



THE RIGHT TO EDUCATION UNDER OCCUPATION: A CASE STUDY OF THE ARAB ORPHAN SCHOOL, EAST JERUSALEM

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INTRODUCTION

Described as “both a human right in itself and an indispensable means of realising other human rights,”¹ education is an essential tool in the preparation of young Palestinians for the challenge of rehabilitating their fragmented society, boosting their floundering economy, and building a future state. The continuing Israeli occupation significantly impedes education in the Occupied Palestinian Territory (OPT). As noted by the UN 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.”² There is substantial evidence that Israel is failing in its duties under international human rights and humanitarian law with regard to education. UNICEF has reported that 144 schools in the OPT were disrupted during the 2005/2006 academic year as a result of Israeli military activities, resulting in the disturbance of schooling for 64,712 students and 2,470 teachers.³ Research conducted in 2004 revealed that 226,000 children in 580 schools found going to school “impossible, irregular or very risky.”⁴

The Arab Orphan School in East Jerusalem was established in 1965 to provide free vocational education for Palestinian orphans. It is privately run by the Arab Orphan Society charitable organisation, and has graduated thousands of Palestinian students in a wide range of professions. Located in proximity to Beit Hanina village, the school fell within the area of jurisdiction of the Jerusalem Municipality after the 1967 war and Israel’s illegal annexation of East Jerusalem. The 'Atarot Israeli industrial zone was established in this area, while the villages surrounding the school remained within non-annexed Palestinian territory, resulting in the isolation of the school from the majority of its students and staff, who live in other parts of the West Bank. The school currently has approximately 120 students on its books, approximately a quarter of whom are boarders in the school and originally from various parts of the OPT. This study will examine the case of the Arab Orphan School to illustrate how the Israeli occupation affects the ability of Palestinian students to enjoy their fundamental right to education as guaranteed under international law. The school’s ability to function and its students’ ability to exercise this right have been inhibited by severe movement restrictions, and well as attacks on the school’s personnel and buildings.

¹ Committee on Economic, Social and Cultural Rights, *General Comment 13: The Right to Education*, UN Doc. E/C.12/1999/10 (8 December 1999), § 1.

² *Report submitted by the Special Rapporteur on the Right to Education, Mr. Verner Muñoz Villalobos*, UN Doc. E/CN.4/2005/50 (17 December 2004), para 124.

³ UNICEF, *Occupied Palestinian Territory: Selected Statistics*, Available at: http://www.unicef.org/oPt/Gaza_statistics_27_July_2006_Eng.pdf.

⁴ UNICEF Humanitarian Action, *Donor Update 10 November 2004*, p. 2. Available at: http://www.unicef.org/oPt/OPT_DU_10_Nov_2004.pdf.

MOVEMENT RESTRICTIONS AND THE RIGHT TO EDUCATION

Palestinian access to education is severely limited by movement restrictions imposed by Israel, the Occupying Power, inside the OPT. In September 2006 there were 528 physical obstacles to control and restrict Palestinian movement.⁵ These barriers to movement take various forms, including permanent and “flying” (mobile) checkpoints, roadblocks, dirt mounds, and road gates. In the areas it penetrates, the Annexation Wall constitutes the single most significant barrier to movement restricting the exercise by Palestinian children of their right to education. Teachers and students are often prevented from reaching their schools, being held for hours at gates in the Wall. As a result, more time may be spent travelling to and from school than in the classroom. Furthermore, teaching and learning are adversely affected by stress and fatigue.

The negative effects of the Wall on education will further increase as it moves towards completion – more communities will become isolated, and more roads inaccessible. The completion of the Wall in the 'Atarot area in early 2006 is testament to this, with the pre-existent access difficulties for students and teachers – 85% of whom hold Palestinian IDs – compounded further by the severing of the Arab Orphan School from the surrounding Palestinian villages in its catchment area, such as Bir Nabala. Since it was established in April 2006 as, according to Israel, the “Atarot terminal,” Qalandiya checkpoint provides the only channel of access to the school from the eastern side of the Wall. The internal closure system which limits Palestinian movement between West Bank cities, including occupied East Jerusalem, requires a special permit for West Bank ID holders to pass through Qalandiya checkpoint.⁶

The students and staff of the Arab Orphan School have been unable to secure such permits on a permanent basis. In September 2006, the Israeli civil administration issued temporary three-month permits to pass through the checkpoint, but only to a relatively small percentage of students and staff. It is unclear whether these permits will be renewed upon their expiration on 15 December 2006. Similar three-month permits were issued to students and staff in September 2005 to allow them to cross into the Israeli-defined Jerusalem Municipality in which the school is located, but the Israeli authorities refused to renew them for the rest of the academic year. This resulted in severe repercussions on the proper working of the school, especially after completion of the Wall and the establishment of “Atarot terminal” as the only point of access. The experience of Mahmoud Khdeir al-Froukh, a teacher at the school, illustrates this:

⁵ OCHA, *West Bank Closure Count and Analysis: September 2006*, p. 1. Available at: <http://tinyurl.com/ydfu76>.

⁶ The Arab Orphan School had a strong tradition of educating students from the Gaza Strip, but the tightening on freedom of movement between Gaza and the West Bank after 1994, and the closures implemented after the beginning of the second *intifada* in 2000, have made it impossible for any Gazan students to attend the school in recent years.

Since 5 April 2006, after the completion of 90% of the Wall in North Jerusalem and the opening of the so-called "Atarot crossing," reaching my school has become very complicated. I cannot go through the 'Atarot crossing, as it is only for people who hold permits, so I can only go from Ramallah to Bir Nabala through the new Rafat road. From there, I sneak through 'Atarot buildings near Bir Nabala village. Whether or not this route works depends on what presence the Israeli army has there on a given day. Between 5 April 2006 and 6 May 2006, I have been absent from school six days. On each of these days, I came from Bir Nabala and reached the beginning of 'Atarot but because there was such heavy Israeli army presence there, I returned home.

Extract from Al-Haq Affidavit No. 2955/2006

Given by Mahmoud Khdeir al-Froukh (resident of Ramallah, Ramallah Governorate, West Bank)

The same teacher is one of approximately 30 staff members who have been regularly unable to reach the school since the beginning of the new academic year, due to their failure to secure permits to enter the Jerusalem municipality:

Since the beginning of the current academic year, 2006/07, despite my many thorough attempts to obtain a permit from the Israeli civil administration to pass through 'Atarot border, the only crossing between Ramallah and Jerusalem, all my endeavours have failed. Since the beginning of this academic year on 25 August 2006, I have managed to reach my school only once and illegally, i.e. without a permit. On that day, I reached the school but my colleagues advised me to leave quickly, as the school is subject to continuous raids by the Israeli soldiers and my illegal presence at school would jeopardise both myself and the school administration.

Extract from Al-Haq Affidavit No. 3233/2006

Given by Mahmoud Khdeir al-Froukh (resident of Ramallah, Ramallah Governorate, West Bank)

Only nine staff members and a small number of students have been granted temporary permits to reach the school. The staff members who were denied permits, and are thus obstructed from carrying out their work at the school, currently still receive their salaries from the Arab Orphan Society that owns and runs the school. They are becoming increasingly fearful, however, that if the access problem is not resolved soon, they will lose their jobs.

The children who have been refused permits, meanwhile, are forced to attempt to evade the detection of the Israeli Border Police in order to avail themselves of their right to education. Ibrahim 'Aziz Abu-Ras is one such student:

My whole life has become horrible, because I am a student of the Arab Orphan School, which is completely separated from the West Bank. On 6 April 2006, I was near my school gate when a border patrol passed by. They took me in their jeep to the Border Guard Centre nearby, where I was compelled to sign a pledge not to enter an Israeli area. I told the Israeli officer that I am a Tawjihi student (General Secondary Certificate). He replied by telling me that I hold a West Bank identification card and my school is in Israel, so if I want to attend classes at that school, I must obtain a permit. I signed the pledge but continued to go to school because it is my final year.

Extract from Al-Haq Affidavit No. 2954/2006

Given by Ibrahim 'Aziz Abu-Ras (resident of Bir Nabala village, Jerusalem Governorate, West Bank)

Movement restrictions of this nature imposed by Israel are one of the most obstructive features of the occupation of the OPT, and entail widespread and systematic violations of the right to education.

Legal Analysis

The Right to Education

International human rights law is applicable also in times of armed conflict and occupation. Its *de jure* applicability 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).⁷ Enunciated in the Universal Declaration of Human Rights in 1948, the right to education was subsequently embedded in international law in the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child (CRC). Article 13 of ICESCR ensures the right of everyone to education. In addition, states are obliged under Article 28 of CRC to “take measures to encourage regular attendance at schools and the reduction of drop-out rates.” Israel is also bound by the Convention against Discrimination in Education, which obliges States Parties to eliminate and prevent the deprivation of “any person or group of persons of access to education of any type or at any level.” Thus, Israel has undertaken legal obligations to “respect, protect and fulfil” the essential features of the right to education, including accessibility.⁸ The ICJ has held Israel to be in breach of these obligations by virtue of its construction of the Wall and associated regime.⁹

The education of the protected population in an occupied territory is further protected under the norms of international humanitarian law. Although the Oslo Accords established Palestinian responsibility over the administration of education in the OPT,¹⁰ they were never intended to determine the ultimate legal responsibility of Israel towards the Palestinian population; this was left to final status negotiations.¹¹ Moreover, Article 47 of the Fourth Geneva Convention establishes that an agreement

⁷ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ (2004), para. 111.

⁸ See *supra* note 1, § 50.

⁹ See *supra* note 7, para. 134.

¹⁰ Declaration of Principles on Interim Self-Government Arrangements, 13 September 1993, Article VI(2).

¹¹ Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995, Article XXXI(6).

between the authorities of the occupied territory and the Occupying Power cannot deprive protected persons in the occupied territory of the benefits provided by the Convention. With Israel still in effective control of the OPT, it is clear that the Oslo Accords did not extinguish Israel's obligations under the law of occupation.

Israel is therefore bound by the provisions of international humanitarian law which purport to protect educational institutions and ensure their proper functioning. Article 50 of the Fourth Geneva Convention stipulates 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," and that, "should the local institutions be inadequate for the purpose, the Occupying Power shall make arrangements for the maintenance and education... of children who are orphaned or separated from their parents." The ICRC's authoritative interpretation of this provision emphasises that Article 50 imposes not merely an obligation to refrain from adversely affecting the workings of educational institutions in the occupied territory but "also to support them actively and even encourage them if the responsible authorities of the country fail in their duty."¹² It is clear, therefore, that as an Occupying Power in effective control of the OPT, Israel has, at a minimum, an obligation to facilitate the exercise of the right to education.

Under Article 6(3) of the Fourth Geneva Convention certain provisions of the Convention – including Article 50 – cease to apply "one year after the general close of military operations." The ICJ construed this provision as meaning one year after the general close of military operations leading to the occupation, and accordingly found that, as the military operations leading to the occupation of the OPT in 1967 ended a long time ago, the provisions enumerated in Article 6(3) are no longer applicable.¹³ However, in Al-Haq's view, the situation in the OPT is a belligerent occupation and by nature an international armed conflict between the state of Israel and the Palestinian people holding the right to self-determination.¹⁴ Notably, the Court misinterpreted the phrase "the general close of military operations" contained in Article 6 as referring to "the military operations *leading to the occupation*."¹⁵ According to the drafters of the Fourth Geneva Convention, "the general conclusion of military operations means when the last shot has been fired."¹⁶ This is clearly not the case in the OPT, where military operations are on-going. Surely the drafters of Article 6 did not intend for children to be deprived of education or medical care in the event of an occupation exceeding one year. Consequently, Al-Haq believes that the Occupying Power remains bound by the obligations under Article 50 to ensure and facilitate the proper working of educational institutions in the OPT.

By virtue of its obstructive conduct with regard to the working of, and access to, the Arab Orphan School, Israel is therefore acting in clear contravention of its obligations as they pertain to education under international human rights and humanitarian law.

¹² ICRC, *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva, ICRC, 1958), p. 286.

¹³ See *supra* note 7, para. 125.

¹⁴ *Ibid.*, para. 118.

¹⁵ Emphasis added. See Ardi Imseis, "Critical Reflections on the International Humanitarian Law Aspects of the ICJ Wall Advisory Opinion", (2005) 99 *American Journal of International Law* 102, at 106.

¹⁶ See *Final Record of the Diplomatic Conference of Geneva of 1949* (Berne, Federal Political Department, undated), vol. II A, at p. 815.

Movement Restrictions and Education

Israel invokes Defence (Emergency) Regulations 122 and 126, enacted under the British Mandate, to authorise its occupying forces to limit the movement of Palestinians between or within areas in the OPT. The validity of this purported legal basis is highly questionable, given that the Defence (Emergency) Regulations were repealed by Britain in 1948.¹⁷ It would thus appear that Israel cannot rely upon these regulations as they were not part of the “laws in force in the country” when Israel came into existence, as required under Article 43 of the Hague Regulations. More importantly, no rule of domestic law may overrule an internationally guaranteed norm of human rights law.

Restricting the access of teachers to the Arab Orphan School, in addition to impeding the right to education of the students of the school, further amounts to a flagrant violation of the right to freedom of movement, as enshrined in Article 12 of the ICCPR. Article 12(3) of that covenant allows restrictions on movement only when they are “necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present Covenant.” Blocking children and their teachers from accessing their place of education is clearly not necessary for such purposes. In any event, there can be no justifiable security purpose for building the Wall on occupied territory rather than inside Israel.

Indeed, the ICJ Advisory Opinion on the Wall specifically found that it illegally impeded not only the liberty of movement of Palestinians, but also, as a consequence, the exercise of their right to education.¹⁸ The relevance of this finding to the situation of the Arab Orphan School is clear – the construction of the Wall and the establishment of the “Atarot terminal” limit the ability of many of the students and teachers to move freely between their homes and the school, thereby constituting an unlawful obstacle to the fulfillment of the right to education of those students. By preventing children from easily reaching their school, Israel is moreover acting in direct contravention of its obligation under Article 28 of the CRC to take measures to encourage regular attendance at schools and reduce drop-out rates.

Furthermore, the UN Committee on Economic, Social and Cultural Rights has determined that under international human rights law, “education has to be within safe physical reach”¹⁹ for those that it serves. By preventing Palestinian students of the Arab Orphan School from entering East Jerusalem, the Israeli authorities have forced these students to put their personal safety at risk in order to avail themselves of their right to education, thereby wilfully placing education beyond safe physical reach.

As for humanitarian law, far from supporting or encouraging the workings of educational institutions in the OPT, as is required of the Occupying Power, preventing access to them can only be characterised as adverse interference by the Israeli military authorities, thereby constituting a clear breach of the previously cited Article 50 of the Fourth Geneva Convention.

¹⁷ Palestine (Revocations) Order-in-Council, 14 May 1948.

¹⁸ See *supra* note 7, para. 134.

¹⁹ See *supra* note 1, § 6(b).

ATTACKS ON PERSONNEL/BUILDINGS

Interference with the proper working of the Arab Orphan School has also come in the form of attacks by the Israeli occupying forces on the school's personnel, and indeed the school itself. The school is subject to continuous raids, and the premises have been forcibly broken into several times by the Israeli Border Police, whose patrol station is located only 300 metres from the school. During such raids, employees holding Palestinian IDs have been taken by the Border Police and held for questioning. The founder of the school, Hasan al-Qeeq, faced charges for allowing boarding pupils holding Palestinian IDs to reside inside Israel illegally, but he died of natural causes in April 2004, before the end of his trial. The raids on the school also compromise the safety of the students, many of whom attempt to exercise their right to education by sneaking across the Jerusalem municipal boundary to attend their classes. They have been the victims of intimidation and physical harassment when attempting to get to school. Ibrahim 'Aziz Abu-Ras recounted one such incident:

On Thursday, 4 May 2006, I went to school with some friends through a concrete factory between Bir Nabala and 'Atarot. As we reached 'Atarot, three soldiers appeared and forced us to leave. When I showed them my student card, the soldiers said that it was not a permit and that we could only go to school through 'Atarot border crossing. After a long debate, the soldiers threw stones at us and forced us to leave. My schoolmates and I went home. That day we were supposed to take a practical examination in the school workshops (our school is an industrial school) but we were unable to do so.

Extract from Al-Haq Affidavit No. 2954/2006

Given by Ibrahim 'Aziz Abu-Ras (resident of Bir Nabala village, Jerusalem Governorate, West Bank)

Legal Analysis

Such attacks by the Occupying Power severely harass the students and teachers of the Arab Orphan School, interfere with the proper working of their institution, and violate the fundamental right to education as guaranteed by international law. Customary international humanitarian law obliges the Occupying Power to protect educational institutions, and prohibits any seizure or destruction of, or wilful damage to, such institutions.²⁰ The break-ins and raids on the Arab Orphan School by the Israeli Border Police demonstrate a breach of this obligation, and amount to unlawful interference in the proper working of the school, prohibited under Article 50 of the Fourth Geneva Convention.

Moreover, barriers to movement in the OPT are often implemented by violence, resulting in a vicious circle which has caused the injury and death of children and teachers. The physical harassment meted out to children who attempt to sneak across the municipal boundary illustrates the perils for Palestinian schoolchildren in exercising their right to education, as well as Israel's disregard for its obligations to respect and facilitate that right. Such harassment places education outside the "safe physical reach" of the children, as required under international human rights law.

²⁰ See Jean-Marie Henckaerts and Louise Donald-Beck, *Customary International Humanitarian Law – Volume I: Rules* (Cambridge, Cambridge University Press, 2005), Rule 40, pp. 132-133. See also Hague Regulations, Article 56.

CONCLUSION

The difficulties faced by the students and teachers of the Arab Orphan School should not be considered in isolation, but in the broader context of Israel's systematic violation of the human right to education in the OPT. Draconian movement restrictions, attacks on educational institutions and attacks on their personnel have seriously impacted the proper functioning of schools throughout the OPT in recent years, and have forced numerous Palestinians to abandon their education. In a time of deep crisis for the Palestinian education system caused by international sanctions and Israel's withholding of tax revenues from the Palestinian National Authority (PNA), even the future of a school which is not reliant on PNA funding hangs in the balance. The number of students attending the Arab Orphan School is diminishing constantly: in 2000, before the advent of the severe movement restrictions and construction of the Wall, the school had approximately 250 students; it now has less than half of that number. The uncertainty created by the difficulty of access and the granting of only temporary permits to only some of the staff and students has compromised the future of the school. According to one of its teachers:

The school annual plan has become difficult to implement. Every day a new development occurs that forces us to change our plans accordingly. I consider every day that I spend at school my last day there. Since the beginning of the academic year, I have been living in a state of emergency. The effects of this have been reflected in the students' performance and achievements.

Extract from Al-Haq Affidavit No. 2955/2006

Given by Mahmoud Khdeir al-Froukh (resident of Ramallah, Ramallah Governorate, West Bank)

If the pattern of the 2005/2006 academic year is repeated, the West Bank ID holding pupils and staff of the school who currently have temporary permits to access the area of the school will not have their permits renewed after they expire on 15 December 2006; while the majority who do not currently possess permits will continue to have their applications denied. In light of the developments towards the end of the 2005/2006 academic year – completion of the Wall in the area, the establishment of the “Atarot terminal” and the closing of any alternative means of access to the school – such a move on the part of Israel will result in more acute, potentially existence threatening, obstacles for the Arab Orphan School. Such a flagrant violation of the right to education would amount to interference with the proper working of an educational institution, contrary to the protection afforded by international humanitarian law to such institutions. It would also run in contravention of Israel's obligations under the ICESCR and CRC. No justifications on the grounds of security can legitimise such violations of international law.

Victor Hugo once wrote that “he who opens a school door, closes a prison.” For the purposes of this study, the converse must be considered: what of he who closes a school door? The closure of Palestinian schools has a detrimental effect on the future of their students and indeed on greater society. In the case of the Arab Orphan School this danger is heightened, since the school is also the home and the focal point of the life of many of its students. It is imperative that the Israeli authorities respect their duties under international law and ensure that the school is not forced to close, but rather that its proper functioning is facilitated. Education is the prerequisite for knowing one's rights and exercising them, as well as knowing other people's rights and respecting them. As such the right to education must be firmly defended.