: Israeli Military Siege Has Disastrous Impact on Education for Palestinian Children”, 25 June 2002, <http://www.dci-pal.org/english/display.cfm?DocId=85&CategoryId=1>.

⁴³ “Impact of the Surda Roadblock”, *supra* note 5.

because of internal closures. Those teachers who still travel from afar tend to reach school late or exhausted. The restricted time available for teaching also leads the teachers to revert to less stimulating methods of learning.⁴⁴ In addition, many school days are simply lost due to teachers not arriving at the educational institution.

Finally, the students themselves are less capable of exercising their right to education, due to the repercussions that stressful journeys and attacks have on their mental health and ability to concentrate.⁴⁵ In Hebron, for instance, intense settler harassment of Palestinian children on their way to school has not been met by adequate preventive measures by the Israeli authorities. Other times, the Israeli occupying forces themselves are the direct cause of the problem. As a result of such actions, students are sometimes confined to home education, the quality of which is impossible to assess or ensure.

On [19 March 2005] when school finished, students went home and I left with the teaching staff at one in the afternoon. I was walking with the students when, all of a sudden, a patrol car appeared (a jeep with three soldiers around it) at a distance of 300 metres from the school gate. The soldiers aimed their guns at the girls in a provocative manner although there were no confrontations. This terrified the students. I tried to calm them and waited until all the students had passed. This situation happens daily in the morning and in the evening when students come to, or leave school. This provokes the teachers and frightens the students. That fear is reflected in their level of achievement.

Extract from Al-Haq Affidavit No. 2214/2005

Given by: Nadiya Mahmoud Ibrahim Zaghab, (principal of al-Khader Girls Secondary School and a resident of Beit Jala, Bethlehem Governorate)

The precise consequences of stress and emotional damage on the quality of education are very hard to measure, and no comprehensive study appears to have been carried out. A study covering the 2001/2002 academic year in the 48 schools that are operating in the towns of Ramallah, al-Bireh and Bitouniya found that all schools reported a serious decline in student achievement by the end of the academic year.⁴⁶ A separate field study carried out in January-February 2003 in Jenin, Nablus, Hebron, Rafah, Khan Yunis and Beit Hanoun districts or municipalities found that “teachers and administrators overwhelmingly believed that the quality of the education they could provide was being eroded.”⁴⁷ Consequently, there is a strong likelihood that the quality of education in the OPT has declined since the beginning of the current *intifada*.

Declining quality of education and international law

A declining quality of education in the OPT would fly in the face of the acceptability requirement of international law. The CESCR has specifically linked this requirement to the good quality of the form and substance of education.⁴⁸ Israel would then have to

⁴⁴ Save the Children, *supra* note 6, pp. 31-33.

⁴⁵ For studies documenting this trend, see Save the Children, “Growing up under Curfew”, March 2003, p. 24, http://www.savethechildren.org.uk/temp/scuk/cache/cmsattach/22_Curfew.pdf; Rita Giacaman *et al.*, *supra* note 6.

⁴⁶ Rita Giacaman *et al.*, *supra* note 6.

⁴⁷ Save the Children, *supra* note 45, p. 24.

⁴⁸ CESCR, *supra* note 3, para. 6(c).

cease taking measures that impact negatively on the quality of the education. But even without clear proof of a declining quality of education, Article 28 (1) (e) of the Convention on the Rights of the Child (CRC) obliges States Parties to “[t]ake measures to encourage regular attendance at schools and the reduction of drop-out rates.” Israel has taken few such measures and consequently it finds itself in breach of this provision.

ISRAELI INVOCATION OF SECURITY

Israel systematically claims that its actions are justified by security concerns. This raises separate questions of, on the one hand, whether this justification is at all recognised in theory as a valid exception to Israel’s relevant international obligations and, on the other hand, whether any security exceptions could actually justify the severe Israeli measures.

Security is rarely even a recognised exception

International humanitarian law, applicable during occupation, naturally integrates security concerns into its very fabric. A state cannot unilaterally add to this. It is true that some individual provisions allow for exceptional security concerns. However, none of the provisions cited here as relevant to education in the OPT contains any such exception.

Similarly, some human rights provisions allow a state to limit the exercise of a right for security reasons. As an illustration, Article 12(3) of the International Covenant on Civil and Political Rights allows for restrictions on the right to liberty of movement *inter alia* when “necessary to protect national security”. However, none of the articles on the right to education applicable to Israel contain any such provision.

Some human rights conventions contain a *general* provision allowing for certain restrictions to be placed on the exercise of all rights provided for in a given convention. The only example of this which is relevant to the present study is Article 4 of the International Covenant on ICESCR, which provides that the State may subject the rights provided for in the covenant “only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.” The CESCR has commented on this,

The Committee wishes to emphasize that the Covenant’s limitations clause, article 4, is primarily intended to be protective of the rights of individuals rather than permissive of the imposition of limitations by the State. Consequently, a State party which closes a university or other educational institution on grounds such as national security or the preservation of public order has the burden of justifying such a serious measure in relation to each of the elements identified in article 4.⁴⁹

Thus Israel has the burden of proof that all of its actions are justifiable from a security perspective. This leads to the question of whether it has shown this to be the case.

⁴⁹ CESCR, *supra* note 3, para. 42.

Israel regularly fails to show that its actions are justified

Israeli authorities usually give very inadequate explanations, or none at all, of the security reasons for their actions. Typically, it does not respect the general legal principle of proportionality, according to which the amount of force used in reply to security incidents should not exceed the disturbance created by them. The ICJ found that no qualifying clauses justified Israel's restrictions on the liberty of movement resulting from the Wall and its regime.⁵⁰ Moreover, the facts often suggest that security was not the real motivation behind Israel's actions. Al-Haq believes that the real goal is to make the population at large feel the costs of the *intifada* in order to create an internal societal pressure against resisting the occupation. Israel may not sacrifice education for the purpose of continued occupation.

Conclusion

Israel, as the Occupying Power in the OPT, routinely violates the human right to education of the Palestinian population. Moreover, Israeli interference with, and attacks on, educational institutions run contrary to the protection afforded by IHL to such institutions. Finally, no security exceptions justify these actions. Denying the right to education of generations of Palestinians ultimately threatens the very existence of a human rights culture in the OPT, since education is the prerequisite for knowing one's rights and exercising them, as well as knowing other people's rights and respecting them. Further, denying adequate education to a people threatens its ability to develop and prosper in a world where knowledge is increasingly important and ultimately threatens its capacity to realise itself as a nation.

⁵⁰ ICJ, *supra* note 2, p. 61, para. 136-137.