



April 30, 2019

To:

Mr. Avichai Mandelblit

Attorney General of Israel

via fax: 02-6467001

Mr. Kamil Abu Rokon

Coordinator of Government Activities in the Territories

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Minister of Interior

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Re: Canceling visa restrictions on foreign academics hired to teach at Birzeit University

On behalf of Birzeit University, which operates in the West Bank, we are writing to demand that you:

- A. lift the restrictions preventing the entry of foreign academics to the West Bank for employment by Birzeit University;
- B. refrain from imposing arbitrary restrictions on the stay of these foreign academics or the extension of their stay;
- C. order the publication of a clear and proper procedure for issuing entry visas and visa extensions for foreign academics in the West Bank, similar to the procedure that exists for Israeli institutions of higher education that seek to hire foreign lecturers or researchers.

These demands are based on the following detailed arguments:

1. This letter demands that Birzeit University be allowed to employ foreign academics from abroad, without impediment or restriction, in order to enable the university to independently exercise its academic freedom and conduct higher education in a proper and orderly way.

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2. This demand arises in the wake of last summer, when the Israeli authorities denied visas extensions for West Bank residency to seven foreign academics employed by the University.
3. A survey conducted in February 2018 by the Palestinian Authority's Ministry of Education found that among eight universities in the Occupied Palestinian Territory (OPT) including East Jerusalem, more than half of the foreign lecturers and staff at these institutions were detrimentally affected during the past two years by a rejection of their applications for visa extensions or refusal to allow them to enter the West Bank. The data showed that among 64 foreign lecturers and staff members, at least 32 encountered these and other visa-related difficulties. These academics are nationals of various countries: the U.S., the Netherlands, France, Germany, India, and Jordan, but most are citizens of the U.S. and European Union. Entry visas were denied to 12 of these academics and at least 20 of them encountered various difficulties and obstacles in extending their visa.
4. The survey also showed that Birzeit University was most severely impacted by the policy of the Israeli authorities: Up to the time of which the survey took place, among 26 foreign lecturers and staff members employed by Birzeit University, 15 had encountered difficulties in entering the West Bank or in renewing their visas.
5. This is not coincidental since Birzeit University is the oldest Palestinian university operating in the West Bank. The university was established in 1924 as a girls' school, and developed and grew over the years. In 1942, it became Birzeit College and in 1975-1976 was recognized as a university and changed its name to Birzeit University. The university's objectives include a commitment to excellence, encouraging creativity, experimentation, innovation, achievement, teamwork and values grounded in democratic practices based on diversity, freedom of expression and respect for others. Thus, over the years the University relied greatly on foreign lecturers and researchers from universities in various countries as members of its faculty and as part of the academic relations it conducts with international universities and research institutes around the world. Consequently, Birzeit University has the largest number of foreign academics of any other institution of higher education in the West Bank. As of the 2017-2018 academic year, the University operated nine different faculties offering 111 academic programs, including 75 undergraduate programs, 32 masters degree programs, one PhD program and one program for foreign students. In that academic year, 14,506 students were enrolled at Birzeit University, which employed 446 faculty

members and staff. Some 38,600 students graduated from this institution between the academic years 1974-1975 to 2017-2018.

6. As noted, visa restrictions on academics from overseas have increased during the past two years and this has affected the University's activity. The various restrictions include: denial of entry into the West Bank; unreasonable delays in processing visa applications for entry or residency; granting visas for very short periods, sometimes ranging from only two weeks to three months; restricting visas to the West Bank only and permitting entry-exit only via the Allenby Bridge crossing rather than via Ben-Gurion Airport; and requirements to deposit very large sums as guarantees, sometimes as much as 80,000 shekels.
7. In addition, the foreign academics who receive visas or visa extensions are granted tourist visas that prohibit them from working. It should be emphasized that although, formally, there is a procedure for receiving a work permit in the OPT, in practice such visas have rarely been issued in recent years. Along with these restrictions, the academics encounter an almost complete lack of transparency with regard to the criteria for their entry to the West Bank, the rejection of their applications and the way their applications are processed.
8. These restrictions have forced many academics to leave, some in the midst of the academic year and before completing the courses they are teaching to their students; others live in conditions of uncertainty; some are forced to leave the OPT every three months in order to renew their visas; and most of them are forced to contend with a long and complicated procedure that includes depositing a large sum as a guarantee. They teach in the undergraduate and graduate programs, chair various academic committees at the university, direct and work at research institutes and, as in any other university, serve the students and general public by participating in research, seminars and lectures.
9. The visa restrictions on foreign lecturers and staff members at Birzeit University and other universities in the OPT make it difficult for them to operate in an orderly way, in both the short term and long term. In *the short term*, these restrictions pose an enormous obstacle to recruiting additional foreign academics, who fear they would not receive a visa or would receive a visa for only a very short period that would not allow them to work at the institution for a full academic semester. The restrictions make it impossible to replace lecturers who are forced to leave, adversely affect the courses

taught by the lecturers who are forced to leave, disrupt the everyday life of the university on the academic and administrative levels, and are detrimental to the students.

10. In *the long term*, these restrictions have very severe repercussions on the university, the students and the Palestinian public at large. The employment of foreign academics under these conditions and the inability to recruit additional faculty members isolate the university vis-à-vis other institutions of higher education in the world and diminish the quality of the studies it offers; this will harm the level of studies at the university that is essential for broadening the students' exposure to information and academic research, and will hinder the development of the university's academic studies, research and academic-scientific publications.

11. In response to the harm caused to Birzeit University, the Committee on Academic Freedom of the Middle East Studies Association of North America (MESA) wrote in August 2018 to Prime Minister Benjamin Netanyahu, Justice Minister Ayelet Shaked, Interior Minister Aryeh Deri and Education Minister Naftali Bennett demanding an immediate end to the denial of entry visas and visa renewals to foreign academics in the West Bank and Gaza Strip, and the promulgation of a transparent and clear policy. The letter from the MESA committee also demanded that the academics who suffered from these restrictions be assured entry and residency in order to maintain the academic freedom of Palestinian universities. See:

<https://mesana.org/advocacy/committee-on-academic-freedom/2018/08/06/arbitrary-demands-on-foreign-national-academics-working-in-palestinian-universities>

12. A similar message was sent in August 2018 to the Coordinator of Government Activities in the Territories, Kamil Abu Rokon, by California Scholars for Academic Freedom .See: <https://cascholars4academicfreedom.wordpress.com/2018/08/25/letter-to-major-general-kamil-abu-rukun-about-systematic-interference-by-israeli-authorities-in-palestinian-education-academic-freedom-freedom-to-travel-and-to-teach-study-and-research/>

13. And in October 2018, another letter was sent to the same officials by the British Society for Middle East Studies, denouncing the visa and employment restrictions imposed on foreign academics in Palestinian institutions of higher education and demanding a halt to these restrictions. See:

<http://www.brismes.ac.uk/resources/israeli-violations-of-palestinian-academic-freedom>

14. The arbitrary way in which the applications of foreign academics are handled by the Israeli authorities is reflected in the single procedure governing this subject, entitled “Regulation for the Entry of Foreigners to the Territories of Judea and Samaria,” issued by the Coordinator of Government Activities in the Territories (COGAT) (Order No. 202). This regulation, which applies to citizens of countries that have diplomatic relations with Israel, stipulates (in paragraph 2) the category of foreigners eligible to apply for an entry visa for up to three months only, including “lecturers and advisors.” The regulation states that foreigners who are citizens of countries that have not signed visa exemption accords with Israel can apply to the nearest Israeli embassy or consulate and submit a visa application, and that the foreign national must present documents that verify his status and position, and the purpose of his visit. Foreigners who are citizens of countries that have signed a visa exemption accord with Israel may enter the West Bank via Israel after presenting the documents that verify their status and position, and the purpose of their visit, and this is subject to the scrutiny of COGAT representatives at Ben-Gurion Airport. This regulation goes on to state that a visa may be extended for an additional period of up to a year and for no more than a total of 27 months, but such extensions are possible only for the spouses of Palestinian residents of the area, the children of Palestinian residents of the area up to the age of 16, business people / investors / holders of business licenses in the West Bank / humanitarian cases and others. **Academics and advisors are not included** in the section on visa renewals. In addition, since the Israeli authorities have not issued employment permits in recent years in the West Bank, especially for foreign academics, they cannot be included in this category that allows for extending their stay for a total of up to 27 months.
15. This is a general and vague regulation that does not define the criteria for permitting the employment of foreign academics in Palestinian institutions of higher education and does not authorize COGAT to impose the type of severe restrictions described above.
16. In contrast to this vague regulation, institutions of higher education in Israel are able to recruit foreign academics under a separate procedure that allows the entry and employment of foreigners for a period of up to five years. The “Procedure for Granting a Work Permit, Visa and Residence Permit to a Guest Lec-

turer/Researcher at an Institution of Higher Education” (Procedure No. 5.3.0005, updated on June 14, 2015) issued by the Ministry of Interior’s Population and Immigration Authority, enables foreign academics to be employed under a special residency permit granted by the Population and Immigration Authority, a B-1 Researcher/Lecturer Visa. The procedure requires the institution of higher education to apply for employment of the foreign academic and does not impose this obligation on the academics themselves, as in the case of employing academics in the West Bank. The academic is entitled to bring his/her immediate family to Israel; the spouse receives a tourist visa and children under the age of 18 receive a residency permit for the period of the academic’s employment. The academic and his/her accompanying family can apply for a multiple-entry visa for the entire period, as many as the academic requires for him/herself and immediate family. The procedure stipulates how to submit the application and all the documents that must be attached to it; the application will be examined and, if necessary, the applicant will have 21 working days to provide any missing documents. A decision will be sent within ten days of reviewing a complete application.

17. The procedure details the duration of the permit, if approved, and states that it will initially be granted for up to two years, based on the institution’s request and in accordance with the decision of the Population and Immigration Authority. The permit can later be extended for a maximum period of two additional years, and for a cumulative period not to exceed 63 months (five years and three months). If the academic wishes to remain in Israel beyond this period, it is possible to submit an application to the Interior Ministry for a B/2 residency permit. In addition, this procedure also includes a provision for residency permits for academics on (unpaid) sabbaticals, and allows for extending the residency permit for up to one year.
18. It should be emphasized that there is a clear and detailed procedure for employing foreign academics at universities in Israel, including details on the criteria, process, required documents, dates, status of the academic and his/her family. Most importantly, the procedure enables the entry and residency of foreign academics for extended periods of time, without restrictions, without harassment and without imposing a financial burden, enabling them to be properly employed at an institution of higher education.

19. There is no doubt that the policy toward foreign academics who wish to enter the West Bank to work at universities there is arbitrary and harmful, violating the institution's academic freedom, interfering in its freedom to employ foreign academics and its academic freedom to expand its areas of research and the academic studies it offers to Palestinian students and to the general public.
20. There is no doubt that such policy interferes with the civic life of the protected civilian population while harming the freedom of expression and dignity of the institution, the lecturers, the students and the Palestinian population at large. This right of the university – which operates in a reality of occupation and is responsible for developing sound academic and cultural life, which affects the social, economic and cultural life in the West Bank in general – is an integral part of its right to self-determination as an institution of higher education.
21. As detailed here, this policy violates Israeli law as well as international law that applies to it as an occupying power.
22. The International Court of Justice (ICJ), in an advisory opinion issued on July 9, 2004 on the separation wall constructed by the government of Israel in the West Bank, emphasized the State of Israel's duty as an occupying power to honor and fulfill its obligations under international humanitarian law and human rights law. In the **Mara'abe** case, the honorable court did not reject the application of these principles to the West Bank (HCJ 7957/04 **Mara'abe v. Prime Minister of Israel**, PD 60(2) 477, 492 (2005)).
23. Article 43 of the Hague Regulations, which guides the main consideration in exercising the authorities of the occupying power, states that the occupying army must maintain the law that existed in the area prior to the occupation and act in accordance with it, and that the main consideration of the occupying power in exercising its authorities is the benefit of the civilian population, unless there is an urgent and immediate security-related need that prevents this. The good of the civilian population is what drives the laws of occupation and creates the fabric of considerations that the occupying power can consider when exercising its governing powers and administering the occupied territory. Article 43 stipulates as follows:

Art. 43. The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

See the Supreme Court rulings that affirmed the application of Article 43 to the West Bank: the **Jam'iat Iscan** case, 794-795; the **Mara'abe** case; HCJ 2150/07 **Abu Safiya v. Minister of Defense**, PD 63(3) 331 (2009); HCJ 69/81 **Abu 'Aita v. Commander of IDF Forces in the West Bank**, PD 37(2), 197 (1983); HCJ 10356/02 **Haas v. Commander of IDF Forces in the West Bank**, PD 58(3), 443, 455 (2004).

24. Therefore, Article 43 imposes a positive duty on the occupying power to take all measures necessary to ensure public order and safety, with “public order and safety” interpreted as including the civilian life of the local population. The policy of the Israeli authorities, which leads to restricting the academic freedom of Birzeit University and other Palestinian universities in the West Bank, is contrary to this positive duty because it sabotages orderly and sound higher education, which is one of the components of public and civilian life.
25. In all of the cases we received, there was no security need justifying the restrictions imposed on the academics. Indeed, of all the academics whose visa was restricted or whose entry was denied, it was hard to find even one whose visa or entry was restricted for security reasons.
26. Consequently, since there are no security grounds justifying the policy of restricting the visas of foreign academics in the OPT, the occupying power has no authority to limit the freedom of the university to conduct its academic affairs. The university’s right to self-determination under occupation by exercising its academic freedom, particularly regarding decisions on developing and enhancing the institution’s academic level, is not abrogated or suspended because of the occupation, especially when there are no security considerations to justify this.
27. In this context, the occupying power’s policy of restricting the visas of foreign academics harms the population itself, which has the right to study at a high-quality university, develop and fulfill itself – educationally, socially and economically. Furthermore, the occupation does not abrogate the right of the civil-

ian population and the university to self-determination in conducting as normal a life as possible, while exercising their rights. The exercise of these rights takes on even greater importance as the occupation becomes protracted, all the more so when it reaches its fifty-second year. See also in this context: Orna Ben-Naftali, Aeyal M. Gross, and Keren Michaeli, *Illegal Occupation: Framing the Occupied Palestinian Territory*, 23 Berkeley J. Int'l Law. 551 (2005).

28. The Palestinian people in the West Bank and Gaza Strip are entitled like other people to exercise their right to self-determination, which also includes making excellent universities available that can provide their sons and daughters with top-notch higher education. In this context, the occupation in itself does not prevent, and it must not prevent, them from exercising this right. Indeed, according to the interpretation applied to Article 43, sovereignty in these matters – education – does not change hands; it is inalienable. This means that under Article 43, the current policy described above is very extreme because it violates the right of the Palestinian people to exercise its right to manage its institutions of higher education at a satisfactory and even high-quality level in the same way as other peoples.
29. In light of all of the above, we ask you to accede to the demands stated in the introduction to this letter.

Respectfully,

Sawsan Zaher, Attorney

cc: Mr. Shai Nitzan, State Attorney, via fax: 02-6467006