



**Translated by Adalah from the original Hebrew to English**

26 May 2022

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**Subject: Procedure for entry and residence of foreigners in the West Bank**

Reference: Our letter dated 30 April 2019

Your responses of 9 September 2019, and 24 October 2019

Following our request dated 30 April 2019 regarding the necessity of a procedure for the admission of lecturers and students at Palestinian universities in the West Bank, and following the procedures published on 20 February 2022, we hereby request, on behalf of Bir Zeit University, that the “Procedure for entry and stay for foreigners in the Judea and Samaria area” (hereinafter: the Procedure) be amended in order to ensure the academic freedom and institutional autonomy of Palestinian higher education institutions in the West Bank, and brought into compliance with provisions of international law, as follows:

- A. To cancel all stipulations that interfere with the academic freedom and institutional autonomy of higher education institutions in the West Bank, including stipulations regarding contribution to defined areas (Part C- Section 3D(2)), age ( Part C- Section 3F(1)), degree (Part C- Sections 3G(2) and 3D(3)), the maximum number of residence permits (Part C- Sections 3D(1) and 4B(2) together with Appendix A to the Procedure), additional academic conditions such as “outstanding lecturer” (Part C -Section 3D(1)), and categorical and sweeping restrictions on the period of stay (Part C- Sections 3G(3) and 3D(4)).
- B. To limit the discretion in decisions made according to the Procedure to a clear and reasonable extent and within the framework of the applicable law, and inter alia to repeal Section 2G, 2H, 6D(9) and 10 in Part A of the Procedure.
- C. To stipulate that the Palestinian universities will submit the application for a residence permit for a foreign lecturer.
- D. To cancel the categorical option of requiring a bank guarantee or a cash guarantee to issue such a permit (Part A- Section 5 of the Procedure).

- E. To prescribe a reasonable timeframe for a decision to be reached on the residence and employment permit application of a foreign lecturer and student.
- F. To provide that all applications for the renewal or extension of visas will be submitted without the need to leave the West Bank (Part C- Section 3C(4) regarding lecturers and visiting researchers, Sections 3D(4) and 3D(5) regarding “outstanding lecturers and researchers in required professions”, and Section 4B(7) regarding students).

**To further explain:**

1. The Procedure, which was published on 20 February 2022 and entered into force on 20 May 2022, seeks to regulate, inter alia, the entry of foreign lecturers, researchers, and students to Palestinian academic institutions in the West Bank for teaching and learning purposes (Part C of the Procedure), and to define the “levels of authority” and the manner of handling the above applications.
2. The Procedure has several defects that affect their legality. Among other things, parts of the Procedure are lacking in an authoritative basis; they give broad competencies and almost absolute discretion to the military to intervene in the academic freedom and institutional independence of Palestinian universities in the West Bank; impose far-reaching restrictions on both lecturers and researchers, as well as students, seeking to enter the West Bank for teaching and learning purposes, including academic and personal requirements placed as a threshold condition for anyone applying for a visa; and set conditions that amount to a serious violation of the right to academic freedom and autonomy of the institutions of higher education, and the right to development and self-determination of Palestinians in general. Therefore, the Procedure does not provide a solution to our previous request dated 30 April 2019, in which we demanded the cancellation of restrictions preventing lecturers from entering the West Bank, avoiding arbitrary restrictions on their stay, and ordering the issuance of a procedure that regulates, in a clearly and appropriate manner, the matter of granting entry permits and extending stays for foreign lecturers.
3. The Procedure divides lecturers and researchers seeking to enter the West Bank into two categories: one refers to “lecturers and visiting researchers” who arrive to attend conferences, seminars or semester courses, and the other refers to “outstanding researchers in required professions”, who generally arrive for longer periods.
4. The Procedure imposes highly problematic substantive conditions for granting visas to lecturers or visiting researchers. For instance, a lecturer or a visiting researcher must hold at least a master’s degree (Part C- Section 3C(2); the entry of “outstanding researchers in required professions” would be approved only if it was proven that he/she is “outstanding” and at least holds a doctorate) (Part C- Sections 3D(1) and 3D(3)), and after it has been proven to the satisfaction of the Coordinator of Government Activities in the Territories (COGAT, part of the Israeli Ministry of Defense) that the lecturer has “a significant contribution [to make] to academic education, the region’s economy or the promotion of cooperation and regional peace” (Part C- Section 3D(2)). These conditions constitute an intervention in the academic considerations of higher education

institutions, restricting institutions in limited areas, and some have clearly been placed for political reasons, such as “cooperation and regional peace”. There is clearly no connection between professional academic considerations and this political demand. Such a demand conflicts head-on with the academic freedom of higher education institutions, which are entitled to determine what academic fields they consider necessary and what their needs are in this matter (Part C- Sections 3G(3) and 3D(4)). This adds to the categorical and sweeping limitation on the period of stay and the extensions that are possible (Part C- Sections 3C(3) and 3D(4)).

5. Moreover, the quota set for issuing visas to lecturers and researchers in the field of higher education is very limited, and stands at 100 (Appendix A - Designated quotas for the Procedure) for dozens of Palestinian universities and institutions of higher education in the West Bank, of which, 50 institutions are listed in the Procedure (Appendix D - Recognized higher education institutions). A quota of 150 students was also set in Appendix A to the Procedure. There is no doubt that there is no correlation between this limited number and the number of higher education institutions, and in any case, this limited number does not meet the basic needs of the institutions, as detailed in our referenced letter.
6. The above-described restriction, which imposes procedural and substantive conditions regarding the academic qualifications required of foreign lecturers, the type of “required” professions and the scope of needs, constitute a severe violation of academic freedom and institutional autonomy, which are fundamental values of higher education. These conditions constitute a blatant interference in the discretion of Palestinian institutions of higher education in determining their own needs and in making decisions about their academic work, the standards they set for themselves, their management and related activities, the identity of lecturers and their required academic training, the number of lecturers and subjects taught. Recall that academic freedom - which is vital for the existence of human rights such as freedom of expression, association and freedom of thought - is inextricably linked to institutional autonomy, which allows the institution of higher education a space for self-management without external intervention, and all the more so when it comes to political intervention by an occupying power.
7. For illustrative purposes only, compared to the Procedure that is the subject of this letter, “The procedure for issuing an employment permit, visa and residence permit for a lecturer / guest researcher at an institution of higher education”, which applies in Israel (hereinafter: the Israeli procedure), is much clearer, allows for discretion and ensures the compliance with principles of academic freedom and the institutional autonomy of higher education institutions in Israel to a large extent. For example, the Israeli procedure does not set a numerical quota like the one set in the Procedure in question, and does not contain restrictive criteria for the academic institutions’ request to accept and invite guest lecturers. The Israeli procedure states that, “determination of eligibility for a license in accordance with this procedure is based upon the recommendation of the President of the institution of higher education or a person authorized by him who is the official recommending entity and with the approval of the Population and Immigration

Authority” (Section B7 of the Israeli procedure). That is, the Israeli procedure gives Israeli universities academic discretion and institutional autonomy to determine the scope of guest lecturers, their areas of expertise, and the needs of institutions in general in this matter, without the intervention of the Population and Immigration Authority.

8. Academic freedom and institutional autonomy distinguish between the individual and institutional dimensions of autonomy, and the procedural and substantive dimensions of institutional autonomy. Procedural autonomy refers to the institution’s ability to decide how it will strive for goals, and substantial autonomy allows the institution to set those goals. In Europe, these fundamental principles underlie the European Higher Education Area (EHEA), established in 1999, a decade after the profound changes in Central and Eastern Europe and a little more than two decades after the adoption of the *Magna Charta Universitatum*.<sup>1</sup> These principles were also adopted in the Bologna Process, which included intergovernmental reform of higher education involving 49 European countries and several European organizations, including the EUA.<sup>2</sup> Thus, there can be no dispute that academic freedom is of great importance and vital not only for academics and students, but also for the social life, culture and developmental opportunities of the Palestinian population and the Palestinian people as a whole. Hence, academic freedom and institutional autonomy are essential for universities to produce the research and teaching necessary to improve society and the human condition among the population they serve and in which they operate.
9. Therefore, academic freedom has been recognized as a fundamental right in the constitutions of many countries and in regional constitutions - see, for example, Article 13 of the Charter of Fundamental Rights of the European Union; Article 201 of the Spanish Constitution and Article 16 of the South African Constitution. This right is also enshrined in the Universal Declaration of Human Rights (Article 26(1)) and the International Covenant on Economic, Social and Cultural Rights (Article 13). General Comment No. 13 to the International Covenant on Economic, Social and Cultural Rights states, inter alia, that this right is the primary vehicle through which individuals and communities can empower themselves economically. In addition, education has a vital role in promoting human rights and democracy.
10. Along with the Procedure’s improper intervention in the discretion of Palestinian higher education institutions, it also violates basic principles of administrative law, giving almost absolute discretion to the Israeli authorities in deciding whether to accept or reject requests of lecturers/ researchers/students, while relying on improper considerations and using vague directives and concepts, without setting out clear criteria that regulate the limits of the authority of those responsible under the Procedure.<sup>3</sup>

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<sup>1</sup> CHEA - Council for Higher Education Accreditation, Academic Freedom and Institutional Autonomy -- For Democracy and Quality: Policy Brief. Number 15 (March 2020).

<sup>2</sup> <http://www.ehea.info/>

<sup>3</sup> According to established precedent, the rules of administrative law apply to the actions of Israeli authorities in the West Bank, being occupied territory. See: H CJ 7957/04 *Mara’abe v. The Prime Minister of Israel* (2005), H CJ 393/82 *Jam’iat Iskan Al-Ma’almoun v. IDF Commander in the Judea and Samaria Area* (1983).

11. Such broad discretion runs throughout the provisions of the Procedure, both in the grounds for refusal, in the possibility of making visas contingent upon numerous conditions and instructions, and in many other provisions. For example, the procedure provides overbroad, vague and unclear grounds for refusal, stating that, “as a rule, a foreigner has no vested right to enter the Area. Applications from foreigners will be evaluated according to the discretion of the authorized office.” (Part A- Section 10). And as for the processing of applications for visa extensions, the Procedure stipulates that applications will be examined “in accordance with the circumstances of the case, including ... (9) **any other relevant considerations**” [(Part A- Section 6D (9)) (emphasis added).
12. Furthermore, the terminology of the Procedure establishes a state of extreme uncertainty and unreasonableness. The Procedure states that, “the granting of an advance permit, under this procedure, refers to a permit for a foreigner to arrive at the Allenby Bridge Crossing and **does not guarantee actual entry into the Area**. Only after the foreigner has arrived at the border crossing and been questioned will the **final decision be made** regarding the foreigner's entry into the Area.” (Part A - general, paragraph 2G) (emphasis added). It further states that “implementation of this procedure shall be contingent on the security situation and the prevailing Israeli policy, which is reviewed and amended from time to time” (Part A - general, Section 2H). In practice, conditioning the entry of the visa applicant on a “questioning” and on “security situation and the prevailing Israeli policy at the time” wide opens the scope of discretion for the realization of the actual stay. In other words, according to the Procedure, obtaining a visa does not guarantee actual entry into the West Bank, and there is uncertainty as to its meaning and issuance. Conditioning one’s actual entry into the West Bank and procurement of the visa on a “questioning” and to the Israeli government policy at the time creates uncertainty, gives very wide and unlimited discretion, and opens the door to arbitrary and irrelevant considerations.
13. The Procedure also uses vague and unintelligible language. One example is the use of the term “outstanding researchers”, for which there is no clear definition in the Procedure. Using this vague term undermines the need for the procedure to be sufficiently clear and it leaves wide scope for unlimited discretion and, once again, opens the door to arbitrariness.
14. The Procedure is supposed to set, regulate and clearly define the authority and the manner of processing foreign applications, in accordance with applicable international law, but the vague language of the Procedure renders it meaningless and devoid of purpose. Its ambiguity leads to arbitrariness in the decision-making processes prescribed by the Procedure. The use of vague terms allows for the Military Commander to take into account improper and irrelevant considerations without any limitation.
15. The uncertainty in the Procedure is also reflected in the non-determination of a time limit for processing visa applications. The Israeli procedure, by contrast, clearly sets a time frame for processing applications, with the application being examined within 21 working days from the time of submission; and if additional documents are required, a

response to the application will be sent within ten days after the submission of the additional documents. This has no equivalent in the Procedure in question.

16. While a foreign lecturer seeking to work at a Palestinian university is supposed to submit the applications and documents himself\herself, the Israeli academic institution is permitted to submit the applications for a lecturer seeking to work at an Israeli university, which reflects the principle of their institutional autonomy. Furthermore, compared to a lecturer at an Israeli university, who can receive an extension without needing to leave the country (Article C.11.2 of the Israeli Procedure), a foreign lecturer at a Palestinian university will suffer instability and disturbance as an extension of a visa [for foreign lecturers at Palestinian higher education institutions] after the passage of a specific time period requires traveling abroad and applying for a visa renewal, which will only be possible nine months after the date of departure (Part C- Sections 3D(5) and 3G(4) of the Procedure), which also infringes on academic continuity, freedom and institutional autonomy.
17. The Procedure further stipulates that the authorized entity has the right to condition the issuance of a visa on restrictive conditions, and to demand a bank guarantee or a cash guarantee, which is not limited in amount and can rise to “a total of over 70,000 ₪”. This requirement is not enshrined in any legislative source [in the West Bank] and is therefore manifestly lacking in authority. Such a guarantee cannot be imposed without a legislative source, and in accordance with applicable international law. Furthermore, determining such a guarantee is unreasonable and might present an obstacle and an economic burden, and have a deterrent effect for many visa applicants. It is important to note that there is no equivalent provision in the Israeli procedure.
18. The limitations described impair the ability of universities to expand the range of research and academic studies provided to students; block the possibility of a diverse learning atmosphere; impair the quality of research; limit the research institutions and universities’ ability to develop international relations and academic cooperation; and, in fact, to a large extent they isolated Palestinian universities from the global academic arena. These restrictions also violate the right of the Palestinian people to self-determination, which includes their right to enjoy the freedom of economic, social, and cultural development.
19. The above-described restrictions violate provisions of international humanitarian law and human rights law that are applicable to Israel in the West Bank as an occupying power. According to Regulation 43 of the Hague Convention, it is the duty of an occupying power to respect and act in accordance with the law that existed in the occupied territory prior to the occupation, and when exercising its powers, the occupying power must consider, in the first place, **the benefit of the local civilian population** and restoring the existing order, to the extent that there are no urgent and immediate security needs preventing it. Regulation 43 imposes a positive obligation on the occupying power to take all necessary measures to ensure public order and safety, which is interpreted as including the civilian life of the local population, at the heart of

which lies academic and research activity, which impacts the social, economic and cultural life of the population.

20. As stated above, the restrictions imposed in the Procedure disregard and even run counter to the benefit of the local population and severely harm it, in the absence of any urgent or immediate security justification. They are based on purely political considerations aimed at reinforcing Israeli control over Palestinians and their institutions in the West Bank. The university is a distinctly civilian public space, with no “military” characteristics that could justify imposing barriers and restrictions on the entry of lecturers and researchers. There is also no rational connection between the number of foreign lecturers, their academic level, the type of professions they teach, their areas of interest, and the security situation in the West Bank.
21. It is important to note that these are well-known and highly respected universities around the world that have been setting clear internal guidelines and academic standards for themselves over the years. Any intervention in their discretion that imposes external academic or political considerations and norms violates Israel’s positive obligation to maintain the existing order and civilian life of a protected civilian population in the Occupied Territories since 1967. This is the situation in all universities worldwide, including Israel, which are granted the authority to determine their purposes and needs autonomously in this regard, including the means of realizing those needs.
22. Moreover, and as mentioned, since academic freedom and institutional autonomy in this context are closely linked to the developmental possibilities of the Palestinian population in the West Bank, the Procedure and restrictions imposed by it violate Palestinians’ rights to development. In 1993 the General Assembly of the United Nations adopted the Declaration on the Right to Development.<sup>4</sup> The Declaration, and subsequent developments, make clear that every human being and all peoples has an inalienable right to economic and social development that is equitable, just, sustainable, non-discriminatory, is enshrined in the rule of law, and fully safeguards all human rights and freedoms. The right to development has been recognized as a human right in itself, which gives it the status of universal applicability. In his report dated 19 October 2016, the United Nations Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, Michael Lynk, clarified that the Declaration on the Right to Development is particularly relevant to understanding human rights abuses in the Occupied Territories. The report emphasizes in this context that the Declaration establishes a rights-based approach to economic growth and social progress:

“Human rights are to be embedded in all aspects of economic and social development as a necessary precondition to the achievement of real and sustainable progress, expanded capacities and enlarged freedoms for the entire population. Both individuals and peoples are entitled to these rights, and States parties have a responsibility to create the conditions and remove the

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<sup>4</sup> Resolution 41/128, annex. The right was reaffirmed in subsequent international human rights instruments, including the Vienna Declaration and Programme of Action (1993).

obstacles to achieve the enjoyment of these rights. Among its core features, the right to development requires both the application of transparent and participatory procedures as well as the substantive realization of equality of opportunity for everyone in their access to basic resources and their socioeconomic rights.”<sup>5</sup>

23. These rights are given increased validity and significance in light of the ongoing occupation and long-standing control of Israel in the West Bank, and impose positive obligations on Israel. The report of the Special Rapporteur concludes in this regard that the management of the Occupied Territory in good faith and for the benefit of the protected population requires, inter alia, respect for its economic, cultural and social rights and encouragement of independent development.

24. It should be recalled that the Procedure has been the subject of widespread international criticism, due, inter alia, to the granting of extensive and unlimited discretion in the matter to the Israeli military and its violation of the academic freedom and institutional autonomy of higher education institutions in the West Bank. Among other things, UN human rights experts stressed that the Procedure could have a negative impact on the enjoyment of academic freedom in the Occupied Palestinian Territory. In a memorandum sent to Israeli authorities on 29 April 2022 by Michael Lynk - then Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 - Koumbou Boly Barry, Special Rapporteur for the Right to Education, and Irene Khan, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the experts expressed serious concern that the Procedure could curtail academic freedom, in violation of the right to education recognized by article 13 of the International Convention on Economic, Social and Cultural Rights (ICESCR), to which Israel is a State Party. The abovementioned experts also emphasized that if the Procedure is implemented, Palestinian universities would face undue restrictions in attracting and recruiting foreign lecturers and researchers, and in fostering intellectual exchange at their institutions:

“The Procedure gives COGAT extremely wide discretion to select and limit the number of foreign academics and students who can study and conduct research at Palestinian universities [...] The criteria for determining “necessary fields” and approving permit applications of foreign lecturers and researchers are ambiguous and subject to wide interpretation. The Procedure merely provides that applications would be approved “if it is proven, to the satisfaction of the authorized COGAT official, that the lecturer contributes significantly to

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<sup>5</sup> Resolution 41/128, annex. The right was reaffirmed in subsequent international human rights instruments, including the Vienna Declaration and Programme of Action (1993) p 15.



academic learning, to the Area's economy, or to advancing regional cooperation and peace [...]

We express serious concern that the Procedure could curtail academic freedom, in violation of the right to education recognized by article 13 of the International Convention on Economic, Social and Cultural Rights (ICESCR) [...]

We also draw your attention to article 19 of the International Covenant on Civil and Political Rights, which Israel ratified on 3 October 1991, which protects the right to freedom of opinion and expression as well as many aspects of academic freedom (A/HRC/75/261). If the Procedure is implemented, Palestinian universities would face undue restrictions in recruiting and attracting foreign lecturers and researchers, and fostering intellectual exchange at their institutions. Given that the Procedure sets a ceiling on a period of residency, it would also inhibit existing long-term academic projects and programs, or the planning of long-term research programs and activities, and undermine the existing accreditation, recruitment, appointment and promotion procedures at Palestinian universities.

Furthermore, in our views, the fact that the Procedure accords the COGAT unfettered discretion in approving entry and residence permits for foreign lecturers, researchers and students, is problematic and would pose an obstacle to the enjoyment of academic freedom. It may have the effects of depriving Palestinian academics and students of opportunities to engage with international scholars and to freely pursue, develop, transmit and exchange knowledge and ideas in their fields of academic interest.

We are further concerned about the interference by COGAT into decisions that should be solely adopted by academic institutions, in particular when it comes to identifying what is a “necessary field” in academic research, which lecturer could contribute significantly to academic learning and research, and which students should be enrolled.”

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27249>

### **In conclusion:**

25. The provisions of the Procedure set out above limit and undermine the universal fundamental principles of academic freedom and institutional autonomy of institutions of higher education in the West Bank, including the development and promotion of the academic standards of these institutions, their international collaborations and their objectives, goals and attainments. This situation constitutes a dereliction of Israel's obligations under the applicable provisions of international law, and violates the rights of Palestinians under those laws, as well as principles of administrative law.

26. Finally, it should be recalled that the existence of a wide gap between the Israeli procedure and the Procedure in question in terms of the discretion awarded to higher education institutions in the admission of lecturers and guest researchers, as well as the approval procedure, indicates unlawful discrimination in relation to the application of the basic principles, as mentioned above. The applicability of two different legal systems to the West Bank and inside the Green Line [in Israel] is irrelevant to the matter at hand, since the principles of academic freedom and institutional autonomy should form the basis of the Procedure and constitute the dominant consideration guiding the process of determining the Procedure's directives. The application of the above principles should be universal, regardless of the geographical location of higher education institutions, the legal system operating there, or the national differences between them. In comparison with the Israeli procedure, the Procedure at hand confers ethnic superiority on Israeli academic institutions over Palestinian ones, in everything related to academic freedom, the autonomy of the institutions, and their potential for development. Such superiority can have no justification.

In light of all the above, you are hereby requested to amend the Procedure, as stated at the beginning of our letter.

Sincerely,

Attorney Suhad Bishara

Attorney Hassan Jabareen