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Gisha - Legal Center for Freedom of Movement  
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# Rafah Crossing: Who holds the keys?

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## Rafah Crossing: Who Holds the Keys?

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# Table of Contents

<b>Introduction</b>	<b>7</b>
<b>Summary of Analysis and Recommendations</b>	<b>11</b>
<b>Chapter 1: Historic Background: the Gaza-Egypt Border, a Gradually Closing Crossing Point</b>	<b>17</b>
Rafah Crossing from the occupation of the Gaza Strip in 1967 until 2000	17
Restrictions on crossing from the outbreak of the intifada in 2000 until the "disengagement" in 2005	19
Rafah Crossing after the disengagement and Agreement on Movement and Access	21
Exit from the Gaza Strip through other crossings	30
<b>Chapter 2: Rafah Crossing Shuts Down, Closure Tightens</b>	<b>35</b>
Passage from Egypt to the Gaza Strip through Israel	39
The passage of pilgrims to Saudi Arabia in December 2007 coordinated by Egypt-Hamas	43
The breach of the Gaza-Egypt border by Hamas	44
Ad hoc openings of Rafah Crossing via Egypt-Hamas coordination	47
The passage of goods and people through underground tunnels	52
Israel's control of the Palestinian population registry	57
<b>Chapter 3: The Implications of the Closure on Life in the Gaza Strip</b>	<b>65</b>
Economic damage	66
Trade and business	68
Employment outside the Gaza Strip	70
The erosion of the middle class	72
Undermining higher education	73
Restrictions on the exit of students from the Gaza Strip abroad	75
Access of students from abroad to universities in Gaza curtailed	81
Undermining civil society	81
Harm to family life	85

Violation of the right to freedom of worship	87
Harm to the fabric of daily life	89
Undermining the very ability to leave the Gaza Strip	92
<b>Chapter 4: The Implications of the Closure on the Health Care System in Gaza</b>	<b>97</b>
The deterioration of the health care system in Gaza	98
A shortage of medications, medical equipment and skilled medical personnel	98
Reduced ability to refer patients to Egypt	99
Deaths of patients who did not receive adequate medical care	101
Cutting ties between the Gaza health care system and the medical community abroad	103
Harm to Gaza's medical education and future generations of doctors	105
Difficulties in accessing medical services outside the Gaza Strip	108
Limited openings of Rafah Crossing to Egypt	108
The "shuttle" mechanism for passage to Egypt and Jordan	114
Problems accessing medical services in Israel and via Israel	115
<b>Chapter 5: Who Is Closing Rafah Crossing?</b>	<b>119</b>
Israel's position	119
Egypt's position	125
The position of the Hamas regime in the Gaza Strip	134
The Palestinian Authority's position	136
The EU's position	137
The US position	140
<b>Chapter 6: Analysis of the Parties' Responsibility for the Closure of Rafah Crossing</b>	<b>143</b>
Israel	143
Israel's control of Rafah and the other Gaza Strip border crossings	144
Israel's control of the Gaza Strip	148
Israel's obligations	150
Obligations under international humanitarian law	150
Obligations under international human rights law	152
"Post-occupation" obligations	153
Obligations under Israeli administrative law	156
Obligations under the right of transfer	156

Egypt	160
Obligations under the right of transfer	162
The obligation to allow the passage of humanitarian consignments to a population affected by armed conflict	162
The obligation to act against violations of the Fourth Geneva Convention and not to facilitate them	163
The Hamas regime in Gaza	167
The Palestinian Authority	170
The European Union	172
The United States	174
<b>Conclusion</b>	<b>177</b>
<b>Appendix</b>	
Appendix 1: Letter from Israel Defense Ministry	181
Appendix 2: Palestinian Authority Official Response	183



## Introduction

The Gaza Strip has been sealed almost hermetically for nearly two years, isolating its 1.5 million residents and violating their right to freedom of movement. Israel closed the Gaza Strip in a gradual process over a period of years, which included instituting an exit regime based on permits, building a fence, imposing an increasingly tight closure on the land crossings and preventing travel by air or sea.

As a result, Rafah Crossing between Gaza and Egypt has become a vital window for Gaza residents seeking to enter or leave and a crossing point connecting the Gaza Strip not only with Egypt but with the outside world in general, and even with the West Bank. During the times that regular traffic through Rafah Crossing was possible, tens of thousands of people traveled through it in both directions every month.

However, in the year between the capture of Israeli soldier Gilad Shalit (June 2006) and the Hamas takeover of the internal government in Gaza (June 2007), Israel kept Rafah Crossing closed 85% of the time; since June 2007, Rafah Crossing has been closed permanently, except for random and limited openings by Egypt, which meet only 3% of the needs of the residents of the Gaza Strip to enter and leave.

The closure of Rafah has severe implications for the residents of the Gaza Strip, including preventing access to health care services that are not available in Gaza, preventing access to opportunities for academic studies or employment abroad or in the West Bank, forcing long separations of family members on either side of the border, causing fatal damage to commerce and business, and creating a growing feeling among residents of the Gaza Strip that they are enclosed, isolated and trapped. The closure, of course, means a real inability to leave the Gaza Strip, even under circumstances of mortal danger.

It is the closure of Rafah Crossing that is causing these severe violations of the rights of residents of the Gaza Strip, and therefore those responsible for closing

it bear responsibility for those violations. Since Israel withdrew from the Gaza Strip in 2005, including from the Gaza-Egypt border, it is hard to point to a single party that is exclusively responsible for the closure of Rafah Crossing. Several parties are involved in control of the crossing to various extents: Israel, Egypt, the Hamas regime in the Gaza Strip and the Palestinian Authority (PA). Each one of those parties is shirking its responsibility and pointing an accusatory finger at the others for closing the crossing. The result is that 1.5 million residents of the Gaza Strip are denied access to the outside world, apparently without anyone bearing responsibility.

The purpose of this report is to dispel the haze and lack of transparency, and to answer the question: who is closing Rafah Crossing, and who is therefore responsible for the resulting violation of the rights of the residents of the Gaza Strip?

In order to answer that question, the report begins with a factual section, including a comprehensive review of the policy regarding Rafah Crossing and the other Gaza Strip crossings over the years, the various arrangements under which Rafah Crossing operated, data on the passengers who crossed through it until the end of December 2008, and then the heart of the matter – the severe implications of the closure of Rafah for the residents of the Gaza Strip, and primarily their access to adequate health care services. In this respect, the spotlight is aimed primarily at the implications of the restrictions on the freedom of movement of people, but to a certain degree it also sheds light on the grave impact of the restrictions on the passage of goods into the Gaza Strip. Likewise, the report presents a detailed description of the positions of the various parties regarding Rafah Crossing, the extent to which the various parties control the crossing, the merging of interests behind its closure and the political conflicts that are undermining attempts to re-open it. The report is based on field research, information from Israeli authorities, including information presented to the Israeli Supreme Court, information from Palestinian and international organizations, and meetings and correspondence with relevant officials in Israel, Egypt, Gaza and the West Bank.

On the basis of the facts, presented as is and without interpretation, we offer an analysis of the legal responsibility of the various parties. The analysis is based on the obligations of each party under international law and on the principle that the



extent of control exerted by each party dictates the extent of its responsibility for the crossing and for the implications of its closure.

The analysis focuses mainly on Israel's responsibility for the freedom of movement of the residents of Gaza, for two reasons: first, control of Rafah Crossing must be seen in the context of Israel's control of all the other crossing points of the Gaza Strip – land, air and sea – which make Gaza a "land-locked" territory, dependent on Rafah Crossing for contact with the outside world. That control has significant implications for Israel's responsibility for Rafah Crossing. Gisha – Legal Center for Freedom of Movement (Gisha) and Physicians for Human Rights-Israel (PHR-Israel) take the position that Israel continues to constitute an occupying power in the Gaza Strip, because it controls significant aspects of life in Gaza, including its borders, the Palestinian population registry, the tax system and the funding of public services; therefore, we ascribe to it increased responsibility for the freedom of movement of the residents of the Gaza Strip. Second, as Israeli organizations, we see it as our primary responsibility to make recommendations and demands of the authorities of the state in which we are acting and to whose institutions we have access. Simultaneously, we analyze the responsibility of the other parties – mainly Egypt, the Palestinian Authority (PA) and Hamas – for blocking access of Gaza residents to the outside world, and we make demands on them accordingly. We invite readers of the report to offer their own analysis and conclusions, on the basis of the facts detailed in the report, and, on the basis of their conclusions, to address the appropriate authorities with their own recommendations and demands. To that end, we present our analysis separately from the historic and factual background (chapters 1 and 2), and the presentation of the parties' positions (chapter 5). A copy of this report was sent to the relevant authorities. A response from the Palestinian Authority is included as Appendix 2 to this report. The other parties chose not to send a response for purposes of publication in this report.

Israeli authorities and other parties tend to treat the closure of Gaza as a political issue; Gisha and PHR-Israel stress that the right of the residents of the Gaza Strip to leave and enter the territory in which they live is not a political issue but a basic right, which the parties who exert control over Rafah Crossing are obligated to respect and safeguard. The various parties – mainly Israel, Egypt, the PA and Hamas – should be held accountable for the violation of the rights of the residents of the Gaza Strip and are asked to take concrete action to bring about the

opening of the crossing, placing the rights of the residents of the Gaza Strip at the top of their priorities and transcending the political interests or conflicts that are presently perpetuating the closure of the crossing. They may choose the arrangements under which they discharge their obligation to allow traffic between Gaza and the outside world, but the very obligation to do so is not subject to political discretion.

This report focuses on Rafah, in order to clarify and shed light on the complicated and unique circumstances of the control over that crossing, in contrast with the other Gaza Strip crossings, which are directly and exclusively controlled by Israel. However, our main concern in issuing this report is the freedom of movement of the residents of the Gaza Strip and their access to and from the outside world. Those rights can be realized through Rafah Crossing, but they can and should also be realized through the other Gaza Strip crossings, including via the sea and air space and the land crossings with Israel.

In that spirit the report also addresses local and foreign policymakers as they set out to make future arrangements for Rafah Crossing and the other Gaza Strip crossings: the previous arrangements allowed the frequent closure of Rafah Crossing and led to an ongoing violation of the rights of the residents of the Gaza Strip, and therefore – they should not be reinstated. Any future arrangement must first and foremost ensure respect for the rights of the residents of Gaza, including the right to freedom of movement, and give residents regular, easy and convenient access to other countries and to the West Bank.

## Summary of Analysis and Recommendations

### Israel

Even though Israeli forces are not stationed on the Egypt-Gaza border permanently, Israel continues to exert substantial and indirect control over the possibility of opening Rafah Crossing and uses that control to exert pressure on the residents of Gaza, as part of a policy of collective punishment. Israel controls all the other Gaza Strip crossings and closes them, thereby creating dependence upon Rafah Crossing as the only channel between the Gaza Strip and the outside world.

Israel's control of the Gaza border crossings, in addition to its control of other significant aspects of life in the Gaza Strip, makes Israel responsible for allowing freedom of movement in and out of Gaza. According to Gisha and PHR-Israel, that control rises to the level of effective control. Therefore, Israel owes obligations under the laws of occupation. However, even for those who believe that Israel's control of Gaza is not an occupation, its control – in the past and in the present – subjects Israel to obligations towards the residents of the Gaza Strip under human rights law; because of the right of transfer for residents of a land-locked area; and as a consequence of the laws of "post-occupation." That responsibility requires Israel to allow the regular operation of Rafah Crossing or alternatively, to allow passage through the other crossings, by sea, air or land.

Israel owes a special responsibility for the health care system in Gaza, including the access of patients to medical treatment that is not available in the Gaza Strip, for a number of reasons, including because of its closure of Gaza, which prevents the health care system there from developing.

### Gisha and PHR-Israel call on Israel:

- To immediately implement an arrangement to allow the free movement of residents of the Gaza Strip to other countries and to allow them to return home as they choose.
- If the right of the residents of the Gaza Strip to freedom of movement out of their territory cannot be realized through Rafah Crossing, for one reason or another, Israel must allow them such passage through the other crossings – whether by land through the Kerem Shalom or Erez crossings, or by air or sea from the Gaza Strip to the outside world.
- To allow the passage of patients into Israel for medical treatment, whether they are to receive treatment in Israeli hospitals or to pass through Israeli territory to the West Bank, east Jerusalem or Jordan.
- To allow the development of an independent and advanced health care system in Gaza, by allowing the passage of medical teams so that they can have contact with the Palestinian medical community in the West Bank and east Jerusalem and the international medical community, and by allowing in medical equipment and medications, according to the accepted standards of a developed health care system.

## Egypt

Egypt, which has the physical capacity to open Rafah Crossing, closes it as the result of pressure exerted on it by Israel and other parties and in order to promote its own interests, not to recognize the Hamas government in the Gaza Strip and not to allow a connection between it and Egyptian entities that oppose the government. The closure of the Gaza Strip and the suffering of its residents create pressure on Egypt to open the crossing, and it does so for humanitarian purposes, sporadically and ad hoc, informing Israel of these openings. Those openings satisfy the travel needs of only a fraction of the residents of Gaza.

Meanwhile, Egypt is mediating between the parties in order to reach agreement on opening the crossing. Even in the absence of an agreement between the other parties, Egypt is obligated to open Rafah Crossing; that obligation derives from the actions of Israel, which is closing the other crossings to and from the Gaza Strip

and uses Rafah Crossing to implement a policy of collective punishment. The Israeli closure of the Gaza Strip creates an obligation for Egypt to open Rafah by virtue of its obligation to respect the right of transfer of the residents of the blocked Gaza Strip, and by virtue of its obligation to act against the violation of the Fourth Geneva Convention by Israel. Likewise, Egypt is obligated to allow the passage of humanitarian aid from its territory into the Gaza Strip.

**Gisha and PHR-Israel call on Egypt to open Rafah Crossing regularly for the passage of residents of the Gaza Strip through Egypt and to allow the sufficient passage of humanitarian provisions from its territory into the Gaza Strip.**

## **The Hamas Regime in Gaza**

In contrast to the other parties – Israel, Egypt, and the PA – Hamas is the only party that wants Rafah Crossing to open immediately and fully. However, Hamas' objection to Israeli involvement in operating the Gaza Strip border crossings constitutes an obstacle to their opening. In addition, Hamas' control of the Palestinian side of Rafah Crossing prevents the Presidential Guard from operating there, causing the other parties to keep the crossing closed. Rafah Crossing is therefore an arena for the political struggle between Hamas, the PA and Israel, with the victims being the residents of the Gaza Strip, who are under direct Hamas control and for whose rights it is responsible.

**Gisha and PHR-Israel call on Hamas to make the rights of Gaza residents its top priority and not to allow disputes and power struggles over control of the crossing and arrangements for opening it to violate the right of the residents of the Gaza Strip to freedom of movement.**

## **The Palestinian Authority**

The Palestinian Authority continues to exercise a certain amount of control over the residents of the Gaza Strip, and therefore also continues to bear responsibility for their rights. The power struggle between the PA and Hamas leads to the PA

objecting to opening Rafah Crossing until the Presidential Guard resumes control over the Palestinian side of the crossing, which may be dependent on the reinstatement of PA control over the Gaza Strip. The refusal of the PA to compromise with Hamas over control of Rafah Crossing contributes to the perpetuation of its closed status, and thereby the PA is violating its commitment to guarantee the rights of the residents of the Gaza Strip.

**Gisha and PHR-Israel call on the PA to take part in all initiatives to operate the Palestinian side of Rafah Crossing, in coordination with any relevant party, including Hamas, while making the rights of the residents of the Gaza Strip its top priority.**

## **The European Union**

The European Union, the presence of whose forces as monitors allowed the opening of Rafah Crossing as part of the Agreement on Movement and Access (AMA), does not have the ability to open the crossing itself; however, the EU chooses to continue its involvement in the agreement and to support its renewed implementation, under the terms set by the other parties. The EU's involvement in Rafah Crossing obligates it, under the Geneva Convention, to do everything it can to prevent the violations of the convention involved in the closure of Rafah. If its efforts do not put an end to the violation, the EU must renounce its involvement in the AMA so that its actions do not constitute recognition, tacit approval or complicity in an act of collective punishment, in violation of the Geneva Convention.

**Gisha and PHR-Israel call on the EU to do everything it can to bring about the renewed and regular opening of Rafah Crossing or to bring about an alternative way of ensuring the regular and free movement in and out of Gaza for all residents. If that is not within the capacity of the EU, it must withdraw its involvement in the arrangements regarding Rafah Crossing and act vis-à-vis the other involved parties to ensure respect for the Fourth Geneva Convention and the rights of the residents of the Gaza Strip.**

## **The United States**

The United States chose to be involved in what happens on the Gaza-Egypt border by having placed the AMA under its auspices without insisting on its implementation and by exerting pressure on Egypt to prevent smuggling into the Gaza Strip through tunnels. At the same time, it has not taken action against the human rights violations caused by the closure of Rafah nor acted to find alternatives to facilitate freedom of movement for Gaza Strip residents. Its involvement in the border arrangements obligates the United States to act to promote the opening of Rafah Crossing or another crossing in and out of the Gaza Strip, and as part of its duty not to be party to a violation of the Geneva Convention.

**Gisha and PHR-Israel call on the United States to do everything it can to bring about the renewed and regular opening of Rafah Crossing or to bring about an alternative way of ensuring the regular and free movement in and out of Gaza for all residents. The United States must act to ensure that all involved parties respect the Fourth Geneva Convention and the rights of the residents of the Gaza Strip.**





## Chapter 1

# Historic Background: the Gaza-Egypt Border, a Gradually Closing Crossing Point

### **Rafah Crossing from the occupation of the Gaza Strip in 1967 until 2000**

The Gaza Strip was created following the 1948 war, and its borders were determined in the armistice agreement between Israel and Egypt in 1949. From then until 1967, the Gaza Strip was under Egyptian rule. Entrance into Egypt through the Sinai Peninsula for residents of the Gaza Strip, by train from Gaza City to Cairo or through the Rafah-Sinai border, required receiving a permit from the Egyptian security authorities.

After Israel occupied the Gaza Strip in 1967, the Israeli army declared it a closed military area whose residents could leave only with the approval of the district commander. Five years later, residents of the Strip were given a general exit permit to Israel and the West Bank, a policy which remained in effect until 1991. Residents of the Gaza Strip who wished to travel abroad still had to acquire Israeli exit permits, which involved a protracted and tedious bureaucratic procedure. Many requests by Palestinians to receive such permits were rejected over the years, on the basis of individual or collective restrictions. In September 1991, the requirement to obtain a permit in advance was canceled, and Gaza Strip residents were required to ask for exit permits at the border crossings on their way abroad. This requirement remained in effect until the implementation of Israel's disengagement from the Gaza Strip in September 2005.<sup>1</sup>

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1. The information about the exit from Gaza until the disengagement is taken mainly from B'Tselem: The Israeli Information Center for Human Rights in the Occupied Territories and Hamoked: Center for the Defence of the Individual, "Gaza Prison: Freedom of Movement to and from the Gaza Strip on the Eve of the Disengagement Plan," March 2005 (hereinafter: B'Tselem and Hamoked, Gaza Prison). See also B'Tselem, "Restrictions on Foreign Travel," November 1989.

In order to travel abroad – subject to Israel’s approval – Gaza residents could either exit through Rafah Crossing into Egypt or through Erez Crossing into Israel and from there either travel through the Allenby Bridge between the West Bank and Jordan or fly via Ben Gurion Airport. The Gaza-Egypt border that runs through Rafah connected Gaza with the Sinai Peninsula, which Israel also occupied in 1967. Until Israel withdrew from the Sinai in 1982, it allowed people to cross from the Gaza Strip into Egypt through Al-Arish in Sinai for humanitarian reasons, in coordination with the Red Cross.<sup>2</sup> After signing a peace agreement with Egypt and withdrawing from the Sinai, Israel opened Rafah Crossing, which once again became the link between the Gaza Strip and Egypt. The crossing was opened on April 25, 1982 and was operated by the Israel Airports Authority (IAA). Until the outbreak of the second intifada in late September 2000, it was open 24 hours a day, almost every day, except for Yom Kippur (the Jewish Day of Atonement) and Eid al-Adha (the Muslim Festival of Sacrifice). During those years, between 1,200 and 1,500 Palestinians crossed through Rafah every day in both directions, and twice as many in the summer, when relatives from Arab countries came to visit the Gaza Strip.<sup>3</sup>

The Cairo agreement was signed in 1994 between Israel and the Palestinian Liberation Organization as the first stage in the implementation of the Oslo accords, and it defined the transfer of powers from Israel to the Palestinian Authority in Gaza and Jericho.<sup>4</sup> The agreement called for joint Israeli-Palestinian control of Rafah Crossing but left Israel with full security responsibility at the crossing, the power to prohibit the crossing of Palestinians not registered in the Population Registry of the Occupied Palestinian Territories (OPT) and permission to interrogate or detain travelers.<sup>5</sup>

In practice, even after the Oslo accords went into effect, Rafah Crossing continued to function in the same way it functioned in previous years, although

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2. Al Mezan Center for Human Rights, "A Special Report on Israel's Restrictions on Palestinian Right of Movement at Rafah Crossing," February 8, 2003, p.7, available at [http://www.mezan.org/document/Rafah\\_crossing\\_en.pdf](http://www.mezan.org/document/Rafah_crossing_en.pdf).

3. Ibid, p. 8.

4. Agreement on the Gaza Strip and the Jericho Area, Cairo, May 4, 1994.

5. Ibid, Appendix I, Section 10, Subsection b(1) and (2); Subsection f(3); Subsection e, respectively. The same rules were repeated in the Interim Agreement on the West Bank and the Gaza Strip between Israel and the PA signed in Washington, D.C. on September 28, 1995 (Appendix I, Section 8) (hereinafter: the interim agreement).

the border terminal was staffed by Israeli and Palestinian security officers. A similar number of people continued to travel between the Gaza Strip and Egypt every day, and Israel continued to restrict the exit of Palestinians abroad as it saw fit, even though the agreement did not condition the right of a resident of the Strip to go overseas on receiving a permit from Israel; just as before the Oslo accords, only upon their arrival at the border did many residents discover that Israel classified them as "denied permission to go abroad" for security reasons, without providing any additional explanations.

### **Restrictions on crossing from the outbreak of the intifada in 2000 until the "disengagement" in 2005**

Upon the outbreak of the Al-Aqsa Intifada in September 2000, Israel began closing Rafah Crossing periodically. Meanwhile, it prevented the residents of Gaza from going abroad in other ways and drastically restricted their access to Israel and the West Bank.<sup>6</sup> On January 17, 2001, Israel completely took over Rafah Crossing and forbade the entrance of the Palestinian border terminal staff.

The longest period of closure ran from December 2004 to January 2005, following an incident in which Palestinians killed five Israeli soldiers and injured another five by blowing up a tunnel they dug under an Israeli sentry position at the crossing. Rafah Crossing remained closed for 40 days for entry and 52 days for exit, preventing the passage of tens of thousands of Palestinians who were accustomed to crossing between Egypt and the Gaza Strip.<sup>7</sup>

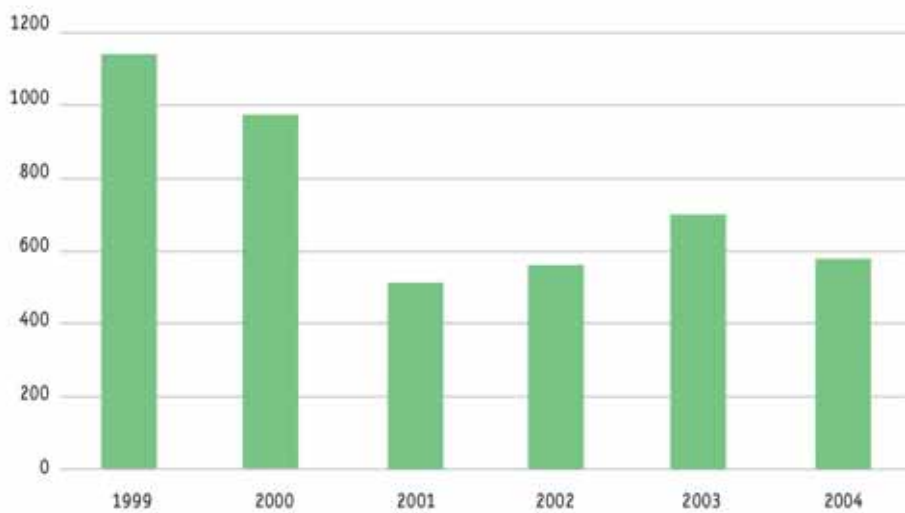
With the outbreak of the intifada, Israel forbade the passage of vehicles through the Rafah terminal, allowing only pedestrian traffic. On the days that it was open during the intifada, Rafah Crossing usually operated for only seven hours a day, compared to 24 hours a day previously. In addition, during those years, Israel imposed restrictions on passage through Rafah, including defining tens of

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6. See below, p. 30-33.

7. OCHA (the UN Office for the Coordination of Humanitarian Affairs in the Occupied Palestinian Territories) "Situation Report, Rafah Terminal," January 19, 2005, available at <http://domino.un.org/unispal.nsf/85255db800470aa485255d8b004e349a/111f3adf4cc4ddf785256f8f0069db36!OpenDocument>

thousands of residents of the Gaza Strip as "denied permission to go abroad for security reasons" and imposing collective restrictions for varying lengths of time according to age and family status. Thus, Israel forbade the passage through Rafah of people aged 16-35, including the sick, for four and a half months in 2003, as well as for ten months from April 2004 to February 2005, with few exceptions.<sup>8</sup> Egypt also made the terms of entrance into its territory stricter, and in the years of the intifada required all residents of the Gaza Strip to obtain entrance visas to Egypt, a requirement previously applied only to men under the age of 40.



**Diagram 1: Average daily traffic of people through Rafah Crossing in both directions, 1999-2004**

Source: Israel Airports Authority<sup>9</sup>

The frequent closure of Rafah Crossing, the reduction of its opening hours and the restrictions imposed on those passing through it greatly extended the waiting time for travelers, which could last for a number of days. Likewise, during the intifada the number of Gaza Strip residents who managed to travel abroad through Rafah

8. Ibid; OCHA, "The Gaza Strip: Access report," March 2005, p. 3, available at [http://www.humanitarianinfo.org/opt/docs/UN/OCHA/ochaSR\\_GazaAccess\\_Mar05.pdf](http://www.humanitarianinfo.org/opt/docs/UN/OCHA/ochaSR_GazaAccess_Mar05.pdf). See also B'Tselem and Hamoked, "Gaza Prison," p. 21.

9. The figures were provided by Atty. Arie Shiham, the legal advisor of the IAA, to Noga Kadman of Gisha, in a letter from December 16, 2008.

Crossing dropped. According to IAA figures, which appear in Diagram 1, in 1999, before the intifada, an average of 1,100 people traveled through the crossing in both directions every day, while in the years 2001-2004 the average number of passengers per day was 590, meaning there was a 54% drop in the number of people crossing between the Gaza Strip and Egypt.

## **Rafah Crossing after the disengagement and Agreement on Movement and Access**

In July 2005, ahead of the implementation of the Israeli disengagement plan from the Gaza Strip, the number of people passing through Rafah rose to 1,280 a day.<sup>10</sup> The plan, intended to remove the permanent Israeli presence from the Gaza Strip – both civilian and military – stipulated that the existing arrangements at Rafah Crossing would remain in effect after its implementation.<sup>11</sup> However, the implementation of the disengagement did not allow the same arrangements to remain in effect: as part of the disengagement, which took place in August-September 2005, Israel removed its military presence from the Egypt-Gaza border, and the IAA pulled out of the Rafah terminal.

On September 7, 2005, Israel and Egypt closed the border crossing in anticipation of the establishment of a new mechanism for its operation. When Israel's military forces withdrew from the Gaza-Egypt border on September 12, 2005, a few thousand Palestinians crossed between the Gaza Strip and Egypt, until the PA stopped that traffic five days later.<sup>12</sup> Afterwards, Rafah Crossing was almost completely closed for two and a half months. Thousands of Palestinians seeking to return to their homes or to leave the Gaza Strip were stranded on either side of the crossing. During that period, Egypt and the PA, in coordination with Israel,

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10. OCHA, "The Gaza Strip, Access Report," November 2005, available at [http://www.ochaopt.org/documents/ochaSR\\_GazaAccess\\_Nov05.pdf](http://www.ochaopt.org/documents/ochaSR_GazaAccess_Nov05.pdf).

11. The Cabinet Resolution Regarding the Disengagement Plan, Revised, June 6, 2005, Addendum A, section 11, available at <http://www.mfa.gov.il/MFA/Peace+Process/Reference+Documents/Revised+Disengagement+Plan+6-June-2004.htm#A> (Hereinafter: the disengagement plan). The section says: "The State of Israel is interested in moving the passage to the 'three borders' area, south of its current location," namely to the Kerem Shalom crossing.

12. OCHA, "Humanitarian Update," November-December 2005, p. 11, note 12, available at [http://www.ochaopt.org/documents/ochaHU11\\_1205\\_En.pdf](http://www.ochaopt.org/documents/ochaHU11_1205_En.pdf)

opened the crossing for only five full days and six half days. On those days only a limited number of Palestinians traveled through Rafah.<sup>13</sup>

On November 15, 2005, Israel and the PA signed the Agreement on Movement and Access, mediated by the US and EU, and with the tacit approval of Egypt (hereinafter: AMA) including, among other things, agreed principles for the operation of Rafah Crossing.<sup>14</sup> The professed goal of the agreement was "to promote economic development" and to "improve the humanitarian situation on the ground." US Secretary of State Condoleezza Rice, who played a leading role in the negotiations that led to the agreement, said at a press conference after it was signed:

"The agreement is meant to give the Palestinian people freedom to move, trade, live normal lives [...] For the first time since 1967, Palestinians will gain control over entry and exit from their territory."<sup>15</sup>

According to Javier Solana, EU representative in the negotiating team, "This is the first time that a border is open and not controlled by Israelis."<sup>16</sup>

According to the language of the agreement, "Rafah will be operated by the Palestinian Authority on its side, and Egypt on its side, according to international standards." The agreement says the PA should operate the Palestinian side of the border under the supervision of an EU force. Egypt is not party to the agreement, which was signed between Israel and the PA and establishes arrangements on the Gaza side of the border. A World Bank document, meant to clarify the language of the AMA and address the understandings reached by the parties during the negotiations that led to its signing, states that one of the three principles guiding the agreement is the continuous operation of the crossings.

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13. OCHA, "The Gaza Strip: Access Report," September 2005, p.2; October 2005, p. 1-2; November 2005, p. 2. See [www.ochaopt.org](http://www.ochaopt.org). Visitors who entered Gaza during that period without Israeli permission were defined by it as illegal sojourners, not entitled to residency status in the Gaza Strip. See below, p. 62.

14. Agreement on Movement and Access and Agreed Principles for Rafah Crossing, Israel – PA, November 15, 2005, available at <http://www.mfa.gov.il/MFA/Peace+Process/Reference+Documents/Agreed+documents+on+movement+and+access+from+and+to+Gaza+15-Nov-2005.htm>. (Hereinafter: the AMA). Egyptian sources told Gisha in an interview on March 19, 2008, that Egypt was party to the discussions with the various parties that forged the agreement.

15. Joint press conference by Condoleezza Rice, Javier Solana and Jim Wolfensohn on the Rafah AMA, November 15, 2005, Jerusalem. Available at <http://2001-2009.state.gov/secretary/rm/2005/56890.htm>

16. Ibid.



"GOI [Government of Israel] has clarified that it will not close a passage due to a security incident unconnected with the passage itself. [...] A passage will only be closed if there is a clear and direct threat to that specific passage."<sup>17</sup>

Rafah Crossing was opened on November 26, 2005, under the new arrangement, based on the AMA. An examination of the implementation of the agreement in practice and over time shows that, contrary to the declarations, the agreement did not allow the Palestinians independent control of exit from and entrance into their territory, the principle of the continuous operation of the crossing was not honored, and the crossing was closed frequently by Israel unrelated to incidents threatening the crossing itself. The implementation of the AMA signaled the end of Israel's military presence at Rafah Crossing, but not the end of its substantial control over the crossing. Israel continued to exercise control through its control of the Palestinian population registry, which determines who is allowed to go through Rafah Crossing; its power to prevent the passage even of Palestinians listed in the population registry on security grounds; the right to veto the passage of foreigners; and its ability to decide to close the crossing indefinitely.

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17. World Bank Technical Team, "The Agreement on Movement and Access from 15 November 2005: the Passages – Technical Elaboration," 2.12.05. Available at <http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/AgreementMovementAccess.pdf>

Israel's involvement in the border crossing emerges from the provisions of the agreement itself: crossing through Rafah is limited to holders of Palestinian identity cards, namely Palestinians registered in the Palestinian population registry, which includes both the West Bank and the Gaza Strip, a registry whose updating still requires Israel's permission.<sup>18</sup> This requirement means that a decision by Israel not to register a Palestinian as a resident of the Gaza Strip or the West Bank denies him or her the right to exit or enter the Gaza Strip through the crossing. Moreover, even though the AMA does not say so explicitly, both parties – Israeli and Palestinian – have interpreted it as allowing Israel to veto the passage of registered Palestinians whom it claims are "terror operatives."<sup>19</sup> In practice, Israel has never used that power.<sup>20</sup>

According to the AMA, foreign nationals, including Palestinians who previously resided in the Gaza Strip or whose relatives hold Palestinian identity cards, are not allowed to enter the Strip through Rafah at all and therefore need to receive entrance visas to Israel and permits to enter the Gaza Strip through Erez Crossing, in order to enter Gaza. The agreement lists exceptional categories of foreigners allowed to enter the Strip through Rafah Crossing: diplomats, foreign investors, employees of international organizations and humanitarian cases. According to the language of the agreement, the PA must inform Israel of any such traveler in advance, Israel must explain any objection to their passage, and the PA must inform Israel of its decision.

In practice, it turned out that it was Israel that made the final decision and had the power to prevent the entry of foreigners through Rafah Crossing, even when they belonged to one of the categories of foreigners allowed to cross. According to Israel's Coordinator of Government Activities in the Territories (COGAT): "Requests for the passage of foreigners

**Israel's supervision of the passengers at Rafah was carried out from a control room located a few kilometers south at the Kerem Shalom crossing, under Israeli control.**

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18. See below, p. 57-63.

19. Related by Ron Roman, the IDF Spokesman, to Atty. Sari Bashi of Gisha in a letter from January 29, 2006.

20. Related by representatives of EU Border Assistance Mission (EUBAM) to Atty. Noam Peleg of Gisha at a meeting on October 30, 2006.



who do not carry Palestinian documents are subject to the approval of the Israeli side after being approved by the Palestinian side."<sup>21</sup> According to representatives of the EU Border Assistance Mission (EUBAM) at the crossing, a joint committee was supposed to decide on the exceptional passage of foreigners, but in fact it is Israel that decides what constitutes a humanitarian case for the purpose of such passage.<sup>22</sup>

**Dr. Leila Mariati**, a physician of Palestinian origin holding US citizenship, wanted to enter the Gaza Strip and the West Bank in order to treat patients there. The Israeli Ministry of the Interior refused to grant her an entry visa to Israel, and therefore she could not enter the Gaza Strip through Erez Crossing. Meanwhile, the Israeli authorities also refused her request to enter through Rafah Crossing, conveyed to them by the PA. In all cases the refusal was explained by security reasons. Thus, Dr. Mariati was not permitted to grant humanitarian aid to the residents of Gaza.<sup>23</sup>

Israel's supervision of the passengers at Rafah was carried out from a control room located a few kilometers south at the Kerem Shalom crossing, under Israeli control, near the "three borders" point between Israel, Egypt and the Gaza Strip. In the control room, Israeli security officers, European inspectors and Palestinian representatives watched the goings-on at Rafah Crossing through some 30 closed-circuit video cameras. The Israeli representatives could monitor the identities of those wishing to enter or exit the Gaza Strip, while looking up information about them in computerized databases.<sup>24</sup>

The operation of the control room by Israeli security officers, the presence of EU monitors at Rafah Crossing and the presence of PA representatives are conditions for its opening. Therefore, Israel has been given the de facto power to prevent the opening of the crossing by not operating the Israeli control room and by controlling the arrival of the European team to the crossing. Technically Israel could prevent the European monitors, living in the southern Israeli city of

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21. Related by Eyal Freiman, office of Coordinator of Government Activities in the Territories, the Defense Ministry, to Atty. Sari Bashi of Gisha in a letter from October 9, 2006.

22. Related by representatives of EUBAM to Atty. Noam Peleg of Gisha at a meeting on October 30, 2006.

23. Administrative petition (Jm) 829/05 Mariati v State of Israel (not published, 13.7.2006).

24. Related by EUBAM representatives to Atty. Noam Peleg of Gisha at a meeting on October 30, 2006.

Ashkelon, from reaching Rafah Crossing, because to get there they had to travel through the Kerem Shalom crossing, in Israeli territory and under complete Israeli control. As a matter of fact, in order to prevent the monitors from reaching the crossing, all Israel had to do was inform the European team that the crossing was closed. That is because the European force interprets the AMA to condition EUBAM authority to oversee the crossing on the participation of both parties to the agreement: Israel and the PA.<sup>25</sup>

### **The passage of goods through Rafah**

After the Oslo accords were signed in 1994, Rafah Crossing began to serve as a terminal for the import of goods as well, and every month hundreds of trucks entered the Gaza Strip through it, carrying raw materials for construction, food deliveries, clothing, medicine, electrical appliances and other merchandise from various countries.<sup>26</sup> The freight terminal at Rafah was also subject to Israel's policy of closing the border crossings after the outbreak of the intifada in late September 2000; in the first year of the intifada the freight terminal at Rafah was closed more than 70% of the time.<sup>27</sup> The number of trucks passing through Rafah dropped from 5,122 per month in 2000 to only 405 in 2001. In the following years the number rose gradually, and by 2004 more than 8,600 trucks entered Rafah Crossing. Import through Rafah stopped altogether in September 2005 as part of the implementation of the disengagement plan.<sup>28</sup>

The November 2005 AMA between Israel and the PA forbade the entry of merchandise into the Gaza Strip through Rafah Crossing beyond personal effects, thereby preventing the possibility of import through it. According to the agreement, import to the Gaza Strip should have taken place through the Kerem Shalom crossing, which is located inside Israel and is under its direct control. The agreement allowed the use of Rafah Crossing to export goods to Egypt, but

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25. Related by Maria Telleria, spokeswoman of EUBAM, to Atty. Noam Peleg of Gisha in a letter from January 15, 2007.

26. Related by Atty. Arie Shalom, the IAA legal advisor, to Noga Kadman of Gisha in a letter from December 16, 2008.

27. UNSCO (UN Special Coordinator in the West Bank and Gaza), "The Impact on the Palestinian Economy of Confrontation, Border Closures and Mobility Restriction," 1 October 2000 – 30 September 2001, p. 5, available at [www.ochaopt.org](http://www.ochaopt.org) (Hereinafter: UNSCO, The Palestinian Economy).

28. The figures were provided by Atty. Arie Shalom, the IAA legal advisor, to Noga Kadman of Gisha in a letter from December 16, 2008.

arrangements were never established to make that possible. The prohibition on imports through Rafah Crossing also created a certain difficulty for export through it, because a Palestinian truck loaded with merchandise could leave Gaza through Rafah as part of the implementation of the agreement, but it could not return via Rafah even if empty, because of the prohibition on imports.<sup>29</sup>

In the first seven months of AMA implementation, from November 25, 2005 to June 24, 2006, Rafah Crossing was operated regularly. During those months, the crossing was open every day for an average of more than 9.5 hours. Every day an average of 1,320 people crossed in both directions,<sup>30</sup> similar to the number of passengers through Rafah Crossing before travel restrictions were imposed during the intifada.

On June 25, 2006, Palestinian militants attacked an Israeli military outpost at Kerem Shalom and captured Israeli soldier Corp. Gilad Shalit. That day, Israel ordered Rafah Crossing closed. Israel stopped implementing the AMA and kept the crossing mostly closed. Israel told the European force that security risks precluded opening the crossing.<sup>31</sup> However, comments by senior Israeli security officials reveal it was a political decision by Israel, intended to pressure the residents of the Gaza Strip and their leadership in order to effect the release of the captured soldier.<sup>32</sup> Hence, Rafah Crossing was not closed because of a direct threat to the crossing itself, in contradiction to Israel's explicit declaration during the negotiations over the AMA.<sup>33</sup>

According to the Israeli Defense Ministry, Rafah Crossing was "closed to continuous operation." However, "the crossing opens periodically, mainly for humanitarian traffic."<sup>34</sup> On the few occasions when Israel allowed the crossing to open, it was done ad hoc, at random, and without giving sufficient prior notice to

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29. See Gisha, "Disengaged Occupiers: The Legal Status of Gaza," January 2007, p. 36, available at [http://www.gisha.org/UserFiles/File/publications\\_/Hebrew%20Position%20Paper%20for%20website.pdf](http://www.gisha.org/UserFiles/File/publications_/Hebrew%20Position%20Paper%20for%20website.pdf). [Hereinafter: Gisha, "Disengaged Occupiers"].

30. The information was provided to Gisha by OCHA.

31. Related by EUBAM representatives to Atty. Noam Peleg of Gisha at a meeting on October 30, 2006.

32. This emerges, for instance, from the summary of the discussion in the office of the Defense Minister's advisor on August 22, 2006. For further details see below, p. 121.

33. *Supra* p. 23.

34. Related by Ruth Bar, assistant to the Defense Minister, in a letter to the office of MK Michael Melchior from December 18, 2006.



residents. Sometimes the crossing opened for a few hours and only in one direction, which usually did not meet the travel needs of the population. Once Rafah Crossing closed for regular traffic, the joint committee that was supposed to discuss exceptional requests for the passage of foreigners also stopped meeting.<sup>35</sup>

The frequent closure of the crossing caused an extreme and dangerous situation of overload, crowding and congestion at the border crossing by Gaza residents wishing to travel during the rare hours when it opened. On March 8, 2007, for example, thousands of Palestinians crowded into the Rafah terminal in an attempt to leave to Egypt. An old man was crushed to death and nine residents were injured by the pushing of the crowds and shooting by Palestinian security forces who were trying to restore order at the crossing.<sup>36</sup> Because of the incident, the crossing was closed after only one and a half hours of activity, again preventing thousands of residents from leaving the Gaza Strip. Among those waiting were dozens of patients who had been referred to medical treatment in Egypt, and at least some of them never managed to get out.<sup>37</sup>

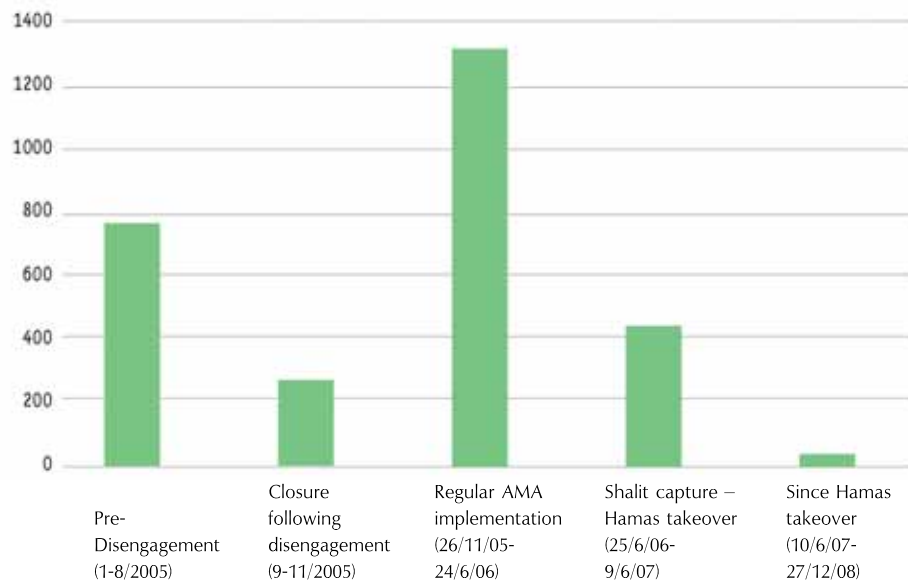
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35. Related by EUBAM representatives to Atty. Noam Peleg of Gisha at a meeting on October 30, 2006.

36. OCHA, "Humanitarian Monitor," No. 11, March 2007, p. 9, available at [http://www.ochaopt.org/index.php?module=displaysection&section\\_id=118&format=html&edition\\_id=&period=50:YEAR](http://www.ochaopt.org/index.php?module=displaysection&section_id=118&format=html&edition_id=&period=50:YEAR)

37. This was learned from an inquiry by the organizations Gisha and PHR-Israel, who wrote a letter on the subject to the Israeli Defense Minister and the Coordinator of Government Activities in the Territories on March 8, 2007.

In June 2007 Hamas took control of the internal government in the Gaza Strip, which led to the freezing of the implementation of the AMA on June 10, 2007 (see below). In the eleven and a half months between the capture of Israeli soldier Gilad Shalit and the discontinuation of the implementation of the agreement, Rafah Crossing was closed for 265 days, approximately 86% of the time. During those months, 163,632 people crossed the border in both directions, averaging 468 people a day.<sup>38</sup> In other words, during that period, the number of people allowed through the crossing was just 35% of the number during the time it operated regularly after the disengagement, when an average of 1,320 people per day crossed in both directions. This last figure indicates the actual demand for crossing between the Gaza Strip and Egypt and allows us to estimate that the closures of the crossing between June 2006 and June 2007 prevented, on average,



**Diagram 2: Average daily traffic of people through Rafah Crossing in both directions, 2005-2008**

Source: OCHA, UN Office for the Coordination of Humanitarian Affairs

38. Based on OCHA figures provided to Gisha.

852 people from exiting and entering the Gaza Strip every day. In fact, on most days during the period between June 2006 and June 2007, not one person went through Rafah Crossing, because it was rarely open. The inability to predict when it would open made it difficult to plan travel from Gaza in advance and required many residents to wait for days and even weeks on the Egyptian side of the border on their way home to the Gaza Strip.

### **Exit from the Gaza Strip through other crossings**

Since the beginning of the intifada in September 2000, Israel almost completely stopped issuing Gaza residents transfer permits to the West Bank in order to go abroad through the Allenby Bridge or entry permits into Israel in order to fly through Ben Gurion Airport. Leaving the Gaza Strip by air was possible only for a limited time before being thwarted by Israel: Gaza's international airport was inaugurated in the southern Gaza Strip in November 1998 as part of the Oslo agreement. The PA operated the airport, from which up to 30 flights a week left to Arab countries, subject to Israeli inspection of the passengers at the Rafah terminal. Upon the outbreak of the intifada at the end of September 2000, activity of the airport was greatly restricted, and in February 2001 it stopped operating completely. Israel's bombing of the control tower and the runways in December 2001 and January 2002 prevented the possibility of continuing to operate the airport, which has not been rebuilt. It was never possible to leave the Gaza Strip by sea, in the absence of a seaport and given Israel's military control of Gaza's waters and the prohibition of sea craft except for fishing boats in limited areas. Even after the implementation of the disengagement plan from the Gaza Strip, Israel continues to exclusively control the Gaza Strip's airspace and territorial waters.<sup>39</sup> The AMA provided for a seaport to be built in Gaza and required Israel to issue guarantees to donors to the project that Israel would not interfere with its operation. Israel did not provide such guarantees to the donors, and the construction of the seaport never began. Negotiations over the re-operation of the Gaza airport never took place, contrary to the stipulation of the agreement.<sup>40</sup>

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39. Disengagement plan, section 3 a(1).

40. See Gisha, "Disengaged Occupiers," p. 45 (supra note 29, p. 27.).

The ability of Gaza residents to enter Israel gradually diminished over the years, until it became virtually impossible. In January 1991, the general exit permit from the OPT was canceled, and since then residents of the Strip have been required to obtain individual exit permits to leave Gaza for Israel, granted upon the approval of the Israel Security Agency (ISA, aka the "Shabac"); the number of such permits gradually dropped over the years. In 1993 a general closure of the OPT was declared, the enforcement of which became especially effective in the Gaza Strip in 1995, when an electronic fence and concrete wall were built around it. The crossing was periodically closed even to those holding individual permits, during times when a "total closure" of the Strip was declared. Upon the outbreak of the intifada in Sep-

**Since the beginning of the intifada in September 2000, Israel almost completely stopped issuing Gaza residents transfer permits to the West Bank in order to go abroad through the Allenby Bridge or entry permits into Israel in order to fly through Ben Gurion Airport.**

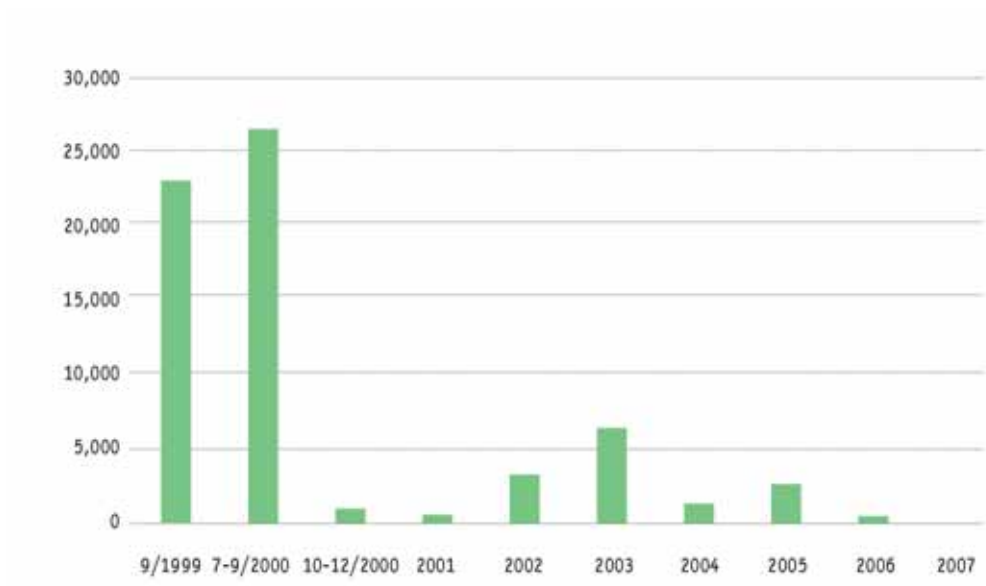
tember 2000, Israel canceled many existing exit permits and issued few new ones. Since then exit permits from the Gaza Strip were limited almost exclusively to workers, merchants and patients treated at Israeli hospitals. The number of days in which Erez Crossing was closed rose sharply, and in the first year of the intifada, the crossing was closed to Palestinians 72% of the time.<sup>41</sup> After a certain improvement in 2002, Erez Crossing again closed frequently, and in 2004 the number of days it was closed reached 149, including an almost three-month period after the detection of explosives on a worker who was about to pass through the crossing at the end of August.<sup>42</sup> The restrictions led to a drop of tens of percentage points in the number of Palestinian residents of the Gaza Strip who were able to enter Israel every day: from more than 26,000 per day in the summer of 2000, on the eve of the intifada, to fewer than 900 per day after it broke out later that year.

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41. UNSCO, "The Palestinian Economy," p. 3.

42. UNSCO, "Closure in the Gaza Strip," December 2004, p. 3; OCHA, "The Gaza Strip – Access Report," February 2005, p. 1, available at [http://www.ochaopt.org/documents/ochaSR\\_GazaAccess040305.pdf](http://www.ochaopt.org/documents/ochaSR_GazaAccess040305.pdf)

Beyond the declaration of Erez Crossing as an international border terminal,<sup>43</sup> the implementation of the disengagement plan did not lead to an immediate change in Israel's policy regarding exiting the Gaza Strip. However, on March 12, 2006, in anticipation of the Jewish Purim holiday, Israel imposed a closure on the OPT and prevented the entrance of workers from the Gaza Strip into Israel. Since then they were not let back in, and Israel's policy is "not to allow the entrance of residents of the Gaza Strip except for very exceptional humanitarian cases."<sup>44</sup> Israel continues to prevent residents of Gaza from passing through the Erez checkpoint, except for a few hundred patients and a handful of merchants every month, as well as exceptional cases.



**Diagram 3: Average daily number of Palestinian workers entering Israel through Erez Crossing, 1999-2007**

Source: OCHA, UNSCO reports<sup>45</sup>

43. Order on Entry into Israel (border stations) (amendment) 5765-2005.

44. HCJ 4496/07, **Madhoun v OC Southern Command**, response of the Respondents from May 27, 2007 [Hebrew], para. 8, available at <http://www.gisha.org/index.php?intLanguage=4&intItemId=444&intSiteS-N=82&OldMenu=82>.

45. The organizations' reports are available at [www.ochaopt.org](http://www.ochaopt.org). The figures do not include weekends, on which the crossing is closed.



The restrictions on passage from the Gaza Strip to Israel also inhibit the ability of the residents of the Strip to visit the West Bank, where they have familial, social, economic, educational and cultural ties. In October 1999, a few years behind schedule, Israel opened the "safe passage" between the two territories, promised in the Oslo accords.<sup>46</sup> Movement through the passage was made possible subject to receiving a permit from Israel. For thousands of people, passage was completely forbidden, sometimes because of sweeping restrictions by age and family status. The safe passage operated for less than one year, during which about 12,000 safe passage permits were granted to residents of the Gaza Strip each month.<sup>47</sup> With the outbreak of the intifada, Israel closed the safe passage on October 6, 2000, and has not renewed its operation since. The number of residents of Gaza who were able to visit the West Bank since then dropped drastically: between 2001 and 2005, Israel issued an average of just 260 permits a month to residents of the Gaza Strip to visit the West Bank.<sup>48</sup> The provision in the AMA to operate convoys of buses between the Gaza Strip and the West Bank "no later than December 25, 2005" was never implemented. The Gaza Strip and the West Bank, which were supposed to be "a single territorial unit" according to the Oslo accords,<sup>49</sup> gradually became severed from each other.<sup>50</sup>



The gradually tightening closure of Rafah Crossing over the years should be viewed in the context of Israel's simultaneous reduction and cancellation of all other exit and entry options in and out of the Gaza Strip – by sea, by air and through the land border between Gaza and Israel and the West Bank. The closure of every other crossing made Rafah Crossing essential for traveling abroad; therefore, a decision to close Rafah Crossing essentially completes the closure of the Gaza Strip, denying its residents access to the outside world.

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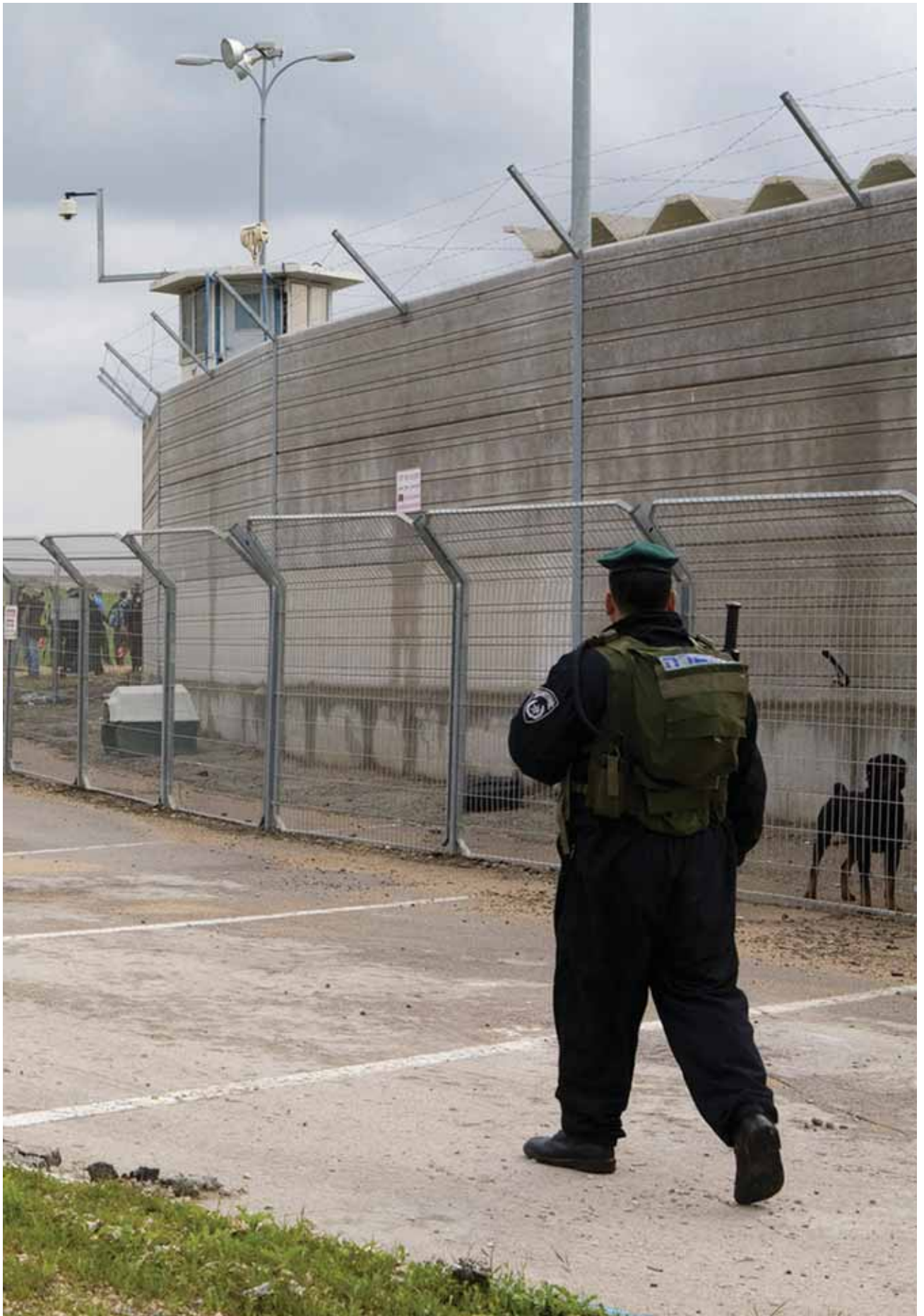
46. Interim agreement, 1995, Appendix I, Section 10.

47. The information was provided by the IDF Spokesperson to B'Tselem. See B'Tselem and Hamoked, "Gaza Prison," p. 15.

48. Ibid.

49. Interim agreement, 1995, Chapter 2, Section 11.

50. For more information on the subject, see Gisha, "Disengagement Danger: Israeli Efforts to Separate Gaza from the West Bank," February 2006, available at [http://www.gisha.org/UserFiles/File/publications\\_/disengagement%20danger.doc](http://www.gisha.org/UserFiles/File/publications_/disengagement%20danger.doc).



## Chapter 2

# Rafah Crossing Shuts Down, Closure Tightens

In the elections for the Palestinian Legislative Council in January 2006, the Hamas movement won a majority of the seats. Movement leader Ismail Haniya was sworn in as the prime minister of the new Palestinian government, most of whose ministers came from the ranks of Hamas. Fatah continued holding junior positions in the cabinet ministries and the authority to coordinate with Israel, including regarding the crossings into the West Bank and Gaza Strip. Fatah leader Mahmoud Abbas continued to serve as president of the PA, and the security apparatus of the PA's Presidential Guard continued to operate at the crossing points between the OPT and Israel. After the elections, Israel and the US reiterated their declarations that Hamas is a terrorist organization and that their policy is to abstain from contact with it.<sup>1</sup> The US and the EU froze their aid to the Hamas-controlled PA,<sup>2</sup> and Israel refused to transfer the customs money it had collected that belonged to the PA.<sup>3</sup>

Power struggles between Fatah and Hamas forces led to acts of violence between the two movements in the Gaza Strip, even after the agreement on and creation of a unity government in March 2007. The clashes reached a peak in the week between June 9-15 2007, with a wave of fighting in the Gaza Strip in which 188 Palestinians were killed and 840 were wounded.<sup>4</sup> On June 15 the fighting ended with Hamas taking over the Gaza Strip and seizing its internal government. PA members were gradually pushed out of their positions of power in the cabinet

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1. Prime Minister's Office, Press Release, January 26, 2006, available at <http://www.pmo.gov.il/PMO/Archive/Spokesman/2006/01/spokemesbit260106.htm>; U.S. Department of State, Daily Press Briefing, January 27, 2006, available at <http://www.state.gov/r/pa/prs/dpb/2006/60004.htm>
  2. US State Department, Daily Press Briefing, April 7, 2006, available at <http://www.state.gov/r/pa/prs/dpb/2006/64251.htm>
  3. Prime Minister's Office, Press Release, February 19, 2006, available at <http://www.pmo.gov.il/PMO/Archive/Decisions/2006/02/des4705.htm>
  4. OCHA, "Humanitarian Monitor," No. 14, June 2007, p. 1, available at [http://www.ochaopt.org/documents/HM\\_June07\\_.pdf](http://www.ochaopt.org/documents/HM_June07_.pdf)



ministries, in the security apparatuses and at the border crossings. Hamas members replaced them all, with the exception of low-level Fatah officials who continued to staff positions related to coordination with Israel, such as the Civil Affairs Committee, operating under the Palestinian Interior Ministry, and the Gaza Strip's health coordinator in charge of submitting applications for entry permits into Israel.

Abbas announced he was dismantling the unity government, firing Prime Minister Haniya, and outlawing the Hamas military wing. Israel tightened the closure of the land crossings between the Gaza Strip and the outside world, claiming that there was no legitimate party on the Palestinian side to take responsibility for operating the various border crossings and also that terrorist threats against the crossings had increased, endangering those operating them.<sup>5</sup>

**Along with the sweeping prohibition against the entrance and exit of people since Hamas took control of the government in the Gaza Strip, Israel also severely restricted the transfer of goods, upon which the economy of the Gaza Strip and its humanitarian needs depend.**

Along with the sweeping prohibition against the entrance and exit of people since Hamas took control of the government in the Gaza Strip, Israel also severely restricted the transfer of goods, upon which the economy of the Gaza Strip and its humanitarian needs depend.<sup>6</sup> The main consequence of those developments was an intensification of the closure, isolation, and shortages from which the residents of the Gaza Strip suffered.

Rafah Crossing, which opened for the last time on June 9, 2007 after being closed for most of the previous year, was no longer open for regular traffic, and the implementation of the AMA was discontinued: the PA's Presidential Guard, the force that until that time had operated the Palestinian side of the crossing, was

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5. A letter from Lieut. Asaf Baharal, CoGAT, to Atty. Noam Peleg of Gisha, July 15, 2007.

6. For further information see: Gisha, "Commercial Closure: Deleting Gaza's Economy from the Map," July 2007, [http://www.gisha.org/UserFiles/File/publications\\_english/Publications%20and%20Reports\\_English/Formatted-Deleting%20Gaza%20Economy%20from%20the%20Map.doc](http://www.gisha.org/UserFiles/File/publications_english/Publications%20and%20Reports_English/Formatted-Deleting%20Gaza%20Economy%20from%20the%20Map.doc)

pushed out of its position following the Hamas takeover of the Gaza Strip. Therefore, the PA could no longer carry out its part in the AMA; Egypt, for its part, closed the border because of its inability to continue operating it in the presence of PA representatives, as the agreement stipulated.<sup>7</sup> Israel announced its opposition to opening the border – over which it claimed to have no control – in such a way that would allow unmonitored entrance and exit from the Gaza Strip, contrary to the AMA;<sup>8</sup> on June 15 the European force in charge of the border crossing announced it was suspending its activity because of the EU policy to abstain from contact with Hamas, which became the ruling force at Rafah Crossing.<sup>9</sup>

Since then, for almost two years, Rafah Crossing has been almost hermetically closed. As opposed to the year between the capture of Israeli soldier Gilad Shalit and the Hamas takeover of the Gaza Strip, in which Israel closed the crossing 86% of the time,<sup>10</sup> since June 2007 the Rafah Crossing has not opened for even a single day according to the AMA. Yet at the same time, all of the parties involved in signing the agreement – the PA and Israel which were parties to it, the EU which constitutes a third party, the US which mediated, and Egypt which participated in the discussions that preceded it – continue treating the agreement as valid and as the basis for reopening the crossing.<sup>11</sup> The mandate of the European force, whose job it is to monitor traffic through Rafah on the basis of the AMA, continues to be renewed periodically. Their mandate is presently in effect until November 24, 2009, even though, since June 2007, just a small team of European monitors has been staying in the Israeli city of Ashkelon, waiting for the renewed implementation of the agreement.<sup>12</sup>

As a result of the discontinuation of regular passage through Rafah, since June 2007, a number of limited alternatives have arisen, allowing movement between

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7. Related by official Egyptian sources to Atty. Sari Bashi and Tania Hary of Gisha in an interview on October 28, 2008. The interview took place in response to questions addressed by Gisha to the Egyptian Foreign Ministry through the Egyptian Embassy in Tel Aviv.

8. HCJ 6475/07, **Abu Laban v Defense Minister**, respondents' response from July 29, 2007 [Hebrew], para. 4, available at <http://www.hamoked.org.il/items/9061.pdf> (submitted by Hamoked: Center for the Defence of the Individual).

9. Related by Maria Telleria, spokeswoman of EUBAM, to Tania Hary of Gisha in an e-mail from August 3, 2008.

10. Based on OCHA figures provided to Gisha. Supra pp. 27-30.

11. For a deeper discussion of the positions of the various parties, see below chapter 5, pp. 119-141.

12. European Union Council, Press Release from November 10, 2008, available at [http://consilium.europa.eu/cms3\\_fo/showPage.asp?id=1021&lang=en&mode=g](http://consilium.europa.eu/cms3_fo/showPage.asp?id=1021&lang=en&mode=g)

the Gaza Strip and Egypt in exceptional cases. They will be described below. However, it is important to keep in mind that these are emergency solutions that address the acute needs of a small number of people and cannot resolve the general hardship of the 1.5 million residents of the Gaza Strip, resulting from the closure and their acute need for freedom of movement to the outside world.

## **Passage from Egypt to the Gaza Strip through Israel**

After the discontinuation of passage through Rafah in June 2007, Palestinians who wanted to enter the Gaza Strip continued arriving on the Egyptian side of the border and found the gate closed. In July, their number reached 6,000, including children, elderly, medical patients, relatives of Gaza residents who came to visit, and students studying overseas. Those waiting had to stay on the Egyptian side of Rafah and in Al-Arish, either in rented rooms, in tent camps Egypt erected in schools, in parks, or on the streets. Egyptian organizations provided some of them with lunches, and most of them had to support themselves in a foreign place, while their money ran out. Hundreds of the people waiting remained in the border area, at the height of summer, without shelter or aid. According to the Palestinian Center for Human Rights, among those waiting were 1,200 patients on their way home from receiving medical care in Egypt. Fourteen of them died on the Egyptian side in July 2007, after their condition worsened during the long wait in difficult conditions.<sup>13</sup>

**Mohammed (pseudonym), 24, waited in Egyptian Rafah for more than two months with his wife and six-month-old son:<sup>14</sup>**

"Our situation is a nightmare, suffering. I am stuck here with my wife and my six-month-old son. My son is blind. We left 15 days before the events in Gaza for medical treatment for the baby at the Ma'had Nasser hospital in Cairo. [...] The day we were supposed to return to Gaza is the day the border crossing closed. We came here to treat our child for 15 days and we have been here for 65 days already. [...]"

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13. Palestinian Center for Human Rights, "Situation Assessment," 6-7 December 2007, see: [http://www.pchrgaza.org/files/PressR/English/2008/rafah\\_cro.html](http://www.pchrgaza.org/files/PressR/English/2008/rafah_cro.html)

14. Testimony given on July 23, 2007 to Ayda Abdalbari of Gisha.

"Now we are in Egyptian Rafah. We rented a room for 25 Egyptian pounds a night. Our money is about to run out, actually it already did, and we put together another \$100 from here and from there. [...] The apartment where we are staying only has three mattresses and nothing else. We have run out of milk for the child.

"There are a lot of people here, it is not just me, my wife and my son. [...] I have another child in Gaza, he is a year-and-a-half old. He is also sick and receiving medical care. He stayed with my brother and his wife in Gaza. [...] I hear him crying on the phone every time we talk to our family in Gaza. [...]

"That is my situation, and it is relatively better than what other people are going through. People started sleeping outdoors under the open sky. They have run out of money. There are places where 50 people are sleeping in a 5x3 meter room, men, women and children. All that noise around me is the sound of screaming of people fighting over the food they bring us for lunch and over milk for the babies."

As an alternative to Rafah Crossing, Israel offered to let those waiting to return to the Gaza Strip come through the Kerem Shalom Crossing in Israeli territory, on the border between Israel, Egypt and the Gaza Strip.<sup>15</sup> The idea was not implemented because of the objection of Hamas, expressed by its shelling the border crossing with mortars.<sup>16</sup> At the end of July, Israel, Egypt, and the PA reached a solution according to which those waiting would return to the Gaza Strip by entering Israel through the Nitzana crossing on the Israel-Egypt border, and being bussed from there through Israeli territory to the Erez checkpoint through Israel.<sup>17</sup> By August, 6,374 Palestinians entered the Gaza Strip this way, some of whom had been waiting to return home for more than two months.<sup>18</sup>

Since Rafah Crossing shut down in June 2007, residents of the Gaza Strip hardly had any way to leave. Two and a half months later, at the end of August 2007, Israel introduced a temporary mechanism allowing a limited number of residents

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15. A letter from Lieut. Asaf Baharal, CoGAT, to Atty. Noam Peleg of Gisha, July 15, 2007.

16. HCJ 6475/07, **Abu Laban v Defense Minister**, respondents' response from July 29, 2007, para. 5 (see supra note 8, p. 38). For a detailed discussion of Hamas' position on the Kerem Shalom crossing, see p. 134-135 below.

17. *Ibid.*, para. 8.

18. OCHA, "Humanitarian Monitor," No.16, August 2007, p. 1, available at [http://www.ochaopt.org/documents/Humanitarian\\_monitor\\_August\\_2007.pdf](http://www.ochaopt.org/documents/Humanitarian_monitor_August_2007.pdf)





of the Gaza Strip, if they held long-term residence visas, resident status, or citizenship of a foreign country, to travel abroad. The PA's Civil Affairs Committee, which continued operating in the Gaza Strip under the authority of the PA ministries in Ramallah, was responsible for registering such residents wishing to leave and transferring that list to Israeli security officials for their approval. The Israelis then transferred the list of approved names to the Egyptian authorities for approval, who ascertained that the residents of the Gaza Strip were going to travel through Egypt on their way to a third country.<sup>19</sup> Ultimately, the exit of 605 residents of the Gaza Strip was approved through the Erez checkpoint, and from there they were taken by "shuttle" buses through the Nitzana crossing to Egypt. In shuttles running at the end of August and beginning of September, just 502 of them reached Egypt. The others were not allowed to pass, blocked either by Israeli or Egyptian authorities, even though their exit had been approved in advance.<sup>20</sup>

On September 19, 2007, after continuous firing of rockets from the Gaza Strip into Israel, the Israeli government's Security Cabinet declared the Gaza Strip under Hamas rule a "hostile territory," and decided to impose restrictions on the transfer

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19. Related by Sgt. Yarden Zer-Aviv of the Military Advocacy General's International Law Department to Atty. Noam Peleg of Gisha in a phone call from September 3, 2007.

20. The figures were provided by the PA's Civil Affairs Committee in the Gaza Strip to Ayda Abdalbari of Gisha on February 22, 2008.

of goods from Israel to the Gaza Strip, including supply of fuel and electricity, and restrict the traffic of people in and out.<sup>21</sup> The restrictions on movement included discontinuing the shuttle arrangement, which was only later renewed in December 2007. During that time, the PA collected lists of 6,400 residents waiting to travel abroad under the shuttle arrangement. In December 2007 and January 2008, Israel operated the shuttles for seven days and approved the exit of 1,664 residents of the Gaza Strip to Egypt. Ultimately, 1,470 of them were allowed through by the Israeli and Egyptian authorities, and the rest were returned to the Gaza Strip.<sup>22</sup> Some of the travelers were sent back because their travel papers had expired due to the long wait to leave the Gaza Strip, and others because either the Israeli or Egyptian security officials refused to let them through.<sup>23</sup> Those who left were given no guarantee they would be allowed to return to the Gaza Strip.

**The attempt to help the residents of the Gaza Strip leave as a way to garner public opinion became a battleground between the Hamas government in the Gaza Strip and the PA in the West Bank.**

Smaller convoys took place at the end of February and middle of March 2008, carrying several dozen Palestinian patients from the Gaza Strip to medical care in Egypt and Jordan.<sup>24</sup> Those patients were bussed by Israel back to the Gaza Strip in April and May 2008. Since then, Israel has not renewed the transport mechanism, despite periodic promises to do so, in several cases summoning residents to transports and canceling them at the last minute, putting the patients in a situation of uncertainty, unable to plan their travel.<sup>25</sup>

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21. Israeli security cabinet decision, September 19, 2007, available at <http://www.mfa.gov.il/MFA/Government/Communiques/2007/Security+Cabinet+declares+Gaza+hostile+territory+19-Sep-2007.htm>

22. The information was provided by the PA's Civil Affairs Committee in the Gaza Strip to Ayda Abdalbari of Gisha on February 22, 2008.

23. Related by Egyptian sources to Gisha in an interview from March 19, 2008.

24. For detailed discussion of this see below, p. 114-115.

25. Official Egyptian sources told Atty. Sari Bashi and Tania Hary of Gisha in an interview on October 28, 2008 that the shuttles were stopped after March 2008 because at that time Egypt began to open the crossing periodically, with the agreement and knowledge of Israel, and it was decided that that was sufficient to replace the transport arrangements. Israeli officials declined to respond to Gisha's question why the transports were stopped and referred to the general reply letter from the Defense Ministry about Rafah Crossing, attached to the report as appendix A.

## **The passage of pilgrims to Saudi Arabia in December 2007 coordinated by Egypt-Hamas**

The attempt to help the residents of the Gaza Strip leave as a way to garner public opinion became a battleground between the Hamas government in the Gaza Strip and the PA in the West Bank. The Hajj ceremonies, in which Muslim pilgrims from all over the Middle East and the world go to Mecca and Medina in Saudi Arabia, occurred in December of 2007. The Hamas government in Gaza promised residents who registered in its offices that they could go to Saudi Arabia through Rafah Crossing; meanwhile, the PA government in Ramallah reached an agreement with Israel to allow about 1,000 pilgrims from Gaza to go to the Hajj in Saudi Arabia through the Erez checkpoint, and from there through the Allenby crossing to Jordan, and it too registered residents for that purpose.<sup>26</sup>

At the beginning of December 2007, Egypt allowed 2,200 Palestinians to leave the Gaza Strip through Rafah Crossing to Sinai and from there to Saudi Arabia, in coordination with the Hamas government and based on lists supplied by the latter.<sup>27</sup> This was the first time Rafah Crossing opened for the exit of Palestinians since June 2007; it was done without coordination with the PA or Israel. Nor was there any Israeli supervision of the passengers, creating tension between Israel and Egypt and increasing hostility between the PA and Hamas.<sup>28</sup> Meanwhile, Israel allowed 700 pilgrims to leave the Gaza Strip to Jordan through the Erez checkpoint and the Allenby crossing.<sup>29</sup>

At the end of December, in anticipation of the return of the pilgrims who exited through Rafah Crossing, Egypt accepted Israel's request to allow their entry back into the Gaza Strip only through an Israeli-controlled crossing. The pilgrims protested fiercely, burning tents and vandalizing property in the temporary camps built for them in Al-Arish, Egypt and refusing to undergo Israeli inspection, for fear

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26. Related by the Ministry of Religious Affairs in Gaza to Ayda Abdalbari of Gisha in a phone call from November 10, 2008.

27. The information was provided to Gisha by OCHA.

28. Haaretz, Avi Issacharoff, "PA objected but Egypt allows Palestinians out of the Gaza Strip," December 4, 2007 [Hebrew], available at <http://www.haaretz.co.il/hasite/spages/931016.html>; "Exit of pilgrims from Gaza – an Egyptian slap in the face to Abbas," December 8, 2007 [Hebrew], available at <http://www.haaretz.co.il/hasite/pages/ShArt.jhtml?more=1&itemNo=932237&contrastID=2&subContrastID=21&sbSubContrastID=0>.

29. Related to Ayda Abdalbari of Gisha in meeting with OCHA representatives in Gaza, November 2, 2008.

of investigation and detention by Israeli authorities.<sup>30</sup> Ultimately, Egypt allowed the returnees to cross through Rafah, which they did on January 2, 2008. Israeli officials were quoted by the media as saying this contradicted the understandings between the countries.<sup>31</sup>

## The breach of the Gaza-Egypt border by Hamas

Upon the return of the pilgrims, Rafah Crossing again closed to traffic, while the need of the residents of the Gaza Strip to leave it – to access goods difficult to obtain inside Gaza, to visit relatives, to study, and to work – became more pressing. In mid-January there was an escalation in fighting between Hamas forces and other militants in the Gaza Strip and Israel. Following the clashes on January 18, Israel closed the border crossing from Israel to the Gaza Strip hermetically and, for the next four days, cut the Gaza Strip off completely from any supply of food, medicine, and fuel.

**The masses stocked up on food, medicine, cigarettes and oil, which were severely lacking in the Gaza Strip or whose prices had risen sharply because of the closure.**

The Gaza power plant shut down two days later because of the prevention of the supply of industrial diesel, on which it depends for its operation.<sup>32</sup> The duration of ensuing power outages, frequent even prior to the border closure, extended to 12 hours a day in some parts of the Gaza Strip. The electricity shortage prevented the supply of running water to at least 40% of the residents of the Gaza Strip and escalated the collapse of the sewage system, leading to the dumping of untreated sewage water into the Mediterranean Sea. On January 22, Israel somewhat eased the stranglehold on the Gaza Strip but still allowed only limited entry of

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30. Haaretz, Yoav Stern and Amos Harel, "Egypt expected to let pilgrims straight into Gaza Strip," January 1, 2008 [Hebrew], available at <http://www.haaretz.co.il/hasite/spages/940533.html>

31. Haaretz, Yoav Stern, Avi Issacharoff and news agencies, "Palestinian pilgrims cross border to Gaza through Rafah," January 2, 2008; Al Jazeera, "Ordeal over for Gaza pilgrims," January 3, 2008, available at <http://english.aljazeera.net/news/middleeast/2008/01/200852514858578916.html>

32. See affidavit by Rafiq Maliha, project manager of Gaza power plant, given to Gisha on January 20, 2008 as part of HCJ 9132/07, **al-Bassiouni v Prime Minister**, available at [http://www.gisha.org/UserFiles/File/Legal%20Documents%20/fuel%20and%20electricity\\_oct\\_07/english\\_docs/Maliha%20affidavit%202010-08-no%20details.PDF](http://www.gisha.org/UserFiles/File/Legal%20Documents%20/fuel%20and%20electricity_oct_07/english_docs/Maliha%20affidavit%202010-08-no%20details.PDF)

goods.<sup>33</sup> Sources in the Israeli defense establishment told the press that the border crossings were open, from then on, only for the transfer of a minimal amount of goods and aid to prevent a humanitarian disaster and curb international criticism of Israel.<sup>34</sup>

Early the following morning, Hamas militants blew up most of the 12 km wall separating the Gaza Strip from Egypt. At dawn, residents from all over the Gaza Strip began swarming towards the breached fence and into Egypt. While no exact number is available, various estimates indicate that as many as hundreds of thousands of residents crossed the border.<sup>35</sup> The masses stocked up on food, medicine, cigarettes and oil, which were severely lacking in the Gaza Strip or whose prices had risen sharply because of the closure.

**A.R., 39, Shati refugee camp in Gaza, went to Egypt on the day the border was breached:<sup>36</sup>**

"I left home at 7 a.m. . The only thing I was thinking about was to change the air, to change the atmosphere, to leave Gaza (the prison) even for one day. I got to Rafah. There were so many people there I could hardly find a place to step. There were no borders, Gaza had expanded, I could not believe my eyes. The walls of the border had fallen.

"When I walked around Egyptian Rafah I watched the tragedy. Women and children with huge bags walking through a very crowded place, entire families loaded with luggage, behaving as if they were about to emigrate forever. Students were holding their baggage, hoping to get to their universities abroad. On the way

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33. OCHA, Gaza closure Situation Report, January 18-24 2008, available at [http://www.ochaopt.org/documents/Gaza%2001\\_24.pdf](http://www.ochaopt.org/documents/Gaza%2001_24.pdf); OCHA, Update on Gaza Closure, Humanitarian Monitor, Volume 21, January 2008, p. 1, available at [http://www.ochaopt.org/documents/Humanitarian\\_Monitor\\_Jan\\_08.pdf](http://www.ochaopt.org/documents/Humanitarian_Monitor_Jan_08.pdf)

34. Ha'aretz, Barak Ravid and Amos Harel, "Barak: if we don't have quiet the Palestinians won't have quiet," January 23, 2008 [Hebrew].

35. Related to Ayda Abdalbari of Gisha by representatives of OCHA and UNWRA in the Gaza Strip. See also Ha'aretz, Amira Hass and Haaretz service, "Hamas planned the breach for months," January 24, 2008 [Hebrew], available at <http://www.haaretz.co.il/hasite/spages/947830.htm>; see also Al Jazeera, "The Palestinians continue to go through, Egypt keeping border with Gaza open," January 26, 2008 [Arabic], available at <http://www.aljazeera.net/News/archive/archive?Archived=1081887>

36. Testimony given to Ayda Abdalbari of Gisha on January 23, 2008.



I met patients who were going to Egypt for treatment. I met people who bought a lot of goods from Egypt, such as cigarettes, diesel fuel, tires, milk and even goats. Almost all of Gaza was there.

"When I was in Egypt I felt that this is the freedom we need, that is the space we want as Palestinians, that is the dignity we deserve as human beings. It really feels good when you can smell freedom. It was freedom for one day."

The Egyptian forces let the Palestinians enter Egyptian territory to Egyptian Rafah and Al-Arish, but prevented them from continuing into the Sinai and Egypt proper, excepting a small number of people who were allowed to go to the Cairo airport. The media said that Egyptian President Hosni Mubarak instructed the Egyptian security forces to let the Palestinians come in and buy food because they were hungry.<sup>37</sup> Meanwhile, pressure was put on Egypt to close the border crossing: Israel said it "expects the Egyptians to solve the problem,"<sup>38</sup> and the US administration expressed its concern that " Hamas would take advantage of the situation" of the border being breached.<sup>39</sup> On February 3, 12 days after the border was breached, Hamas and Egyptian security forces closed the border together following Egypt's request. According to the media, Egyptian Foreign Minister Ahmed Abu Al-Gheit threatened to break the legs of anyone who breached the border with Egypt.<sup>40</sup>

## **Ad hoc openings of Rafah Crossing via Egypt-Hamas coordination**

At the end of February and the beginning of March 2008, fighting between the Israeli army and Palestinian forces in the Gaza Strip escalated, including the massive shooting of rockets from the Gaza Strip towards Sderot, killing one Israeli

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37. CBS News, "Gaza Residents Pour Into Egypt," January 23, 2008, available at <http://www.cbsnews.com/stories/2008/01/23/world/main3741730.shtml>

38. Israeli Foreign Ministry Press Release, January 23, 2008 [Hebrew], available at <http://www.mfa.gov.il/MFAHeb/Spokesman/2008/Israel%20Foreign%20Ministry%20response%20to%20events%20at%20the%20Rafah%20crossing%20230108>

39. US State Department, Daily Press Briefing, January 23, 2008, available at <http://www.state.gov/r/pa/prs/dpb/2008/jan/99617.htm>

40. The Egyptian Gazette, "Egyptian official asked to retract comments," February 11, 2008. Appears on Egyptian Foreign Ministry site: [http://www.mfa.gov.eg/MFA\\_Portal/en-GB/Press\\_and\\_Media/Economic\\_Press\\_Reviews/pressreviewen11022008.htm](http://www.mfa.gov.eg/MFA_Portal/en-GB/Press_and_Media/Economic_Press_Reviews/pressreviewen11022008.htm)

civilian, and Israeli land and air bombardments of the Gaza Strip in an operation called "hot winter." During the operation, 107 Palestinians were killed, including 27 children, and an additional 250 were injured, including 60 children. The Palestinian Ministry of Health declared an emergency situation and reported a shortage of medicine and medical equipment, impairing its ability to treat the many injured.<sup>41</sup> Under these circumstances, Egypt decided to open the Rafah Crossing for the first time since the breach at the end of January, for the passage of injured from the Gaza Strip to hospitals in Egypt. At the beginning of March, Egypt opened the border crossing for six days, and on each of these days allowed a few dozen injured Palestinians to cross.

Since then, Egypt has allowed the Rafah Crossing to open periodically, unpredictably, and irregularly, for brief periods of time, in direct coordination with Hamas. It does so to relieve the pressure of those wishing to cross from either side of the border, to prevent a repeat of the border breach by residents from Gaza, and to respond to pressure inside Egypt and from the Arab world.<sup>42</sup> According to official Egyptian sources, the border openings have the agreement of Israel and the PA; Egypt informs both parties in advance and even sends Israel the lists of those expected to pass through. These sources do not know of cases when Israel refused the passage of a person whose name was on the list of passengers.<sup>43</sup>

And so, at the beginning of April 2008, Egypt allowed 360 Egyptians who had been in the Gaza Strip to return to their country and enabled a similar number of Palestinians waiting in Egypt to return to their homes in Gaza. In May, Egypt allowed 1,000 Palestinians – most of them residents of Arab countries and the rest medical patients – into Egypt, and 450 into the Gaza Strip. At the end of June and in the beginning of July, 550 patients, students, and foreign residents left the Gaza Strip for Egypt and 560 entered. At the end of August 2008, 3,300 Palestinians in similar categories left the Gaza Strip, and more than 1,000 residents returned. Towards the end of September 2008, 200 residents of Gaza went to Egypt, many of them pilgrims on their way to Saudi Arabia, and some 600 returned to the Gaza Strip. More than 1,000 pilgrims and patients were allowed back during October 2008, and so on.

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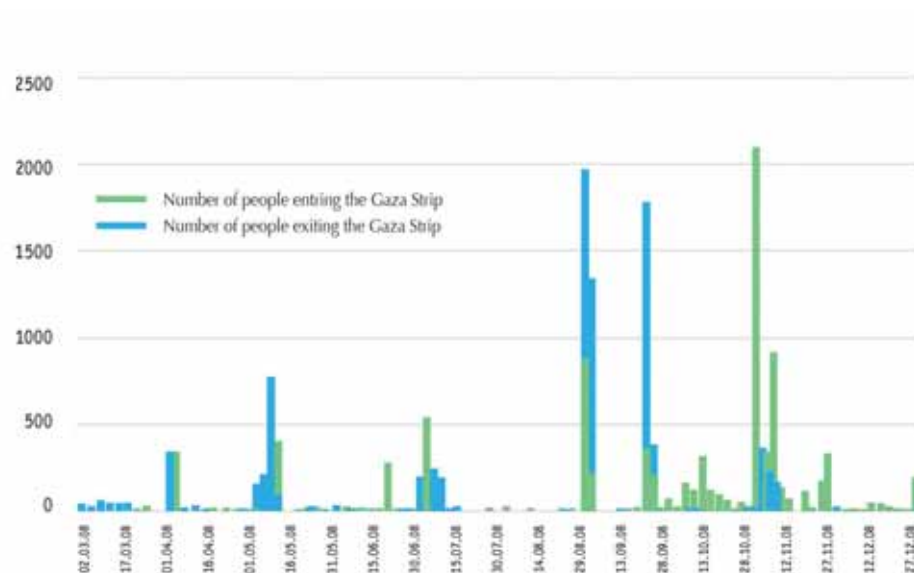
41. OCHA, "Gaza humanitarian Situation Report," February 27-March 3, 2008, pp. 1-2, available at [http://www.ochaopt.org/documents/Gaza\\_Situation\\_Report\\_2008\\_02\\_30\\_Final5.pdf](http://www.ochaopt.org/documents/Gaza_Situation_Report_2008_02_30_Final5.pdf)

42. Related by Egyptian sources to Gisha. For details and further information see below, p. 131-132.

43. Related by official Egyptian sources to Atty. Sari Bashi and Tania Hary of Gisha in an interview on October 28, 2008.



The Hamas-run Ministry of the Interior in Gaza regularly publishes announcements in the local press calling on the public to sign up for passage. Before Egypt opens the border for the exit of residents from the Gaza Strip, it informs the Interior Ministry two days in advance, while specifying the passage categories approved for that day – patients, pilgrims, foreign residents, or residents of Gaza with residence permits abroad, including students – and the number of passengers in each category. The Interior Ministry checks those slated to go through on that day, gives lists of names to the Egyptians, and publishes the names of those approved on the night before the passage or on the day of the passage itself.<sup>44</sup> In addition, Egypt also receives names of people interested in exiting from the PA, the EU, humanitarian organizations,<sup>45</sup> and even from private parties in the Gaza



**Diagram 4: Entrance and Exit of People through Rafah Crossing in ad hoc Openings, March 2, 2008 -December 27, 2008**

Source: OCHA

44. Related by Egyptian sources to Gisha in interviews from March 19, 2008 and October 12, 2008 and by Ihab al-Ghasin, a senior Interior Ministry official in Gaza to Ayda Abdalbari of Gisha in a conversation from September 23, 2008. Announcements of expected openings of the crossing and lists of those scheduled to go through it are published on the Interior Ministry website: [www.moi.ps](http://www.moi.ps).

45. Related by official Egyptian sources to Atty. Sari Bashi and Tania Hary of Gisha in an interview on October 28, 2008.

Strip and Egypt.<sup>46</sup> According to testimonies received by Gisha, sometimes even Palestinians whose names do not appear on the lists manage to get through; claims have also been made of passage by bribery, but were denied by official parties on both sides. In addition, Egypt sometimes opens the border without prior notice to a handful of people, mainly medical patients or representatives of official delegations, following high-level contacts between the Hamas government in the Gaza Strip and the Egyptian government.<sup>47</sup>

Due to the uncertainty as to the identity of the people whose passage will be approved, every time an announcement is made or a rumor spreads that the crossing is going to open, crowds of those hoping to enter or exit gather. In conditions of congestion and crowding they wait for many hours, sometimes overnight, in hopes of being allowed to board buses taking them to the Egyptian side of the crossing. Because of the short duration of the openings and the small number of people allowed through, most of the people waiting have to go back empty-handed. The uncertainty about exit and the very short notice before opening the crossing make it impossible for residents of the Gaza Strip to plan their travel.

**Student, 23, admitted to Master's degree studies in Project Management in Malaysia, beginning on July 1, 2008; tried to leave through Rafah Crossing on September 24, 2008:**

"Last Sunday, I left home at 4 a.m., following the announcement that a temporary opening of the Rafah Crossing was expected, in which students would be allowed out. We waited all day in the heavy heat, in the halls and in buses without air conditioning, in the middle of the Ramadan fast, without having any information about what was going on. During the day only some of the students went to Egypt, and at 4 a.m. the next day most of us were told we had to go home. I went home physically – but mostly mentally – exhausted, because I don't know if I will ever be able to leave Gaza and begin my studies."

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46. Palestinian Interior Ministry Press Release from July 2, 2008, available at <http://www.moi.ps/en/?opr=details&id=104>

47. Related by Dr. Bassem Naim, Minister of Health in Gaza, to Ayda Abdalbari of Gisha in an interview on December 17, 2008.

The residents of Gaza who have managed to leave to Egypt through Rafah don't know when they will be allowed to return to the Gaza Strip; there is no procedure available to coordinate their return, and they must come to the border area and wait for an unknown length of time for the crossing to open. In a number of cases, Egypt refused to allow into its territory residents of Gaza who had spent time abroad and wanted to fly to Egypt and return to the Gaza Strip through it, citing that Rafah Crossing was closed.

### **K., 41, prevented from returning to Gaza with his family for a year**

In 2003, K received a scholarship for doctoral studies in organic chemistry in England. That summer K left the Gaza Strip through Rafah Crossing and flew to England with his wife L and their two small daughters, two-year-old S. and one-year-old I. While they were in England, in 2006, the couple's son M. was born.

As soon as his studies were over, the family got ready to return to Gaza and came to the airport on November 9, 2007 with plane tickets to Egypt through Turkey. The Turkish airline refused to let them on the plane, because they did not have visas to Egypt; they were told those were the new regulations enacted by Egypt since Hamas took over the Gaza Strip.

The family had to return to England, after they had already given up their home and sold their furniture and household effects. K.'s request from the Egyptian Embassy in England to receive an entry permit to Egypt in order to pass through it to Gaza was refused, with the explanation that Rafah Crossing was closed; attempts by K. to receive an entry permit to the Gaza Strip through Israel, including an appeal to the State Attorney's Office submitted by Gisha in May 2008, led nowhere.

K. and his family had to stay in England for nearly a year, continuing to pay high rent and suffering economic hardship because of the expiration of the scholarship K. had enjoyed while he was a student. S. and I., ages eight and six at the time, missed part of the school year because their parents enrolled them in school late, after they found out that their plan to return to Gaza fell through. M., age two, had never met his grandparents, aunts, and uncles, all of whom live in Gaza. When two of K.'s aunts and two of his uncles died during that period, he was unable to say goodbye to them or mourn their loss with his family.

In July 2008, the family flew to Jordan and from there traveled to Egypt. After waiting there without luck, they returned to Jordan, and then finally managed to return to Gaza in September 2008, via Erez Crossing, almost a year after their scheduled return.

In a rare exception, from December 31, 2008, Egypt opened Rafah Crossing daily to allow injured from the Gaza Strip into Egypt and to let medical equipment into the Strip, due to the three-week Israeli offensive against the Gaza Strip in December 2008-January 2009, which left 1,440 Palestinians dead and more than 5,300 wounded. On February 5, 2009, Egypt announced the crossing was closing and returning to the format of period ad hoc openings. Egypt resumed its policy to forbid the entrance of equipment into the Gaza Strip through Rafah, except in special cases.<sup>48</sup>

## The passage of goods and people through underground tunnels

The only products Israel has allowed into the Gaza Strip since June 2007 are those considered "vital to the survival of the population"<sup>49</sup> – and even that sparingly – basic food products, animal feed, medicine and medical equipment, hygiene and disinfection products, agricultural equipment and fuel, diesel and cooking gas.<sup>50</sup> Even the passage of those basic commodities is periodically blocked by Israel for varying lengths of time, in an attempt to put pressure on the Hamas government and Palestinian militants in the Gaza Strip who fire rockets into Israel. Israel presents the allowing of other goods into the Gaza Strip as a gesture of leniency that it does not see itself as required to offer.<sup>51</sup> Since October 2007, Israel has limited the supply of fuel to the Gaza Strip, causing transportation problems, long power outages, damage to the sanitation system, and pollution of the sea with

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48. OCHA, "Protection of Civilians Weekly Report," January 28-February 3, 2009, p. 1, available at [http://www.ochaopt.org/documents/ocha\\_opt\\_protection\\_of\\_civilians\\_weekly\\_2009\\_02\\_03\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_2009_02_03_english.pdf). In Israel during that period three civilians and one soldier were killed and 182 civilians were injured as a result of the firing of rockets by Palestinians out of the Gaza Strip. During the offensive 10 Israeli soldiers were killed and 340 were wounded. See below, p. 177.

49. HCJ 9132/07, **al-Bassiouni v Prime Minister**, respondents' response from November 1, 2007, para. 73.

50. HCJ 4250/08, **Afana Brothers Co. Ltd. v Agriculture Minister**, State Response of September 18, 2008, para. 6 (a copy of the response is in Gisha's possession).

51. HCJ 9132/07, **al-Bassiouni v Prime Minister**, respondents' response from November 1, 2007, para. 73.



sewage. Goods from Egypt, including donations from Arab countries transferred through Egypt for the Gaza Strip, are not allowed to pass through Rafah and are transferred from Egypt to Israel through the Nitzana Crossing and from Israel to the Gaza Strip through the Kerem Shalom Crossing.

Because of the hardships caused by Israel's economic stranglehold on the Gaza Strip, an alternative route that previously existed – smuggling goods through tunnels dug under the border between Egypt and the Gaza Strip – greatly expanded. The tunnels became a vital lifeline for Gaza's economy and the only way to obtain certain goods in the Gaza Strip. Almost every kind of product, from basic products and money to electrical appliances and fuel, are carried from Egypt into Gaza through underground tunnels. The goods smuggled into Gaza are sold at a premium price because the cost includes smuggling the goods from all over Egypt to Egyptian Rafah, paying the wages of the tunnel workers, paying the owners of the tunnel, and various payments to the Hamas government.

According to the AMA, Rafah Crossing is supposed to be the only crossing between the Gaza Strip and Egypt. Its closure and the impossibility of entering or exiting the Gaza Strip any other way have led to use of the tunnels for the passage of people as well. And so, students going to study abroad, patients going for medical care and relatives of residents of the Gaza Strip cross through the tunnels.

Several hundred tunnels run under the border between Gaza and Egypt, owned by a number of merchants who are residents of the Gaza Strip and receive payment for the goods that go through them.<sup>52</sup> The tunnels are supervised by Hamas, which gives an operating license to each tunnel and collects taxes for its digging and operation.<sup>53</sup> According to the media, Hamas' profits from the tunnels reach \$20 million a month.<sup>54</sup> Six thousand people are employed in operating tunnels and smuggling goods through them.<sup>55</sup> Operating the tunnels involves risk for workers: from January to November 2008, 50 Palestinians were killed and dozens were wounded as a result of the collapse of tunnels or accidents stemming from oil leaks that caused fires, the explosion of gas tanks, and electrocution.<sup>56</sup>

**The nearly hermetic closure of Rafah since June 2007 allows passage for only 3% of those needing to travel through the crossing and prevents the movement of tens of thousands of people each month.**

Weapons materials are another major product smuggled through the tunnels into the Gaza Strip. This has led Israel to fight the tunnel phenomenon and demand that Egypt act to locate and destroy them. The US has also pressured Egypt to close down the tunnels as a result of a request from Israel.<sup>57</sup> At the end of 2007, the US Congress decided that in the following year it would freeze \$100 million of the \$1.3 billion grant it gives Egypt in military aid until the State Department certified, among other things, that Egypt had taken real steps to locate and destroy smuggling tunnels from Egypt to Gaza.<sup>58</sup> Subsequently, according to media reports, the US canceled the sanction and decided in

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52. The information was related by one of the owners of the tunnels to Ayda Abdalbari of Gisha on May 3, 2008. It refers to the number of tunnels that existed prior to the military operation in which many tunnels were destroyed by the Israeli Airforce in late 2008 and early 2009.

53. OCHA, "Humanitarian Monitor," No. 29, September 2008, p. 2, available at [http://www.ochaopt.org/documents/ocha\\_opt\\_humanitarian\\_monitor\\_2008\\_10\\_1\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_2008_10_1_english.pdf)

54. Ha'aretz, Avi Issacharoff, "Hamas operates 200 smuggling tunnels and a gas pipe," August 31, 2008 [Hebrew], available at <http://www.co.il/hasite/spages/1016746.html>

55. OCHA, supra note 53.

56. OCHA, "Humanitarian Monitor," No. 30, October 2008, p. 6, available at [http://www.ochaopt.org/documents/ocha\\_opt\\_humanitarian\\_monitor\\_oct\\_2008\\_10\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_oct_2008_10_english.pdf)

57. AP, Ha'aretz, "Egypt FM: Pro-Israeli lobby is harming our relations with U.S.," December 26, 2007 [Hebrew], available at <http://www.haaretz.com/hasen/spages/938610.html>

58. Section 690 of P.L. 110-161, the Consolidated Appropriations Act, 2008.

coordination with Israel to allocate \$23 million of the US aid money to Egypt to fight the arms smuggling and the tunnels by sending engineering teams to help the Egyptian forces act to detect smuggling tunnels and pay for technological means to prevent the breach of the new border fence built after the fence was breached in January 2008.<sup>59</sup> The US State Department declined to respond to Gisha's questions on this matter.

In the summer of 2008, Egypt stepped up its activity against the tunnels; in August and September, its forces blew up many tunnels and in August tunnel operators clashed with Egyptian forces, exchanging fire and causing deaths and injuries.<sup>60</sup> For some time, Egypt has been asking Israel, with US backing, to allow an increase in the number of Egyptian soldiers on the Egypt-Gaza border, which was originally limited to 750 by an agreement between Egypt and Israel after the withdrawal of Israeli forces from the Gaza Strip in 2005. Israel has not yet accepted the request.<sup>61</sup>



From the hermetic closure of Rafah Crossing on June 10, 2007 to December 27, 2008, more than a year and a half, people were allowed through the Rafah Crossing for a total of only 96 days. During that period fewer than 11,000 people traveled from the Gaza Strip to Egypt, mainly pilgrims going to Mecca, patients going to Egypt for medical care, residents of Egypt or other Arab countries returning home, and students studying abroad. About 12,200 people entered the Gaza Strip from Egypt during that time.<sup>62</sup> That tiny number of people crossing through Rafah in both directions in more than 18 months is just over half the number that crossed through it in one month – 40,000 – when the crossing was operating regularly, based on the AMA. The demand for travel can be deduced from the period when the Rafah Crossing was operating regularly; the nearly hermetic closure of Rafah since June 2007 allows passage for only 3% of those

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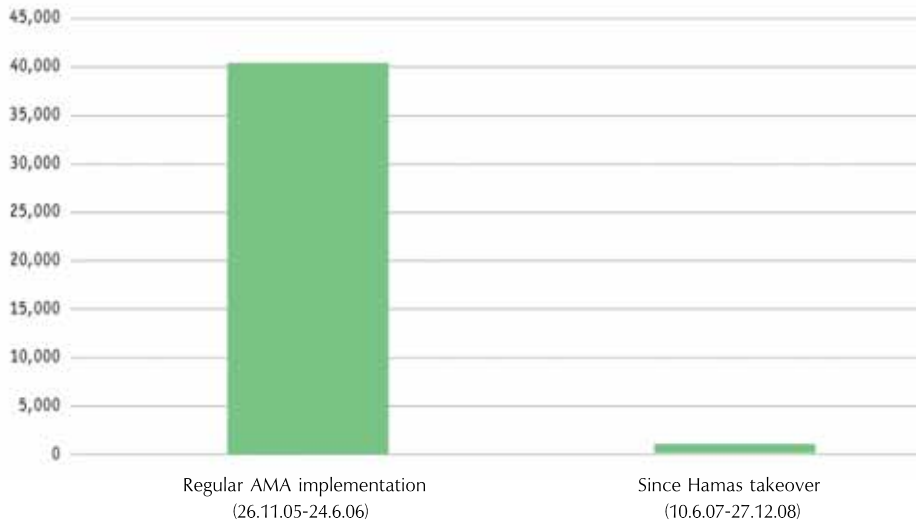
59. Ynet, Roni Sofer, "US to help Egypt prevent smuggling through Philadelphi," March 21, 2008, available at <http://www.ynet.co.il/articles/0,7340,L-3521782,00.html>

60. OCHA, Humanitarian Monitor, Volume 28, August 2008, p. 2, available at [http://www.ochaopt.org/documents/ocha\\_opt\\_humanitarian\\_monitor\\_08\\_2008\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_08_2008_english.pdf), Humanitarian Monitor, Volume 29, September 2008, p. 3 (supra note 53, p. 54).

61. Related by official Egyptian sources to Atty. Sari Bashi and Tania Hary of Gisha in an interview on October 28, 2008.

62. Figures provided by OCHA to Gisha. See organization's reports at [www.ochaopt.org](http://www.ochaopt.org)

needing to travel through the crossing and prevents the movement of tens of thousands of people each month between the Gaza Strip and Egypt and onward to the outside world.



**Diagram 5: Monthly average traffic of people through the Rafah Crossing in both directions when it was operated regularly and since it was closed hermetically**

Source: OCHA

All this happened as the overall closure of Gaza was tightened without precedent: since Hamas took power, passage into Israel through Erez Crossing was limited drastically, first on the grounds of danger to the crossing because of attacks by Hamas militants and the lack of supervision of passengers, which was previously undertaken by the PA, and later as part of a policy of restricting the movement of residents of the Gaza Strip, which was defined as a "hostile territory."<sup>63</sup> The passage of Palestinians into Israel was limited to a few dozen people a day, if any, defined as "the most definitively humanitarian cases," including "urgent, life-saving" medical cases, employees of international organizations and "a few top

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63. See supra pp. 41-42.



level merchants upon whom the economy of Gaza depends."<sup>64</sup> Any other exit to Israel, even for the purpose of traveling abroad, is presented by the Israeli authorities as a privilege it does not intend to grant.<sup>65</sup> To this day, Israel continues to control the Gaza Strip's sea and air spaces and prevents Gaza residents from traveling by air or sea. The Palestinian airport continues to stand in its wreckage, and the Gaza seaport was never built.

Travel between the Gaza Strip and the West Bank, which was almost completely limited even previously, became extremely rare under the policy adopted by Israel after Hamas began controlling the Gaza Strip, which limits travel to exceptional humanitarian cases and completely prohibits "repeat passage" between the Gaza Strip and the West Bank, even in the case of a Palestinian resident, whose address is in the West Bank, seeking to return there from the Gaza Strip.<sup>66</sup> Even the cumbersome and expensive possibility of traveling from the Gaza Strip to the West Bank through Rafah Crossing, Egypt, Jordan and the Allenby Bridge has been denied residents of the OPT since the closure of Rafah Crossing.

The only possibility Israel allows for residents of the Gaza Strip to enter or exit is through Rafah Crossing, to whose opening it also objects. Rafah Crossing remains closed, perpetuating the closure imposed on the 1.5 million residents of the Gaza Strip.

## **Israel's control of the Palestinian population registry**

After it conquered the Gaza Strip in 1967, Israel conducted a population census in which it registered all present and gave them the status of residents of the territories. Since then and to this day, Israel has controlled the population registry of the Gaza Strip and determined who is entitled to receive the status of resident. The Oslo accords may have given the PA "responsibility in the area of population registry and documentation,"<sup>67</sup> but that was limited to printing identity certificates

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64. HCJ 6475/07, **Abu Laban v Defense Minister**, respondents' response from July 29, 2007, paras. 6, 26 (see supra note 8, p. 38).

65. *Ibid.*, para. 10.

66. For example, letter from Matan Solomash, office of Judea and Samaria legal advisor, to Mai Masalha Chabaita of Gisha, February 28 2008.

67. 1995 Interim Agreement, Appendix III, Section 28(1).

based on changes in the registry approved by Israel, except for the registration of children of residents of the OPT, which the PA was allowed to carry out after informing Israel but without needing to ask its approval.<sup>68</sup> Palestinian passports are issued by the PA only to residents of the OPT who are registered in the population registry managed by Israel.

Before the Oslo accords, and even after, the only way to add people to the Palestinian population registry, besides registering children, was by a family unification process. Under that process Israel sparingly gave resident status to first-degree relatives of residents of the OPT.<sup>69</sup> Most of those requests over the years were made by residents of the OPT for their spouses, in most cases wives, born abroad to families of Palestinian refugees, and who wished, in accordance with Palestinian tradition, to come live in the homes of their husbands. During the waiting period for receiving residency status for their spouses, the couples had to meet each other in the OPT with time-limited visiting permits.

When the second intifada broke out at the end of September 2000, Israel stopped adding new residents to the population registry by family unification. In addition Israel also stopped approving permits for visits to the Gaza Strip and the West Bank, thereby forcing families to choose between forced separation, relocation outside of the territories or the "illegal" presence of their wives in the OPT beyond the expiration date of their visiting permits. Tens of thousands of Palestinians, most of them women, chose the last option and stayed in the Gaza Strip without identity cards and without the possibility of leaving. The PA continued registering new applications for family reunification even after the process was frozen and in 2005, had 120,000 such requests submitted by residents of the West Bank and Gaza Strip.<sup>70</sup>

Even after the implementation of the disengagement plan, Israel continues to control the Gaza Strip population registry. The AMA that went into effect in

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68. Ibid, section 12.

69. That is, besides the one-time registration as part of the Oslo accords of tens and thousands of Palestinian members of Fatah from the Palestinian diaspora as residents of the OPT. For further information about family reunification in the OPT see B'Tselem and Hamoked, Perpetual Limbo: Israel's Freeze on Unification of Palestinian Families in the Occupied Territories, July 2006, available at [http://www.btselem.org/Download/200607\\_Perpetual\\_Limbo\\_Eng.doc](http://www.btselem.org/Download/200607_Perpetual_Limbo_Eng.doc)

70. The information was given to B'Tselem by the Civil Affairs Committee in Ramallah on August 14, 2005. See B'Tselem and Hamoked, Perpetual Limbo, p. 20.

November 2005 after the disengagement allowed only Palestinians listed in that registry to go through Rafah Crossing. Therefore, even when the crossing was operating regularly as a supposedly Palestinian-Egyptian border, Israel prevented the passage through it of tens of thousands of Palestinians who lived de facto in the Gaza Strip but had no status in terms of the Israeli-controlled population registry. Those people remained trapped in the Gaza Strip without the ability to visit their families abroad, to receive medical treatment anywhere but in Gaza<sup>71</sup> or to leave the Gaza Strip for studies, work or any other purpose. Similarly, anyone who was not in the Israeli-controlled registry was not allowed into Gaza. Even since Rafah Crossing has been closed to regular traffic and only opened periodically ad hoc, Egypt has only allowed the passage of Palestinians who are registered in the Palestinian population registry managed by Israel.<sup>72</sup>

In February 2006, the Hamas-run Interior Ministry in Gaza began issuing local identity cards for people without resident status. These cards have no validity outside of the Gaza Strip and cannot be used to leave Gaza, because their bearers are not registered in the population registry approved by Israel, and therefore they cannot travel through the Gaza Strip crossings, either Rafah or Erez. Even inside Gaza, their use is limited and they are not valid, for instance, for the purpose of opening a bank account, something that can be done by presenting a visitor permit approved by Israel.<sup>73</sup>

**B.A., 39, married and mother of four boys and a girl, resident of the Shati refugee camp:**

"I have a degree in pharmacy, and in Jordan I worked as a pharmacist. I came to Gaza in 1995 on a visiting license to meet my cousin whom I had never seen. I married him a month after I came to Gaza. From the first moment there were big differences between our personalities. He forced me to stay at home, not to work, not to be in contact with anyone, especially not with men [...]"

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71. In a number of exceptional cases Physicians for Human Rights has succeeded in making Israel issue Palestinian documentation to status-less sick people in Gaza, allowing them to go to Egypt for medical care.

72. Related by official Egyptian sources to Atty. Sari Bashi and Tania Hary of Gisha in an interview on October 28, 2008.

73. Related by Haitham Abu Sha'aban of the Gaza branch of the Cairo-Amman Bank to Ayda Abdalbari of Gisha in a phone call on November 26, 2008. In this way the banks in Gaza are complying with the regulations of the PA's monetary authority in the West Bank.



"When I got here I had a Jordanian passport, which has to be renewed in Jordan every two years. My husband didn't let me go to Jordan to do so and the Jordanian authorities refused to allow me to renew it in Gaza, so I lost my residency in Jordan.

"My husband beats me frequently, uses a lot of violence against me and verbally abuses me. He accuses me of sinning, that my children are not his [...] He threw me out of the house many times and I went to my mother's relatives. He divorced me twice and his family forced him to take me back, because I have no one here in Gaza and I cannot leave for Jordan.

"I tried to write a letter to Queen Rania of Jordan, but to no avail. I tried to commit suicide, but my husband's family saved my life and sent me to the hospital. My life is hell; I feel like a person behind time.

"In July 2008 I finally received my Palestinian identity card and now I am waiting for a Palestinian passport. Unfortunately, there are no passports in Gaza and I must wait, but the minute I receive the passport I am going to leave Gaza and go to Jordan. I cannot stand it anymore."

As a gesture to the PA, Israel agreed in 2005 to include in the Palestinian population registry people who entered the OPT as visitors approved by Israel and stayed there "illegally" without status, as well as the sons and daughters of residents of the OPT, whose parents did not register them as children, and now that they are adults do not have identity cards.<sup>74</sup> In order to implement the process, Israel gave the PA Civil Affairs Committee in Ramallah a list of 51,738 names of people without status in the territories, including 22,611 in the Gaza Strip, most of whom were women who entered the OPT between 1994-2000 with short-term visiting permits. The Civil Affairs Committee in the Gaza Strip began summoning the status-less to register on the basis of the list received from the Palestinian Interior Ministry in Ramallah.<sup>75</sup>

In October 2007, Israel began issuing identity cards for the status-less, based on a list it received from the Palestinian Civil Affairs Committee, of residents recognized as entitled to have their status registered by Israel, and who had submitted applications to do so. By December 2008, 12,328 identity cards were issued in the Gaza Strip for people who entered as visitors until 1998. The last wave of issuing such documents took place in the summer of 2008.<sup>76</sup> Of the names submitted, Israel refused to grant resident status to only a few dozen on security grounds as claimed by the ISA.<sup>77</sup> Today there are still 10,000 residents in the Gaza Strip who have been status-less for years, recognized by Israel as such, and still waiting to receive identity cards as part of that same gesture.

### **Maryam Ahmad Shehadah, 62, born in Gaza, for 13 years status-less in Gaza**

Maryam was born in Gaza in 1946, and in 1967 she left to join her fiancé, who was studying in Egypt at the time. After their wedding the couple moved to Syria where their six children were born. In 1995 they returned to Gaza with their four

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74. Agreement on this matter was reached between Israeli Defense Minister Shaul Mofaz and Muhammad Dahlan, the PA Minister of Civilian Affairs. Information was provided by A.D. of the Civil Affairs Committee in Gaza to Ayda Abdalbari of Gisha on April 27, 2008.

75. Related by A.D. of the Civil Affairs Committee in Gaza to Ayda Abdalbari of Gisha on April 27, 2008.

76. Related by Ismail al-Khatib of the Civil Affairs Committee in Gaza to Ayda Abdalbari of Gisha at a meeting on November 3, 2008.

77. Related by Hussein A-Sheikh of the Civil Affairs Committee in Ramallah to Atty. Sari Bashi and Arabiya Mansour of Gisha in an interview in Ramallah on August 31, 2008.

younger children, hoping to receive identity cards and resettle in the land of their birth. They entered the Gaza Strip with an Israeli visitor permit as guests of the husband's mother. Their two older children, Firas, who settled in Colombia, and Nevin, who lives in Syria, did not enter the Gaza Strip with them. Since they returned to Gaza 13 years ago, the family has lived there without resident status. Maryam's husband and the two older children who are with them in the Gaza Strip received identity cards during 2008 as part of Israel's registration of the status-less. The request by Maryam and her two younger children to register was refused, on the grounds that according to the Israeli registration they are not "present" in the territories.

During all these years Maryam has avoided leaving the Gaza Strip, because such a move would risk her ability to return. She says: "I came here in order to get an identity card. I did not imagine I would be stuck here until 2008 waiting for it. I am disappointed and desperate, I feel like I am in a prison. I have not seen my mother, my sisters, and my brothers since 1995. I have not seen my daughter since then either. The last time I saw my grandson he was three. I long to see my grandchildren and hug them, and to see my son who lives in Columbia, and I can't. If I don't get the identity papers I will stay here and wait for my death. If I get it I will leave the Gaza Strip immediately to see my family and make a pilgrimage to Mecca."

There are also many status-less people in the Gaza Strip whose entitlement to an identity card is not recognized by Israel: the sons and daughters of status-less people, who were born in the OPT or entered them as minors; people who entered the Gaza Strip without individual Israeli permits in the period after the disengagement and before the AMA went into effect, between September 7 and November 24, 2005, when the Rafah Crossing was operated by Egypt and the PA;<sup>78</sup> as well as status-less Palestinians who entered the Gaza Strip from Egypt through the tunnels.<sup>79</sup> The number of people in these categories is estimated to be in the thousands, but there is no way to assess their exact number because, as a result of their lack of entitlement, they have not applied to the Civil Affairs

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78. Related by A.D. of the Civil Affairs Committee in Gaza to Ayda Abdalbari of Gisha on April 27, 2008.

79. Related by Ismail al-Khatib of the Civil Affairs Committee in Gaza to Ayda Abdalbari of Gisha at a meeting on November 3, 2008.

Committee to legalize their status. These people continue living in the Gaza Strip without hope of receiving a recognized status that will allow them to travel.

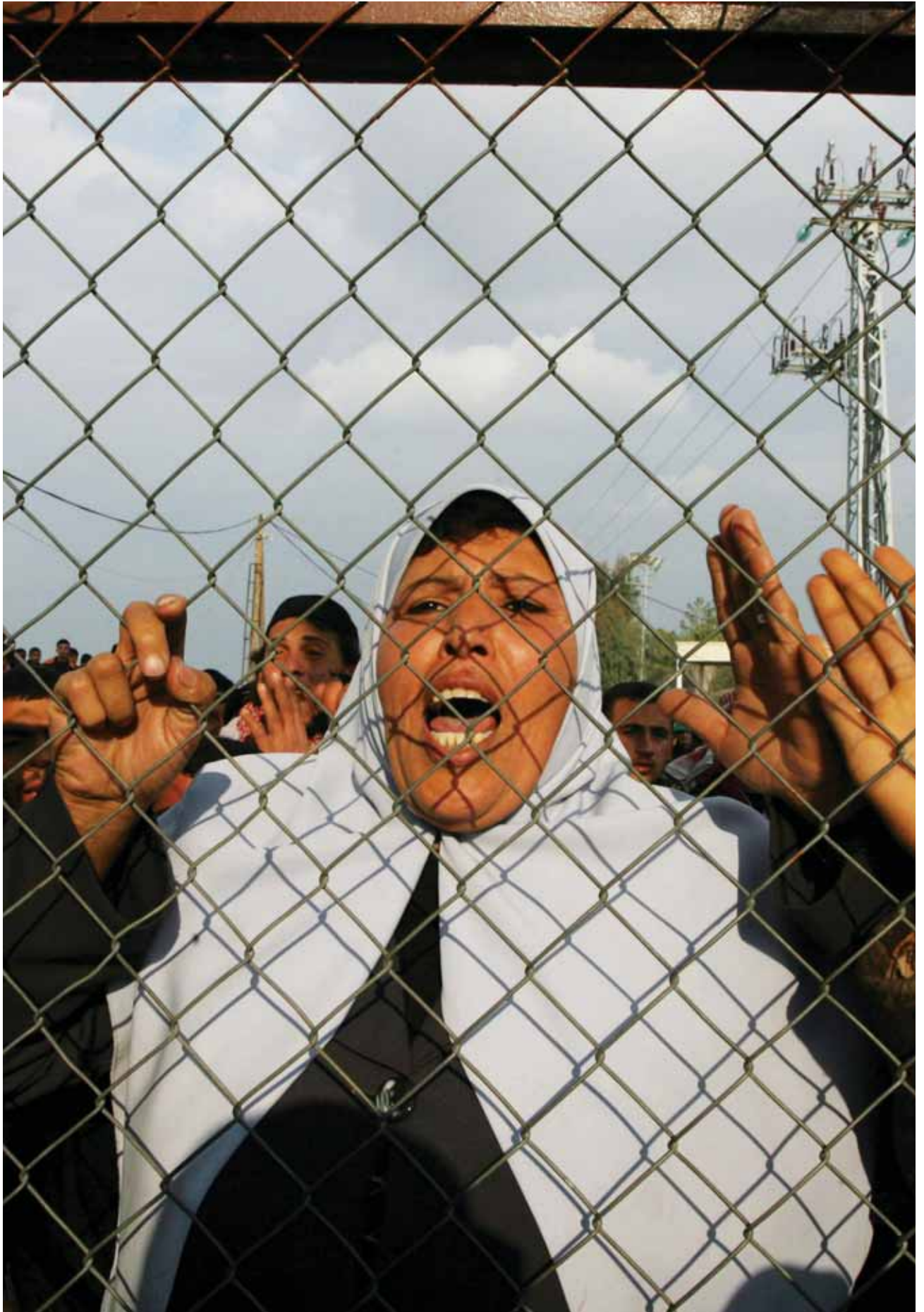
Besides that, granting identity cards to the status-less who reside in the OPT does not solve the problem of many other Palestinians who wish to live in the Gaza Strip and have not been able to enter because they do not have residency status. These include former residents whose residency status was canceled by Israel over the years, the sons and daughters of residents of the OPT who were not registered in the population registry as children and who reside outside of the territories in their adulthood, and tens of thousands of divided Palestinian families in which the family members who do not have residency status, or even the whole family, have been living outside of the territories for years.

**The question of who is a "Gaza resident" according to the Israeli registry still determines who will be allowed to enter or exit the Gaza Strip; that situation did not change after the disengagement nor after the Hamas takeover of the internal government of the Gaza Strip.**

Israel's control of the Palestinian population registry means Israeli control of the borders of the Gaza Strip, because passage through all the Gaza Strip's crossings, except for the tunnels, requires Israeli recognition of the residents as holders of Palestinian identity cards. The question of who is a "Gaza resident" according to the Israeli registry still determines who will be allowed to enter or exit the Gaza Strip; that situation did not change after the disengagement nor after the Hamas takeover of the internal government of the Gaza Strip.<sup>80</sup> In that way, despite the decline of its physical control of the Gaza-Egypt border, Israel continues to tightly control the crossing points between Gaza and the outside world, and as a consequence the makeup of the population allowed to live in the Gaza Strip.

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80. For further information about control of the Palestinian population registry see Gisha, "Disengaged Occupiers," pp. 49-51 (supra note 29, p. 27).





## Chapter 3

# The Implications of the Closure on Life in the Gaza Strip

Because it is impossible to leave the Gaza Strip by sea or by air, Rafah Crossing is the only access route for residents of the Gaza Strip to Egypt. The drastic reduction of the possibility of leaving the Gaza Strip through Erez Crossing since the end of 2000 has increased residents' need to leave via Rafah, even to travel to third countries or to reach the West Bank. Rafah Crossing has thereby become the only crossing that can actually connect the Gaza Strip to the outside world.

There have always been relations between the Gaza Strip and Egypt, including travel between them. Egypt also serves as a transit country for the residents of Gaza on their way to other countries, mainly Arab, where many of them have relatives and upon which they depend to a large extent for their livelihood, studies and health care services. That dependence has always been strong because of the poor economic and employment situation and the lack of adequate health care services and educational opportunities in the Gaza Strip. The situation has worsened since June 2007, because of Israel's policy of closing the passages between the Gaza Strip and Israel more tightly than ever to people and goods. This increased the need and dependence of Gaza residents on finding services and sources of livelihood in other countries. However, simultaneously, Rafah Crossing began to be closed most of the time, and travel abroad became nearly impossible.

The near absolute closure of Rafah Crossing has severe implications for a broad range of aspects of the life of the population of the Gaza Strip and its ability to exercise basic rights. One of the main implications is for Gaza's health care system and the right of its residents to adequate medical care; an entire chapter of this report will be devoted to that subject. Following is a description of the implications of the closure of the crossing for other areas of life and the rights that are violated as a result of the inability to leave the Gaza Strip.

## Economic damage<sup>1</sup>

Over the years, the economy of the Gaza Strip has suffered from weakness and a lack of independence, largely as a result of Israel's policy since 1967: Israel created a partial integration between the economy of the territories and that of Israel, while perpetuating the backwardness and under-development of the Palestinian economy and increasing its dependence on the Israeli economy; the policy of closure, which began in 1993 and increased during the years of intifada, involved restrictions on the passage of workers and goods and led to an increase in unemployment and poverty.<sup>2</sup>

Since Hamas took over the government of the Gaza Strip in June 2007, Israel has closed the crossings into and out of the Gaza Strip, forbidden export from the Gaza Strip and allowed the entrance only of humanitarian goods, such as food, medicine and fuel, and in a limited quantities that do not exceed what is needed for the basic subsistence of the population, as determined by Israel.<sup>3</sup> In reality, the amount that enters is less than what is needed to meet the basic needs of the population, according to UN estimates.<sup>4</sup> Rafah Crossing is also closed, and goods are not allowed to pass through it between the Gaza Strip and Egypt. The closure of the crossings has dealt a drastic blow to the Palestinian economy in Gaza, which was in poor condition to begin with.

Because of the tight restrictions on the entrance of building materials, construction projects in the Gaza Strip have been frozen since June 2007, including for the construction of hospital wings, schools and roads, as well as development plans for the water and sewage systems. Since October 2007, Israel has prevented the regular supply of fuel, severely limiting electricity production, which in turn has caused the near collapse of Gaza's water and sanitation

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1. For further information see: Gisha, "Commercial Closure," chapter 2 (supra note 6, p. 37).

2. For further information see: B'Tselem, "Gaza Prison," pp. 54-56.

3. HCJ 9132/07, **al-Bassiouni v Prime Minister**, Respondents' response from November 1, 2007, para. 73. For instance, in October 2008, 2,579 trucks entered the Gaza Strip from Israel, compared to an average of 9,400 trucks a month between January and June 12, 2007. PalTrade, Gaza Terminals Movement Monitoring Monthly Report, October 2008, p. 12, available at <http://www.PalTrade.org/cms/images/enpublications/Gaza%20Terminals-%20%20Report%20English%20Version%20October%202008.pdf>

4. The U.N. estimate cites the figure of 3,600 trucks a month. See OCHA, Humanitarian Monitor, Issue 14, June 2007, p. 2-3 (see supra note 4, p. 35).

systems.<sup>5</sup> The closure of the crossings has led to the collapse of industry in Gaza and the closure of 95% of the 4,000 factories that operated in it, because of a severe shortage of raw materials, the prevention of the possibility to export and irregular electricity supply.<sup>6</sup> The prohibition on exports and the shortage of raw materials have paralyzed large sections of the agricultural sector. Restrictions on access for fishermen to coastal waters and pollution caused by the dumping of untreated sewage into the sea, which itself is a result of insufficient electricity supply for treatment plants, have also severely impacted the fishing industry.<sup>7</sup>

**In the third quarter of 2000, before the outbreak of the intifada, unemployment in the Gaza Strip was 26.9%. During 2007, the rate of unemployment rose to 35% of the workforce, and in the second quarter of 2008 it shot up to 49%.**

All of the above have led to a sharp rise in unemployment levels in the Gaza Strip, which were already high: in the third quarter of 2000, before the outbreak of the intifada, unemployment in the Gaza Strip was 26.9%. During 2007, the rate of unemployment rose to 35% of the workforce, and in the second quarter of 2008 it shot up to 49%.<sup>8</sup> While the number of breadwinners went down, and the number of dependents supported by each breadwinner went up, prices in the Gaza Strip rose, because of the shortage of products that come in through the crossings with Israel, and because of the high prices of the products that come in through the tunnels from Egypt. The combination of rise of prices and the drop in buying power has made it very difficult to purchase basic products. All of the above have led to a spike in poverty levels in the Gaza Strip, again, already high to begin with: from a poverty rate

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5. For details on the humanitarian damage caused by the electricity shortage in the Gaza Strip, see for instance HCJ 849/09, **Gisha v Minister of Defense**, paras. 21-27, 33-56 of the petition [Hebrew], available at [http://www.gisha.org/UserFiles/File/Legal%20Documents%20Gaza%20Infrastructures%202009/fuel%20petition-final-7\\_1\\_09.pdf](http://www.gisha.org/UserFiles/File/Legal%20Documents%20Gaza%20Infrastructures%202009/fuel%20petition-final-7_1_09.pdf)
  6. PalTrade, October 2008, p. 10 (see supra note 3).
  7. OCHA, "Humanitarian Situation Report in the Gaza Strip, the Impact of the Blockade on the Gaza Strip," December 17, 2008, available at [http://www.ochaopt.org/documents/ocha\\_opt\\_gaza\\_situation\\_report\\_2008\\_12\\_17\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_gaza_situation_report_2008_12_17_english.pdf)
  8. OCHA, "The Humanitarian Monitor," No. 30, Tables of Indicators, October 2008, p. 7. The figure includes the number of people who stopped looking for work, available at [http://www.ochaopt.org/documents/ocha\\_opt\\_humanitarian\\_monitor\\_table\\_2008\\_10\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_table_2008_10_english.pdf)

of 33% in 1998 to a 51% poverty rate in 2006 and 2007. The level of acute poverty in those two years reached 35% of the residents of the Gaza Strip.<sup>9</sup> Deducting allowances and food aid, the level of poverty in 2007 was 80%, and the level of acute poverty was 70%.<sup>10</sup>

The vast majority of the residents of Gaza today – over 80% – depend on humanitarian aid from the UN and international organizations for their livelihood;<sup>11</sup> the possibility of making a dignified living in the Gaza Strip, leading an independent life and building a normal society is diminishing with each day the closure of the Gaza Strip continues.

### **Trade and business**

The hermetic closure of Rafah Crossing to goods and to the regular and free traffic of people prevents the conduct of commerce and business between the Gaza Strip and the outside world, which is not possible in any other way because of the overall closure. The closure of Rafah Crossing to goods has had a direct impact on certain businesses, which relied on the import of goods from Egypt through that crossing, such as shops selling spare parts for cars and mechanics, pharmacies, sewing workshops, and stores selling cheeses and milk products.<sup>12</sup> Businesspeople from Gaza who crossed frequently between the Gaza Strip and Egypt and from there to other countries for trade and business relations, as well as those who imported raw materials and exported products, have had to move their businesses to other places or watch the businesses they built go down the drain.

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9. OCHA, *supra* note 7. The figures were calculated on the basis of a consumer-based index, according to the (relative) poverty line, which is the income level below which it is impossible to buy what is necessary for the subsistence of a family of six. In 2006 the poverty line in the Gaza Strip, according to that index, was NIS 2,300 a month. Acute poverty is defined as income lower than the "subsistence line" – the cost of the minimum amount of calories per day, in addition to the cost of a number of other basic expenditures, such as clothing and housing, which was defined that year as NIS 1,837 per month.

10. The World Bank, "Palestinian Economic Prospects: Aid, Access and Reform," September 22, 2008, p. 20. available at <http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/AHLCReportSept.08final.pdf>

11. OCHA, "Situation Report from the Humanitarian Coordinator," January 6, 2009, p. 3, available at [http://www.ochaopt.org/documents/ocha\\_opt\\_gaza\\_humanitarian\\_situation\\_report\\_2009\\_01\\_06\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_gaza_humanitarian_situation_report_2009_01_06_english.pdf)

12. Related by Muna al-Alami, director of FATEN – Palestine for Credit and Development, to Ayda Abdalbari of Gisha, in an interview in the summer of 2008.

**Faysal Shawwa, President of the Palestinian Businessmen's Association:**

"As long as the borders are closed, you cannot do business. Business people need freedom of movement. They need to be able to move, meet business people from the outside world, export and import from Gaza. [...] The siege prevents us, the business people, the people who can invest in Gaza and create something, from operating. [...] And that is why business people and investors are leaving. We could provide work to people, give some of them the opportunity to live in dignity. We could make Gaza prosper, if only the borders opened and we could conduct normal commercial life."

**Nasser al-Hilu, resident of Gaza, 47, married and father of five, sells food, aluminum doors and windows:**

"Freedom of movement is very important for business, to participate in conferences, expositions and meetings abroad, and to be updated on the latest developments in the world of commerce. [...] The closure of Rafah impacts our businesses negatively. We can not participate in expositions abroad, and many business contracts with companies abroad were canceled before they were signed, because we could not get to the meetings. Because of the closure of Rafah, we lost a lot of money, a lot of business and a lot of contracts."

Even after Rafah Crossing closed to the entrance of goods in 2005, people continued to bring products through it by hand, especially by women residents of the Gaza Strip. They were allowed to enter Egypt freely – until Hamas took over the Gaza Strip – without obtaining Egyptian residence permits as required of men, and without being dependent on having an Egyptian escort to the airport, required of men ages 16-40 who wanted to travel through Egypt on their way to other countries. These women used to buy products in Egypt, because of their good quality and low cost relative to the prices in the Gaza Strip, and bring them in by hand in small bags. Those products included cheeses, clothing and cosmetics, which they sold in the Gaza Strip or used for their businesses.

The FATEN organization in Gaza, which gives micro-loans to small businesses – primarily owned by women – granted most of its loans, until the closure of Rafah,

to women who imported products through Rafah Crossing – whether for small trade or private business. In 2005, for instance, such loans were given to more than 1,700 women. Muna Al-Alami, director of the organization’s branch in Gaza, told Gisha that the closure of Rafah Crossing caused the collapse of most of the small businesses established by women, cutting off that channel of employment and trampling on the economic independence achieved by the women who had made their living this way, and who were sometimes the only earners in their families. They remained without income, fighting for their livelihood and unable to repay the loans. Due to the relatively low level of education among this group of women their chances of finding other work are slim.<sup>13</sup>

**G.A., resident of Gaza, 41, mother of seven, lost her business as a result of the closure of Rafah:**

"I am my family’s only source of livelihood. My husband used to work in Israel, but now he is unemployed. In 2006 I took a loan from the FATEN organization to finance the opening of my shop, where I sold household goods, gifts, perfumes and cheeses. I would buy those products from salesmen, who brought them from Egypt at cheap prices. My shop closed a year and a half ago because of the closure. Since then we live on the coupons that UNRWA gives out and food the neighbors bring us, and we eat mainly bread and hyssop. My children suffer from hunger, constipation and stomach aches. I do not have the money to buy them drinking water, so they drink water contaminated with salt, which makes them ill. I do not have money to repay my loan to FATEN, and the guarantors who signed my loan come and reproach me and yell at me in front of the neighbors. Our situation is very bad."

### **Employment outside the Gaza Strip**

Due to the high level of unemployment in the Gaza Strip, many Palestinians look for ways to make a living outside of it. Until the closure policy began in 1993, Israel encouraged the mass entry of Palestinians from the Gaza Strip into the Israeli labor market, but their number gradually diminished as the border closure policy

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13. Related by Muna al-Alami, director of FATEN – Palestine for Credit and Development, to Ayda Abdalbari of Gisha, in a phone call on February 8, 2009.



progressed: in September 2000, 26,000 workers entered Israel from the Gaza Strip every day, but after the intifada broke out at the end of that month, the number of workers dropped to only a few hundred a day. In March 2006, Israel completely closed Erez Crossing to workers, and since then the option of employment in Israel has been erased for the residents of Gaza.<sup>14</sup>

The Gulf states are another region where residents of the Gaza Strip, like many other Palestinians, used to make a living. Many people used to work in the Gulf for a few years, returning to Gaza to visit their families once or twice a year for some two months. The closure of Rafah has made it difficult for thousands of Palestinians to travel to the Gulf countries to find work and has prevented workers on vacation with their families in Gaza from returning to their jobs in the Gulf. Thereby, another channel of employment for the unemployment-stricken Gaza Strip has been diminished.

**Ahmad al-Hindi, 23, resident of Gaza:**<sup>15</sup>

"In 1980 my father went to Saudi Arabia with the family and began working there as a nurse. Since then, my brothers and I grew up there and usually visited Gaza twice a year. In 2005 I returned to Gaza and began studying engineering at the

14. See diagram no. 3, p. 32.

15. Related to Ayda Abdalbari of Gisha, in an interview on February 2, 2009.

Islamic University. That year my father bought a house in Gaza for our family, so we could live there in the future. The last time my father came to Gaza was in October 2006, accompanied by the rest of the family. Since then, my father tried a few times to leave via Rafah Crossing when it was open, to return to his job in Saudi Arabia, but failed.

"In early June 2007 my family managed to cross Rafah, but my father was returned by the Egyptians because his passport was about to expire. That month Rafah Crossing closed. My father tried to leave Gaza through Erez and Nitzana a few times, but failed. On January 23, 2008, when the border was breached, my father and I entered Egypt, but before we reached Cairo, Egyptian authorities demanded we return to Gaza. In August 2008 we signed up at the Ministry of Interior to leave via Rafah, and on September 20 we were on the bus to the Egyptian side. When we arrived, the Egyptians returned us to Gaza, because our visa to Saudi Arabia had expired in June 2007, because we could not go there to renew it. The Saudi authorities agreed to renew our residency, on condition that we go to the Saudi embassy either in Egypt or in Jordan. But how could we go there, if we are stuck here in Gaza, and the borders are closed in our faces?

"Residency in Saudi Arabia is important to my father so he can work there to support me and our family. My mother, my brother and my three sisters, who went to Saudi Arabia in June 2007, returned to Gaza in November 2008, with the people who returned from Mecca, because they lost hope that my father would be able to return. My father lost his job in Saudi Arabia and doesn't work now in Gaza, and that affects us very badly, on the emotional and economic level. My father is very depressed and sad, and he does not want to talk to anybody. What can we do? Meanwhile, we have a little money my father saved, but what shall we do after the money runs out?"

### **The erosion of the middle class**

Gaza's isolation and the economic closure of it have led to the collapse of the business sector in Gaza and severely harmed the middle class. According to Amr Hamad, President of the Gaza Manufacturers Association, the middle class in Gaza has shrunk, while those who remain in that class do not have the conditions to live at a middle-class standard of living, and many of them live at the standard



of a lower class.<sup>16</sup> The collapse of the middle class in Gaza has destructive consequences for the possibilities of economic and social growth and development, which depend upon that sector.

**Hanan Taha, head of the Gaza branch of PalTrade, the Palestinian Trade Center:**<sup>17</sup>

"In Gaza, the middle and upper middle-class developed over many years. They internalized many values, which took them a long time to develop, until they became part of what characterizes them today. These are classes that invest in their self development, in developing a career and developing an academic profession, they invest in their children and families and especially in education [...]

"The present times have taken them backward. Their lives have been turned upside down, and they do not have the conditions to which they were accustomed. They were very influenced by the siege. People who dreamt, worked and began to see the results and fruits of their labor – both on the economic and on the social level – are seeing everything fall apart before their eyes, without being able to control the situation. They are helpless. [...]

"If the process of eroding the middle class continues, there will be a tremendous social gap in Gaza. [...] You cannot manage a decent society that way.

Development is key, as is income. People's income ultimately goes back to the local market. If there is no middle class, there is no economic development."



## **Undermining higher education**<sup>18</sup>

Since 1967, Israel has restricted the entrance of lecturers and researchers from overseas and from the West Bank who wish to take part in academic life in Gaza

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16. Related by Amr Hamad, President of the Gaza Manufacturers Association, in an interview with Gisha on December 13, 2007.

17. Related by Hanan Taha, head of the Gaza branch of PalTrade, in an interview with Gisha on December 10, 2007.

18. For further information on the subject, see: Gisha, "Held Back: Students Trapped in Gaza," June 2008, available at <http://www.gisha.org/UserFiles/File/Students%20report%20Eng%20-%20Online%20Version.pdf>

or join the higher education system there. Meanwhile, Israel has restricted the exit of lecturers and academics living in Gaza to participate in academic and research activities abroad. Those restrictions became sweeping in June 2007, with the nearly hermetic closure of Gaza's crossings, including Rafah Crossing. This has prevented members of the academic faculty in the Gaza Strip from going abroad for advanced training, conferences and symposiums all over the world. Meanwhile, researchers from abroad face great difficulties entering the Gaza Strip for conferences that take place there, so that the possibility of conducting joint studies, operating with colleagues in academic institutions throughout the world, and expanding intellectual horizons is very limited.

Because of the impossibility of receiving lecturers from the outside, the universities in Gaza periodically face a shortage of appropriate expert lecturers. As an emergency solution, sometimes they are forced to provide long-distance lectures via video conferencing, preventing a face-to-face academic dialogue and incurring technical problems and great financial cost.<sup>19</sup> Likewise, certain university departments are short of equipment and instruments which used to be brought in manually through Rafah Crossing. Today, Israel refuses to let them into the Gaza Strip, nor can they be acquired through tunnels from Egypt.

The academic community in Gaza is also disconnected from the communities in the West Bank, the Arab countries, the West and the entire world. This impacts the entire education system in the Gaza Strip, which is stagnating and cannot develop.

**Kamalain Shaath, President of the Islamic University in Gaza:<sup>20</sup>**

"The Islamic University, like any university in the world, has ties with other countries, and the closure of Rafah has a negative impact on those ties. We used to travel around the world to conferences, for research, for training courses and workshops. Because of the closure of Rafah, we actually can't move; we don't have ties with the world. In the last year we began to feel strangled, without oxygen. I, as a university president, am supposed to participate in conferences and

19. See, for instance, HCJ 11120/05, **Hamdan v OC Southern Command** and related files [unpublished, handed down on August 7, 2007], about occupational therapy studies in the Gaza Strip by remote control.

20. Related to Ayda Abdalbari of Gisha, in an interview on February 9, 2009.

meetings abroad, but I have not been able to leave Gaza for two years because of the closure of Rafah.

"Academic education is a dynamic process: the lecturers must be informed about what is new in their fields, exchange information with researchers abroad, and acquire new knowledge. Preventing researchers from traveling abroad and making contacts with colleagues stymies academic development, progress in research and the ability to stay current with innovations in all areas of science. All these factors have a negative impact on the academic level of the lecturers, which in turn has a negative impact on the students and on their achievements."



### **Restrictions on the exit of students from the Gaza Strip abroad**

The compromised condition of the higher education system in the Gaza Strip is reflected in, among other things, the limited choices of academic study: in the four universities of the Gaza Strip, only some subjects at the undergraduate level can be studied, and the number of Master's degree programs is even more limited. Doctoral studies do not exist at all in the Gaza Strip, nor do basic medical and paramedical certifications, such as occupational therapy, speech therapy, dentistry and physical therapy. In addition, since 2000 Israel has completely prevented the passage of students from the Gaza Strip seeking to study in the West Bank, where most of the Palestinian universities are located,<sup>21</sup> as well as the entrance into Israel of students from the Gaza Strip, who are accepted by Israeli academic institutions.<sup>22</sup> Therefore, traveling abroad has become the only possibility for acquiring higher education in the many areas of study that do not exist in the Gaza Strip.

Since June 2007, when Rafah Crossing was closed almost hermetically, Palestinian students have been prevented from travelling to Egypt and from there to other locations. Ahead of the 2007-2008 academic year, more than 1,000 students

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21. See Gisha, position paper on Limitations on Access to Higher Education for Palestinian Students, December 2006, available at <http://www.gisha.org/index.php?intLanguage=2&intItemId=311>  
22. See HCJ 4496/07, **Madhoun v OC Central Command** (unpublished, June 4 2007).



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for God sake  
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Let us...  
of Palestine  
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sought to leave the Gaza Strip to study abroad, many of them in Egypt. The exit of less than half of the applicants was made possible by the shuttle arrangement Israel introduced temporarily in August-September 2007 and in December 2007-January 2008, from Erez Crossing through Nitzana Crossing to Egypt. Most of the students who took those shuttles arrived at their universities late and missed the first semester.

Since the shuttle arrangement was discontinued, Israel has refused to allow an alternative means of exit for students abroad through its territory, because they are not "exceptional humanitarian or urgent medical cases"<sup>23</sup> – the only circumstances that justify leaving Gaza through Israeli territory, according to Israel. The restriction on the exit of students in these cases has not been justified on security grounds regarding an individual student, but rather is part of a general policy of closure, which, among other things, violates the right of the residents of Gaza to acquire an education.

**Mona Bkheet, 28, resident of Nusseirat refugee camp, completed a Master's degree in environmental and civil engineering at the University of Colorado in 2007 and was accepted for doctoral studies at Southern Illinois University in the US, which she was unable to attend:**

"During the break between my Master's and doctoral studies, I came to visit my family in the Gaza Strip, after not seeing them for two years. I found myself stuck – missing the first and second semesters of the school year, and soon also the summer semester [...] My plans for the future and the efforts I invested in my studies in the last years – all collapsed the moment I entered Gaza. The closure suffocates our spirits, our dreams, our lives and our futures, and makes the people of Gaza – especially the children and the young people – hopeless."



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23. Related by Capt. Hussam Daghes, COGAT, in a letter to Gisha from February 21, 2008.

The periodic border openings by Egypt since March 2008 have allowed the gradual exit of a limited number of students. In that way, at the end of August 2008, some 100 students managed to leave Gaza through Rafah when it was opened, and in September 2008 some 60 students and their families went out. The random and limited openings of Rafah by Egypt do not meet the needs of all of the students of the Strip, nor do they allow most of them to exit, surely not at the appropriate time for them to begin their studies, if at all.

Ahead of the 2008-2009 academic year, public protest arose in the US over the prevention of the exit of seven students from Gaza, who had received American taxpayer funded Fulbright scholarships to study in the US. As a result, and following pressure exerted by US Secretary of State Condoleezza Rice and senior European figures, Israel expressed its willingness in principle to consider granting the requests of "friendly countries" to allow students out of Gaza through Israel,<sup>24</sup> on the condition that they held recognized scholarships.<sup>25</sup> In the summer of 2008, Israel allowed about 70 students, who had received scholarships in EU countries and the US, to leave for their studies.<sup>26</sup> The students had to leave the Gaza Strip through Erez Crossing and travel to the Allenby Bridge, accompanied by diplomatic staff from the countries where they were going to study. From there they traveled into Jordan, where they continued to their final destination.

**These students continue to wait for the rare openings of Rafah Crossing, at the risk of losing their places at the universities to which they were admitted abroad, and the scholarships they won, in a state of complete uncertainty.**

Hundreds of other students, who were supposed to begin studying in the fall of 2008, continue to be trapped in the Gaza Strip, including students without recognized scholarships, students whose exit Israel prevented for security reasons based on secret evidence which can not be challenged, and students who were

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24. Related by Tzipi Livni, Foreign Minister, in letter to MK Chaim Oron on June 30, 2006 (with the permission of the authors).

25. HCJ 7761/08, **Bur'i v Defense Minister**, Respondents' response from September 22, 2008, para. 44.

26. See, for example, a letter from Dar Nadler of the Defense Ministry to Mk Chaim Oron from July 30, 2008, about allowing the exit of students from Gaza, who received Fulbright scholarships in the US.

accepted for studies in countries that Israel does not define as "friendly," including countries in Eastern Europe, Asia and the Middle East. These students continue to wait for the rare openings of Rafah Crossing, at the risk of losing their places at the universities to which they were admitted abroad, and the scholarships they won, in a state of complete uncertainty regarding when they will be allowed out, and if they do leave, whether they will be able to return to Gaza to visit their families.

### **Zaki Atar, resident of Gaza, 24, missed the opportunity for Master's degree studies in South Korea**

Zaki, a university graduate in information technology (IT), applied in April 2008 for a Master's program in international development policy, at the University of Seoul, South Korea. On June 30, 2008, he was informed he had been admitted and won a scholarship, and he was asked to arrive at the university in Seoul by July 31, 2008.

Zaki began searching frantically for a way to reach his studies. In July 2008, Rafah Crossing opened only for the first two days of the month, permitting the exit of a limited number of residents of Gaza, yet he was not one of the lucky ones. He tried to coordinate his exit with Israel and Jordan, through the South Korean embassy in Gaza, and even bought an airline ticket from Dubai to South Korea. The military authorities at Erez delayed in giving him an answer. When the deadline for his arrival at the university passed, Zaki asked the university for permission to come late, writing: "Your Master's degree program is very important for my community, in many ways. I hope I will not lose this rare opportunity." The university allowed Zaki to arrive no later than September 26.

When Rafah Crossing opened again, in late August and late September 2008, Zaki went to the crossing, hoping to reach Egypt and from there travel to his destination. On neither occasion did he manage to get through, and he had to return home empty-handed. The last deadline for his studies passed, and Zaki remained in Gaza, frustrated and helpless. When he heard Rafah Crossing was opening again on November 4, Zaki contacted the Korean university and explained that he had an opportunity to leave the Gaza Strip and get to South Korea within one or two days. The University of Seoul replied that he could not begin his studies late, and



that if he wanted to try to study there the following year, he would have to go through the same admission process again. Zaki stayed in Gaza, unable to attend his studies, for which he had eagerly awaited.

The longer the closure remains in force, the more students despair of applying to universities abroad, paying the enrollment fees and applying for visas. Meanwhile, some of the foundations that gave scholarships to students from Gaza, who were not able to use them, are debating whether to continue supporting students from Gaza. In this way, the closure of Rafah limits the ambitions of many young men and women from Gaza for personal development and undermines their hope to use the education they acquire to help build an educated, robust and thriving civil society in the Gaza Strip.

**Said al-Madhoun, 29, resident of Gaza, admitted to an LL.M. program in the US.<sup>27</sup>**

"[...] Since August 2007, I have been unable to leave the Gaza Strip in order to go to the university. I have a valid passport. I have a letter of admission from the university. I have a scheduled interview for a visa. I have never been tried or accused of a crime. I have never been forbidden to travel. I know where Rafah Crossing is, and I have the will and the mental and physical ability to leave, but unfortunately, I cannot. Rafah Crossing is closed.



"[...] An entire year of my life has blown away. I do not pose a threat to Israeli society. I am not going for fun or entertainment. I want to travel to study, which, in my opinion, will contribute to the development of my community and a better future for my people. The Israeli closure of Gaza is turning my dreams into illusions."

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27. From an article written by Said Madhoun in early 2008 and sent to Gisha. After many efforts, Madhoun left to study in late July 2008, a year behind schedule, through Erez Crossing and Allenby Bridge, in the framework of the exceptional cases in which Israel allowed residents of Gaza to go study in "friendly countries."



### **Access of students from abroad to universities in Gaza curtailed**

Throughout the Arab world there are student exchange programs between universities in the various countries. The universities of Gaza are unable to participate in these programs because of the closure of Rafah. Moreover, every year the universities in Gaza reserve between 10% and 15% of their slots for residents of the Gulf countries – mainly Saudi Arabia – who wish to study there. Usually these are Palestinian refugees with temporary residence in Gulf countries, who are unable to attend the local universities in the countries of their residence, mainly because of their status as refugees. According to the laws of those countries, people with temporary residence status must renew their civil status once a year. As a result of the closure of Rafah Crossing, many of those students have been stuck in Gaza, unable to travel to the countries of their residence to perform that necessary procedure. A large percentage of them managed to leave the Gaza Strip when the crossing was breached in January 2008, but most of them have not returned to Gaza to this day to complete their studies because of the closure of Rafah Crossing. Therefore, for a substantial number of that special group of students, years of study have gone down the drain. The lucky ones who did get back into Gaza had to repeat their academic year from the beginning because of the loss of a semester.

For the academic year of 2008-2009, no Palestinian students living in the Gulf countries enrolled at the universities in Gaza. Besides undermining the ability of those students to realize their professional and academic aspirations, blocking access between Gaza and Egypt severs these students' ties with their own people, which were made possible by the study arrangements that were open to them in Gaza. The absence of these students impoverishes the cultural diversity of the Gaza student body.

### **Undermining civil society**

Civil society mediates between the individual and society and between citizens and the government. It is also within this framework that non-governmental organizations operate, trying to promote social change by influencing government systems, while encouraging community involvement. It is a common assumption

that an active, diverse, and strong civil society helps strengthen democracy, because it strengthens the involvement of the individual in social and governmental processes, helps actualize freedom of association, allows the representation of different communities within society, makes demands on government, and holds government accountable.

The existence of a civil society is all the more critical in a society that is not part of a sovereign state, has a weak central government, and whose communities are divided between different areas, as is the case of Palestinian society. There are about 1,000 non-governmental organizations (NGOs) of various kinds in the Gaza Strip, working for different causes, including promoting democracy, social and economic justice, human rights, development, education and the equality of women.<sup>28</sup>

The closure of Rafah Crossing has dealt a severe blow to NGOs in the Gaza Strip. It has denied them the possibility of maintaining direct ties with professionals, colleagues, foreign government officials, and existing and potential donors. Thus, the closure of Rafah undermines the ability of NGOs in Gaza to do their work for the public good and contributes to the stagnation of Gaza's civil society.

**Amjad a-Shawa, Director of PNGO – the Palestinian Network of NGOs:<sup>29</sup>**

"The closure of Rafah affects every area of NGO activity in the Gaza Strip; it increases the suffering of people in Gaza, and as a result, the workload of these organizations is doubled. Meanwhile, the organizations themselves are hurt by the closure of Rafah: they are unable to maintain communication with the international community to develop their organizations and promote issues related to Gaza; the members of the organizations are unable to attend international and regional conferences and workshops, limiting their ability to develop staff capabilities and negatively impacting the organizations' performance; they do not have the ability to meet Arab partners or partners from the West Bank, to discuss joint issues and coordinate their work.

28. Related by Amjad a-Shawa, Director of PNGO, to Ayda Abdalbari of Gisha, in an interview on January 26, 2009.

29. Ibid., see organization's website at [www.pngo.net](http://www.pngo.net)

"Access to the outside world and the ability to move are very important in order to continue the work of the non-governmental organizations in Gaza and develop it. Rafah Crossing was a lifeline for the organizations. Its closure isolates organizations from the outside world, undermines communications and prevents them from making progress."

For instance, the closure of Rafah and the other Gaza crossings undermined a comprehensive international conference scheduled to take place in late October 2008 in Gaza, for a discussion and dialogue about the implications of the closure for mental health, children, families and communities, and the situation of human rights in Gaza. The Gaza Community Mental Health Programme worked on preparing the conference for a year, together with the World Health Organization.<sup>30</sup>

Ultimately, the only people who physically attended the conference were from Gaza; the other conference invitees, 120 expert researchers from universities from all over the world and from the West Bank, were prevented from participating because of the closure of Rafah Crossing and Israel's refusal to allow them to enter the Gaza Strip through Erez Crossing. In order to maintain communication between all invitees, the conference was, for lack of alternative, held by video conference, which greatly restricted communication between the audience and the speakers.<sup>31</sup>

"The Gaza Community Mental Health Programme found their International Conference, "Siege and Mental Health Walls vs. Bridges" under siege. [...] Following an entire year of planning and preparations, the academic conference was undermined by the decision of the Israeli authorities to prevent the entrance of the international conference participants, only two weeks before the conference. What irony could better illustrate the implications of the siege?"<sup>32</sup>

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30. See conference website: Siege and Mental Health: Walls vs. Bridges, at <http://gazaconference.net>

31. Related by Hussam al-Nounou, director of public relations at the Gaza Community Mental Health Programme, to Ayda Abdalbari of Gisha, on January 25, 2009.

32. Gaza Community Mental Health Programme, Press Release from October 20, 2008, available at: [http://www.gcmhp.net/File\\_files/press22Oct2k8.html](http://www.gcmhp.net/File_files/press22Oct2k8.html)



Another organization that was hurt by the closure of Rafah and the closure policy is the Women's Affairs Technical Committee (WATC), a coalition of ten women's organizations, operating since 1992 to promote the rights of women in Palestinian society.<sup>33</sup> For years, the conference has participated in a number of regional networks of women's organizations: it is working with organizations in Jordan, Egypt and Lebanon to draft a law to protect the rights of women in the Arab world, in order to present it to parliaments in the Arab countries; the committee is also a member of the Women's Court, that convenes every year in Beirut, where women from Arab countries testify about the violation of their rights. The organization is also a member of the Salma Association, including Palestinian, Jordanian, Egyptian and Lebanese organizations, which works in the area of domestic violence. As part of its activity, the association is working on a draft penal law against killing women on grounds of "family honor."

Because of the closure of Rafah and the general closure of the Gaza Strip, the committee has been unable to participate in various regional and international activities since 2006. For a year, the committee has not received invitations to conferences or meetings with the EU, because the latter knows that the members of the committee cannot leave Gaza. Nor can the committee receive visits of consultants, professionals or donors any longer, which further obstructs its work.

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33. The information about the organization was given by Nadia Abu Nahla, director of the Women's Affairs Technical Committee (WATC), in an interview with Ayda Abdalbari of Gisha, on December 13, 2008. See organization's website: : [www.watcpal.org](http://www.watcpal.org)

The only way the committee can participate in international professional events is via video conferencing, which does not allow the building of real ties, developing capabilities, or finding sources of funding. The video conferencing method is also prone to technical difficulties, mainly because of irregular electricity supply to Gaza, which itself is a result of the restrictions on the supply of fuel for Gaza's power plant and for generators, and restrictions on supply of spare parts for equipment. According to Nadia Abu Nahla, director of the WATC office in Gaza:

"Today we cannot leave Gaza. [...] In order to be effective in the world, we must convey a true picture of the condition of women in Gaza, and that cannot happen without us participating personally. [...] Our voice is heard only here, and nobody in the world knows exactly what is happening in Gaza. We have lost our international and regional context. We have stayed behind the times."<sup>34</sup>

## Harm to family life

Many Palestinians in Gaza have relatives in Arab and other countries, and some are even married to spouses who are not residents of the Gaza Strip. For years, Rafah Crossing served as a gateway, through which members of divided families saw each other, whether in the Gaza Strip or outside of it. Since the closure of Rafah, it has become impossible to leave the Gaza Strip to Egypt freely and regularly, and go from there to other countries for family visits; it is similarly impossible to receive visits of family members in the Gaza Strip.

### **The Z. family – nine months waiting for family unification outside of the Gaza Strip**

R.Z., 38, and her husband S. have eight children, all born in Gaza. Following the deterioration of the economic situation in Gaza, S. went to Sweden in February 2006, received permanent residence there, and applied for his family to join him. On February 11, 2008, R. and her children received Swedish residence, and their

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34. Related by Nadia Abu Nahla, head of the Women's Affairs Technical Committee (WATC), in an interview with Ayda Abdalbari of Gisha, on December 13, 2008.

passports were stamped accordingly. The family decided it would live in Sweden until its economic situation improved and then return to Gaza. From that day, R.Z. has been making concerted efforts to leave the Gaza Strip with her children, in order to reunite with her husband, who had been in Sweden for two years alone.

Every time R. heard Rafah Crossing was opening, she quickly packed suitcases, prepared to leave and traveled to the crossing with her children. The family reached Rafah eleven times, waiting long hours and sometimes days, and coming up against a blocked crossing. For example, R. and her children reached the Palestinian side of Rafah on May 11, 2008, waited in the sun all day, crossed to the Egyptian side and continued to wait, until they were informed that the crossing was closed:

"The children returned sunburned, hungry and thirsty. Our emotional state was very bad. The girls asked not to go through the crossing, because it is a very difficult and exhausting route in every way."

Attempts to leave the Gaza Strip through Erez Crossing, with the assistance of Gisha, which applied to the Israeli authorities, were fruitless. During the long months of waiting to leave for Sweden, R. did odd jobs to support her children and periodically received money her husband managed to send. That was not enough, and the family faced economic difficulties and struggled to pay rent. Moreover, the long separation between the father and his wife and children took a heavy emotional toll on R. and her children, as well as on S., who was living alone in a foreign country:

"It is very hard for me to be away from my husband. His support is very important to me, and I have been alone for two years already. [...] This is the second Ramadan we are without him. [...] During the preparations for the holiday the children asked: where is father? Why isn't he with us for the holiday like the other fathers? [...] My son, who is supposedly an adult [19], cries when he hears a friend talking about his father. [...] M., 13, thinks a lot about his father and about the trip, and it is having a big effect on his school work. Every conversation about his father is accompanied by tears, and that kills me. I'm trying to appear strong for them, but I do not have enough strength to do that.

"Every time the crossing opened, my husband waited for a call from Cairo. A three day wait would end with a phone call from Gaza, in which we told him we did not

manage to get through. [...] Every time that happened, and there were many, he cried and so did we. [...] He is suffering from longing, and the waiting is becoming harder and harder."

On November 4, 2008, after nearly nine months of attempts and nearly three years of separation between S. and R. and the children, R. and her children managed to get out of the Gaza Strip through Rafah Crossing, and to go on from there to Sweden in order to live there together as a family.

## Violation of the right to freedom of worship

According to the Muslim religion, every Muslim must make a pilgrimage to Mecca at least once in his or her life, if his or her health and financial situation permit. The pilgrimage, called Hajj, takes place every year over a few days in the last month of the Muslim calendar. Muslims also make pilgrimages to Mecca not during the Hajj, and those are called Umrah.

**Exit of pilgrims during the time of the Hajj, subject to permission from Egypt to open Rafah, has become a battleground between Hamas and Fatah, with the price being paid by residents of the Strip.**

Before the closure of the Gaza Strip tightened, every year thousands of residents of the Gaza Strip made pilgrimages to Mecca as part of the Hajj, and between 10,000 and 15,000 made pilgrimages to Mecca at other times of the year, according to the custom of Umrah.<sup>35</sup> Since the nearly hermetic closure of Rafah in June 2007, that freedom of the worshiping residents of Gaza to fulfill the precepts of their religion has been greatly restricted, because of the closed crossing and the power struggles concerning it. Exit of pilgrims during the time of the Hajj, according to entrance quotas from Saudi Arabia and subject to permission from Egypt to open Rafah, has become a battleground between Hamas and Fatah, with the price being paid by residents of the Strip. Except for the days of Hajj, pilgrimage to Mecca is not recognized by Egypt as one of the categories that justifies leaving through Rafah Crossing during its ad hoc openings.

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35. Related by Awad Madkour, head of the Hajj and Umrah company (a private agency that handles travel by residents of Gaza to Mecca), to Gisha, on January 27, 2009.

In order to allow the residents of Gaza to make pilgrimages as part of the Hajj, Hamas and the PA work simultaneously with Saudi Arabia to receive entrance permits and with Egypt and Israel to coordinate the exit of worshipers from the Gaza Strip. During the Hajj in December 2007, Egypt opened Rafah Crossing for the exit of 2,200 pilgrims from the Gaza Strip who were registered by Hamas; because of a dispute between Egypt and Israel over the route of their return to the Gaza Strip, their entrance was delayed, and they had to wait in Egypt until the latter opened Rafah Crossing for them.<sup>36</sup>

In late 2008, on the other hand, the political rift between the Hamas government in the Gaza Strip and the Fatah regime in the West Bank precluded any pilgrims from leaving Gaza during the Hajj. The passports of the 3,200 pilgrims who were registered by the PA, including visas to Saudi Arabia, waited for their owners at Rafah Crossing.<sup>37</sup> The Hamas authorities urged Saudi Arabia to provide entry visas to the 2,200 pilgrims that they had registered, and announced that the pilgrims that the PA registered would not be allowed to travel, so long as the exit of the pilgrims registered by Hamas was not possible. Hamas security forces raided travel agencies that registered pilgrims for the PA in Gaza, confiscated computers and documents from them, arrested workers, and interrogated them violently about the registration of the pilgrims and their connections with the government in Ramallah. On the night of November 28, 2008, Gaza security forces erected many checkpoints on the way to Rafah Crossing to prevent access for the pilgrims who had been registered by the PA. The pilgrims who did manage to get to Rafah reported that the security forces had prevented them from entering the crossing and even beat some of the pilgrims and their families. By the end of the 2008 Hajj period, not a single pilgrim had left the Gaza Strip.<sup>38</sup>

**M.A., 50, father of nine, resident of the al-Bureij refugee camp, unemployed:**

"The Hajj is very important for every Muslim. It is the way to atone for all the sins you committed in your life. After the Hajj, a person is as if reborn, without flaws.

36. At that time, Israel allowed 700 worshipers to leave through Erez, in coordination with the PA. See supra p. 43.

37. OCHA, "The Humanitarian Monitor," No. 31, November 2008, p. 6, available at [http://www.ochaopt.org/documents/ocha\\_opt\\_humanitarian\\_monitor\\_2008\\_11\\_1\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_2008_11_1_english.pdf)

38. PCHR, Press Release from November 30, 2008, available at <http://www.pchrgaza.org/files/PressR/English/2008/113-2008.html>



I tried to go to the Hajj twice: in 2007 I registered with the PA in Ramallah. They decided I would go and I sent them my passport so I could receive a visa to Saudi Arabia. On December 15 my name appeared on the Palestinian television, on the list of the people who were going to the Hajj through Erez. The next day I went happily to Erez, where I was told that my passport had been lost. You cannot imagine my disappointment and sorrow. [...] I missed the Hajj for that year.

"I did not give up, and in 2008, I renewed my registration and again sent my passport to Ramallah [...]. Again my name was read on Palestinian television, and the Ramallah government asked us to come to Rafah Crossing, where we would find our passports with a visa to Saudi Arabia. [...] In December I went to the crossing, but Hamas police stopped me on the way and asked me where I was going. I told them I was going to Rafah Crossing for the Hajj. [...] They told me that the crossing was closed and asked me to go home. I tried to go to Rafah a different way, but I ran into them again and decided to go home. The PA in Ramallah postponed the time of the Hajj. I tried to reach Rafah again, and again I could not, because Hamas police prevented me and others from going on the Hajj.

**The closure of Gaza from all sides, including the closure of Rafah Crossing, means that all the residents of Gaza wake up every morning to a reality of shortage, restrictions and uncertainty.**

"Again I returned home depressed, seeing the world as black and asking: what have we done that we are prevented from going on the Hajj?"

## **Harm to the fabric of daily life**

The closure of Gaza from all sides, including the closure of Rafah Crossing, means that all the residents of Gaza wake up every morning to a reality of shortage, restrictions and uncertainty, whose implications are severe even in terms of the ordinary, mundane elements of daily life. Hanan Taha, director of the Gaza branch of PalTrade and a mother of four, described to Gisha daily life in the enclosed Gaza



Strip.<sup>39</sup> Some of the difficulties she describes are the result of the limited supply of goods on sale in Gaza:

"Another Eid al-Adha (Festival of Sacrifice) is coming, and for the children the holiday means going to buy new clothes, new shoes, toys, decorations, presents and holiday chocolates to serve the guests. We go to the market and buy from what there is, and there is nothing. There are no new clothes [...]. The experience of going to the market with the children and choosing is a distant memory for me."

Moreover, daily life in the Gaza Strip involves uncertainty about the presence or absence of vital services and a feeling of imprisonment and enclosure:

"Our feeling here, which I share, is that we can wake up in the morning and not find anything, we don't know what we'll find. There is no stability and no security, and I'm talking about social security. I can wake up in the morning and not know if I will find gas to take my kids to school and get myself to work. [...] I don't know whether there will be electricity or not. I go to the grocery store and don't know if I will find milk or not, or how many grocery stores I will have to go through. If a child is sick, I don't know if I will find medicine in the nearby drugstore or not. And I am afraid that if, God forbid, my child gets sick and I need to take care of him outside of Gaza, I won't be able to get him out of Gaza."

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39. Related by Hanan Taha to Gisha, in an interview from December 10, 2007.

For all those reasons the residents of Gaza feel a lack of control over their lives and frustration and hopelessness about the future. Those who can afford it express a desire to leave the area of their birth and build their lives elsewhere:

"Honestly, our lives have become chaos. You cannot think about tomorrow. Whether you work or not, the feeling is of loss. We feel lost in this whole situation. [...] How can you live like this, raise children in this situation? Today I am seriously considering leaving Gaza. [...] I will not raise my children this way. I want their lives to be as normal as possible. I cannot bear to see the effects of this situation on my children."

**S.K., 25, lives in the Shati refugee camp and works as a teacher at a government school:**

"My sister has lived with her husband and four children in Al-Arish, Egypt since 1997. She used to visit us every year until 2006, and we used to go there with her and spend part of the summer vacation in Egypt. We never thought of her as living abroad because it was easy to see her, but not any more.

"When we went to her, we usually used the opportunity to buy fish there, sell it in Gaza and make money. That was a source of income that helped us improve our standard of living, but we lost it because of the closure of Rafah.

"Since 2006, my sister has not been able to come here because of the closure of Rafah. She gave birth that year, and we could not see the baby. In January 2008, when Palestinians broke the wall between Egypt and Gaza, she came here and we saw her again. That was the first time I saw Ali, her little baby. We were happy, because we miss her and her children very much. It is frustrating when you're not free to see your sister [...]. That time, too, we went with her to Al-Arish, but only for one day, because we were afraid that Egypt would close the border and we would get stuck there. [...]

"Rafah Crossing means life to us, going out of jail on vacation and seeing another way of life, feeling that we are still alive. That is what makes me feel that I am a normal person who lives like other people in the world. The closure of Rafah prevents me from living that kind of life to which I was accustomed."

## Undermining the very ability to leave the Gaza Strip

The basic possibility of getting up and leaving, walking away from a situation of pressure and violence, starting a new life elsewhere or leaving temporarily, has become almost impossible for the residents of Gaza because of the hermetic closure of Rafah Crossing. This was illustrated sharply during Israel's massive assault against the Gaza Strip in December 2008-January 2009: for three weeks, the Gaza Strip was bombarded from the air, sea and ground, and its residents were trapped in its small and crowded area, without any way to escape with their families to a safe place, because of the closure.

### **Kusai a-Sultan, 30, married and father of three, resident of Beit Lahiya:**

"On January 2, 2009, the Israeli ground operation began. [...] All the windows in the house broke, and we felt as if there were no oxygen in the house. Israeli tanks surrounded our area; we could see the Israeli soldiers out of the window. They bombed everywhere; the children began to shout and cry, smoke spread through the area and we couldn't breathe. Those were moments of terror. [...] We contacted our neighbors by cell phone, and decided to evacuate all together, about 400 people. [...] We ran out of the area frightened, carrying our children, who were screaming to death; we saw a lot of bodies strewn on the streets.



"[...] We walked and walked until we got to UNRWA's Asma School in the Shati refugee camp. On the first night we did not have mattresses to sleep on or blankets to cover our children. [...] On the second night neighbors brought us blankets. [...] On January 4, 2009, at night, my nephew Hussein, my cousin Abd and another cousin, Rawhi, went down to get water for the children. Suddenly an Israeli plane attacked and killed them.

"What can I say? We left our homes to seek security, to escape death, to use the UNRWA school as a shelter, to protect ourselves from the attacking Israelis, and we found death. The killings followed us to the school. Life turned black right

before our eyes. [...] Despite the attacks, we stayed at the UNRWA school till the end of the war, for a simple reason: we had nowhere else to go. It really feels terrible. [...] I don't think that anything in this life will ever be worse than the experience we went through in that war. There is no place in Gaza that is a safe place or far from the Israeli attacks. The Gaza Strip is a small place. Where can you go?"

Even without a military offensive, life in the Gaza Strip is stressful and suffering abounds, because of the difficult economic situation, unemployment, lack of adequate services and the closed borders. According to studies by the Gaza Community Mental Health Programme, headed by Dr. Eyad Sarraj, the prolonged closure of the Gaza Strip causes high levels of tension and depression among the residents of Gaza.<sup>40</sup>

The tension and the daily difficulties often create a permanent condition of strain inside the family, and even lead

**The basic possibility of getting up and leaving, walking away from a situation of pressure and violence, starting a new life elsewhere or leaving temporarily, has become almost impossible for the residents of Gaza.**

to outbursts of violence, which is usually directed against women. In a survey in the summer of 2008 by the Palestinian Association of Women's Development Studies, of a random sample of 600 women throughout the Gaza Strip, 85% of the women reported a rise in the level of tension, pressure and anxiety inside the family during the closure. Sixty percent of the women reported that the level of violence against women inside their families had risen during the closure.<sup>41</sup> A survey by the Palestinian Central Bureau of Statistics among 1,440 households in the Gaza Strip found that one out of five women suffered from physical violence by her husband at least once during 2005, and that one in ten women suffered from such episodes of violence at least three times during that year. Forty percent of the women in the survey experienced emotional abuse from their husbands

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40. See organization's website: <http://www.gcmhp.net>

41. The Palestinian Association of Women's Development Studies, "The effect of the siege on Palestinian families from the point of view of women," September 2008 [Arabic].

on at least three occasions that year.<sup>42</sup> One third of the respondents assessed that the poor economic situation resulting from Israel's policy of closure was one of the determining factors of domestic violence, and 17% considered that their husbands' unemployment because of the closure to be such a factor.<sup>43</sup> Likewise, the survey found a higher rate of married women reporting violence against them by their husbands, if the latter were unemployed because of the closure.<sup>44</sup> Another study found that even though comprehensive figures are not available, interviews with focus groups showed clearly that long-term unemployment and a sharp drop in the standard of living increased the level of domestic violence against women. All this takes place in the context of a weak legal system with no orderly rule of law.<sup>45</sup>

A female resident of Gaza who wishes to escape from a situation of domestic violence, or any resident who wishes to change his or her place of residence because of the difficulties of living in the Gaza Strip, runs up against a closed gate, uncertainty as to when she will be able to leave, and no guarantee that she can return to her homeland in the event that she does manage to leave. This situation, of entrapment and having no way out, in turn raises the level of tension and suffering in the Gaza Strip.

**R.H., 28, managed after many attempts to move from Gaza to Egypt:**

"I am a member of a family of six. I lived in Gaza with my parents and my married brother. For years my brother beat me, and my father failed to protect me. I felt that my life was in danger because of my brother. I also felt threatened by Hamas, which confiscated my belongings at my job at the Ministry of Youth and Sports, because of my affiliation with Fatah. For that reason, I left my job and had to stay home. I lost hope in Gaza and decided to escape to Egypt in order to find security and stability, to build my future and to find hope in life.

42. PNA, PCBS (Palestinian Central Bureau of Statistics), Domestic Violence Survey, Main Findings, June 2006, pp. 33, 75.

43. Ibid, p. 90.

44. PCBS, unpublished. Appears in Hadeel Qazaz, Personal Security, Violence and Women and Girls' Opportunities for Economic and Social Participation, 2008, Women's Affairs Center – Gaza.

45. Hadeel Qazaz, *ibid*.

"For a year I tried a number of times to get through Rafah Crossing, but I failed: every time it was very crowded, I didn't know anybody who could help me get through, and Rafah closed in my face. Finally, I managed to get through on November 6, 2008 after a friend of mine in Egypt helped put my name on the list of passengers, through an acquaintance of his in the Egyptian authorities.

"When I entered Egypt I felt happy, safe; I felt like a human being. I am going to begin a new life here in Egypt and I am never going back to Gaza."



The closure of Rafah, which completes the isolation of the Gaza Strip from the outside world, violates the rights of the residents of the Gaza Strip and undermines many aspects of their daily lives. Besides the harm to the residents of Gaza themselves, this process undermines the chances of Palestinian society in Gaza to develop economically and to become an open, educated and self-sustaining society that provides welfare to its residents and thrives.

**Prof. Jihad Hamad, professor of political science at Al-Azhar and Al-Quds Universities:**

"We have become people who live only on the basics. The intellectual elites use their money to buy food. People need more than that. They need to feel safety, openness, a connection with the world. If I want to ensure the survival of myself and my family, I must find another environment. I want to give, I want to contribute my skills. In Gaza today that's impossible."

**CARE UNIT**





## Chapter 4

# The Implications of the Closure on the Health Care System in Gaza

Medical services in the Gaza Strip have never met the standards of a developed health care system. Since Israel occupied it in 1967, no independent medical infrastructure was built in the Gaza Strip, and its health care system depended almost completely on the Israeli health care system and on external aid given under Israeli auspices. Israel cultivated that dependence by imposing various restrictions on residents of the Gaza Strip, preventing the development of an independent and advanced health care system. The restrictions have continued, and even intensified, since the withdrawal of Israeli military forces from the Gaza Strip in the summer of 2005.

Gaza's health care system is characterized by an ongoing shortage of advanced medical equipment and machinery, a severe shortage of skilled medical personnel with knowledge and expertise, and the absence of many branches of medicine such as heart surgery, eye surgery, radiotherapy, cardiology, transplants, neurosurgery and complex operations in the fields of urology, orthopedics and internal medicine. The fact that the possibilities for physical development and the development of a future generation of medical professionals are limited as a result of the closure of the Gaza Strip does not bode well for an improvement of that situation.

In order to meet the medical needs of the Gaza population, which have not been sufficiently met by the Gaza health care system, the Gaza Strip has become dependent on the outside world: for medical training, students, doctors and other medical teams have regularly traveled abroad to acquire knowledge, experience and training; for patient care, because although responsibility for the Palestinian health care system in the Gaza Strip was transferred from Israel to the PA following the Oslo accords in 1994, the PA needs to purchase medical services

from hospitals in Israel, Jordan, east Jerusalem, the West Bank and Egypt, in cases when appropriate care is not available in Gaza. The patients and medical teams used the two passenger crossing points from which they could leave the Gaza Strip: Rafah Crossing into Egypt and Erez Crossing into Israel.

As problematic as that situation may have been, it still provided Gaza residents with an address where they could receive medical treatment not available in Gaza. Developments since June 2007 changed things for the worse: following the Hamas takeover of the administration of Gaza, Israel and the international community made a number of decisions that led to a severe deterioration of the Palestinian civilian infrastructure in the Gaza Strip, including the health care system. Increasing Israeli restrictions on the entry and exit of money, goods, services and people through the Gaza Strip crossings – including Rafah Crossing – led to a sharp drop in the capacity of the Gaza health care system to provide adequate health services to the population. They also dealt a severe blow to the Gaza Strip’s chances of developing and strengthening an independent health care system and greatly limited access to vital external medical services. These processes are described below.

**Increasing Israeli restrictions on the entry and exit of money, goods, services and people through the Gaza Strip crossings – including Rafah Crossing – led to a sharp drop in the capacity of the Gaza health care system to provide adequate health services to the population.**

## **The deterioration of the health care system in Gaza**

### **A shortage of medications, medical equipment and skilled medical personnel**

Since June 2007, medical equipment that breaks in the Gaza Strip cannot be sent out for repair; spare parts are not available in the Gaza Strip, and often they are not permitted to be brought in from the outside. So, for example, a delegation of physicians from PHR-Israel that visited the Gaza Strip in June 2008 found that of 72 dialysis machines in the Gaza Strip, 13 were out of order, and therefore 59

machines served a population of 450 kidney patients. They also found that 91 types of medical equipment were not in stock at all, and 173 types existed in an inventory that would suffice for a period of only one to three months. At different points in time, there are shortages of medications and difficulty bringing them in, especially because of the frequent closure of the goods crossings into the Gaza Strip by Israel. The PHR-Israel delegation also found a shortage of 49 types of medications and a minute reserve of dozens of other types. Most of the shortage is in medications for cancer, liver, kidney and chronic disease patients.<sup>1</sup>

In addition, the prohibition on the exit of medical teams for training and continuing medical education (see below) results in new equipment brought into the Gaza Strip that sometimes remains unused due to lack of appropriate knowledge and training among the medical community of Gaza. Although there are instruments and equipment in Gaza for orthopedic and surgical procedures, catheterization and laser eye treatments, there are no expert doctors to operate them. There is also an evident shortage in the Gaza Strip of anesthesiologists, plastic surgeons for cleft lip and palate operations, reconstruction doctors and other experts.

### **Reduced ability to refer patients to Egypt**

Since 1994, the Palestinian Ministry of Health has purchased medical services from hospitals outside of the Gaza Strip in cases when the medical treatment is unavailable in Gaza; for example, in the areas of neurosurgery (herniated disc, spinal cord surgery and removal of head tumors), orthopedics, cornea transplants, plastic surgery, vascular medicine, oncology services, in vitro fertilization and transplants.<sup>2</sup>

Until the beginning of 2007, most of those services were purchased from Egypt, mainly because of the low financial costs involved in receiving medical treatment there compared to Israel, east Jerusalem and Jordan;<sup>3</sup> according to the World Health Organization, between 2003 and mid-2008, an average of 815 patients a

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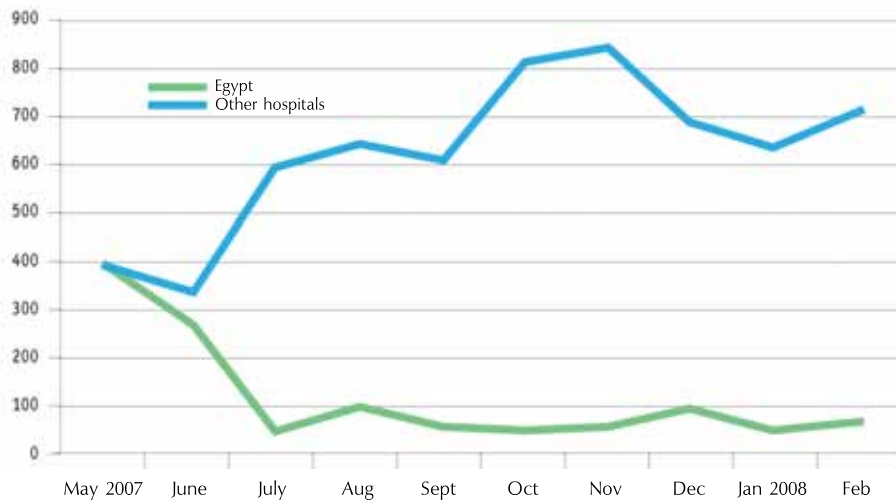
1. PHR-Israel, "The Gaza Strip – Medicine under 'calm,'" July 9, 2008 [Hebrew], p. 4, available at [http://www.phr.org.il/phr/files/articlefile\\_1215677445625.pdf](http://www.phr.org.il/phr/files/articlefile_1215677445625.pdf)

2. *Ibid.*, p. 8.

3. PHR-Israel, "The Disengagement Plan and its Repercussions on the Right to Health in the Gaza Strip," January 2005, p. 51.

month were referred to medical treatment outside of the Gaza Strip. Until June 2007, about half of those patients were referred to Egypt.<sup>4</sup> The referrals to Egypt were made to two hospitals in Cairo: the Ma'had Nasser Medical Center and Palestine Hospital, which are an eight to ten hour drive from the Gaza Strip.

The decision where to refer patients from the Gaza Strip was made by a special committee appointed by the Palestinian Ministry of Health. Financial cost was the main consideration in determining the destination, but in some cases there were other considerations involved, such as the patient's preference and security: thus, after November 2005, some residents who feared direct contact with the Israeli authorities at the Erez Crossing, or even arrest, asked to exit through Rafah Crossing. Another consideration that informed the committee was medical: patients who required frequent treatments and close monitoring by their doctors, such as cancer patients, were referred to medical centers closer to home, namely in Israel, the West Bank and east Jerusalem.



**Diagram 6: Breakdown of referrals by the Palestinian Ministry of Health to hospitals outside the Gaza Strip, May 2007 – February 2008**

Source: the World Health Organization<sup>5</sup>

4. WHO, "Referral Abroad Report." The report was sent by WHO to the PHR-Israel office by e-mail on January 31, 2009.
5. WHO, "Health Sector Surveillance Indicators: Monitoring the Health Sector in the OPT" Issue No. 22: December 2007-January 2008 and No. 23: February- March 2008, available at [http://www.emro.who.int/palestine/index.asp?page=library&option=monitoring.WHO\\_monthly\\_monitoring](http://www.emro.who.int/palestine/index.asp?page=library&option=monitoring.WHO_monthly_monitoring)

The closure of Rafah Crossing in June 2007 barred patients' access to Egypt and, as a result, significantly reduced the number of referrals by the Palestinian Ministry of Health to hospitals in Egypt while doubling the number of referrals to medical centers in Israel, the West Bank and Jordan. The WHO reports that in the period between July 2007 and February 2008, the Ministry of Health referred to Egypt only 10% of the patients who could not be treated in the Gaza Strip, while the remaining 90% were referred to Israel, east Jerusalem, the West Bank and Jordan.<sup>6</sup> In previous years, 50% of the referrals were to Egypt and 50% to the other destinations.

In March 2008, Egypt began opening Rafah Crossing periodically for the exit of patients from Gaza, leading to a relative rise in the number of referrals to Egypt by the Palestinian Ministry of Health. Yet these random and limited border openings still failed to provide an adequate, regular and real solution to the medical needs of the population, and therefore, later that year, only 20% of the patients referred to medical treatment outside the Gaza Strip were referred to Egypt.<sup>7</sup>

The closure of Rafah Crossing limited the Palestinian Ministry of Health's ability to use discretion in its decision where to refer patients. Restrictions on the option of Egypt, where medical care is relatively less expensive, puts an even greater burden on the PA, which is strapped for funds to begin with. This impairs the PA's ability to allocate funding from the health budget to other medical resources.

### **Deaths of patients who did not receive adequate medical care**

Beginning in September 2007, the PHR-Israel office began receiving testimonials from Gaza of patient deaths in circumstances related to the prevention of access to medical care. As a rule, it is hard to estimate the number of deaths caused as a direct result of preventing care: besides the fact that the primary cause of death is disease, it is impossible to assess to what extent obtaining the treatment would have saved lives, because in some cases Palestinian patients die in hospitals even though they receive optimal care. Likewise, it is hard to define to what extent the

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6. Ibid.

7. Related by AbdelNaser Soboh, WHO representative in Gaza, to Ayda Abdalbari of Gisha in a phone call on September 12, 2008.

delay or prevention of care affected the final results in each and every case. However, there is no doubt that every delay or prevention of care reduces the patient's chances of recovering and denies him or her the right to receive medical care.

Figures about such cases of death are collected by a number of parties: the Palestinian Ministry of Health in Gaza attributes 265 cases of death between June 2007 and December 2008 to the closure imposed on the Gaza Strip, including, among other circumstances, the shortage of medication, the closure of Rafah Crossing, bureaucratic obstacles placed by Israel on the exit of patients, and its objection to their exit on security grounds;<sup>8</sup> the WHO has enumerated 32 cases of death that occurred in the Gaza Strip between October 2007 and February 2008, which it attributes to the delay by the Israeli authorities in the process of issuing exit permits to patients and its rejection of their exit applications;<sup>9</sup> PHR-Israel reports dozens of cases of death since June 2007, in which the prevention of care and/or a long delay in Israel giving an answer as to the exit from Gaza for medical treatment clearly led to a deterioration in patients' health status, ending in death. The medical information obtained by the organizations, and which was given to the Erez Crossing authorities at the time, indicates that an immediate transfer to medical care could have saved the lives of those patients, or certainly extended and improved them.<sup>10</sup>

**Na'el al-Kurdi**, 21, was diagnosed with testicular cancer in February 2006. He underwent surgery at Shifa hospital in Gaza in March 2006, received radiotherapy in Egypt that April, and went on to receive chemotherapy in Gaza. In January 2007 his condition deteriorated, and in March cancerous metastases were diagnosed in his liver. In April 2007, Al-Kurdi went to Egypt for treatment and was asked to return there for follow-up in June. Because of the closure of Rafah Crossing since

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8. Source: the official site of the Palestinian Ministry of Health in Gaza, see: [http://www.moh.gov.ps/news\\_det.php?id=238](http://www.moh.gov.ps/news_det.php?id=238)

9. WHO Office for West Bank and Gaza, "Access to Health Services for Palestinian People," April 2008, p. 32, available at [http://www.emro.who.int/palestine/reports/monitoring/WHO\\_special\\_monitoring/access/access%20to%20health%20services%20\(April%202008\).pdf](http://www.emro.who.int/palestine/reports/monitoring/WHO_special_monitoring/access/access%20to%20health%20services%20(April%202008).pdf)

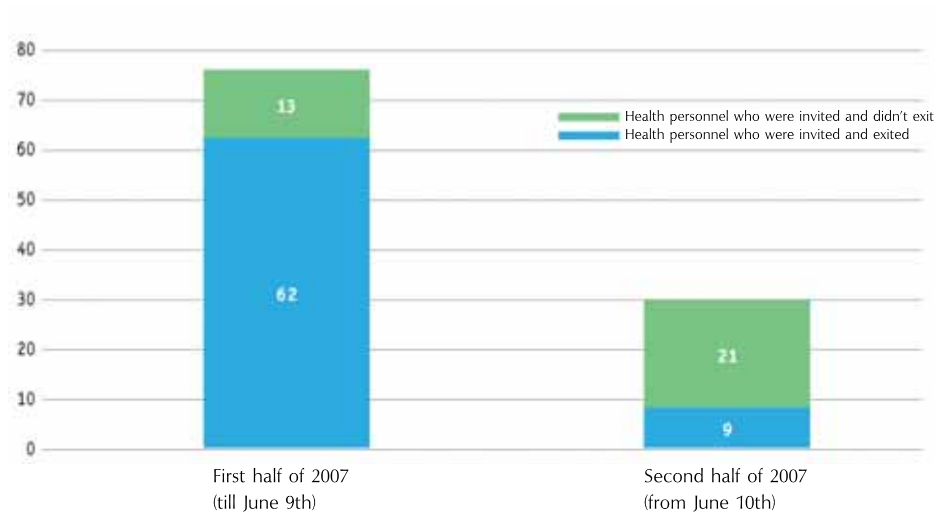
10. The information includes opinions of Israeli doctors, who relied on medical documents from hospitals in Gaza and phone calls with the attending Palestinian doctors. Half of these cases were also reported in the WHO report "Access to Health Services for Palestinian People," *ibid*. PHR-Israel does not have information about an overlap between the cases of death reported by PHR-Israel and WHO and those listed by the Palestinian Ministry of Health.

June 2007, the patient was denied access to Egypt, and he was referred to Ichilov Hospital in Tel Aviv. The authorities at Erez Crossing, directed by the ISA, refused to let him through "for security reasons," and subsequent requests by PHR-Israel on his behalf were also rejected. In October, al-Kurdi's condition deteriorated and he began to suffer from obstructive jaundice and the spread of further metastases. Even though a petition on his behalf was made to the Israeli Supreme Court, in which three doctors expressed their opinion that the prevention of treatment would pose an immediate risk to his life, the Court did not demand that the State allow his immediate passage but rather set a date for a later hearing on the petition. On November 17, 2007, as he waited for the additional hearing, al-Kurdi died of his disease. The next day the State Attorney's Office announced that his entrance into Israel had been approved.



### **Cutting ties between the Gaza health care system and the medical community abroad**

The closure of Rafah Crossing deepened the isolation of the medical community of Gaza, cutting it off almost completely from contact with medical communities abroad. The doctors at government hospitals were accustomed to maintaining contact with the international medical community by periodically participating in conferences and trainings. Those meetings were golden opportunities for the doctors to maintain working relations with colleagues abroad, to receive updates, to study, and to expand their circle of knowledge and experience in various areas of the medical world.



**Diagram 7: Number of Palestinian Health Ministry medical personnel from the Gaza Strip invited to professional training abroad and the level of participation, 2007**

Source: The Palestinian Health Ministry<sup>11</sup>

From June 2006, and especially from June 2007, the number of invitations sent to the Palestinian Ministry of Health in Gaza for medical training and continuing education abroad dropped. According to Walid Shakura, Director of the Department of International Cooperation at the Palestinian Ministry of Health, the drop can be attributed primarily to the closure of Rafah Crossing, which until that time was the main point of exit for medical teams from Gaza on their way to participate in the professional training events and conferences to which they were invited. Meanwhile, the number of doctors from Gaza who received invitations for professional training abroad but did not manage to leave the Gaza Strip rose substantially after June 2007, due to the closure of Rafah Crossing. The attempt by the Palestinian Ministry of Health to coordinate the exit of the doctors through Erez Crossing was only partially successful, because about half of the requests the ministry submitted to the Erez authorities were rejected on security grounds.<sup>12</sup>

11. Cases in which invited personnel did not go out resulted mainly from the closure of Rafah Crossing and sometimes also from the rejection of applications for exit permits by the Israeli authorities. In two exceptional cases the inviting party canceled the invitation. The information and figures were provided by Walid Shakura, director of the international cooperation department at the Palestinian Ministry of Health, to Ayda Abdalbari of Gisha at a meeting on April 4, 2008. The figures do not include medical personnel who were invited and/or went to conferences not on behalf of the Palestinian Ministry of Health.

12. Ibid.



The connection between the medical community in Gaza and the outside world had also been maintained in the past by doctors coming from other countries to Gaza. The Ministry of Health invited doctors for temporary stays in the Gaza Strip, during which they shared their medical experience, whether by providing medical care and performing surgery on patients or by training doctors at Gaza's hospitals. Cardiology, plastic surgery and internal medicine were the main branches of medicine for which doctors came from abroad, mostly from the UK and Italy. During the time Rafah Crossing was open, those doctors entered through it; once the crossing closed, the only way for them to arrive remained through Erez Crossing, requiring the agreement of the Israeli authorities. The cumbersome process of coordinating entry with Israel and Israel's rejection of the Palestinian Health Ministry's requests in several cases were the main reasons for the reduction in the number of doctors from abroad who entered Gaza since June 2007. In 2008, the Palestinian Ministry of Health stopped inviting doctors from abroad to enter Gaza through Rafah Crossing. Doctors who came to the Gaza Strip at all entered through Erez Crossing.<sup>13</sup>

The need for contact with external medical communities and for acquiring knowledge in professional areas is even greater because of the shortage of knowledge and expertise from which the medical system in Gaza suffers. Preventing doctors from meeting their colleagues abroad deepens the system's isolation, increases its dependence on outside help, and impairs its ability to develop and become independent.

### **Harm to Gaza's medical education and future generations of doctors**

Medical studies in the Gaza Strip, which take place at the Islamic University and at Al-Azhar University, have been compromised since Rafah Crossing was closed. Dr. Suhail Madbak and Dr. Mufid al-Mukhalalati, the deans of the faculties of medicine at the al-Azhar and Islamic Universities respectively, enumerate the main repercussions of closing Rafah Crossing on the medical education system in Gaza and its future generation of doctors.<sup>14</sup>

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13. Ibid.

14. Related by Dr. Mufid al-Mukhalalati and Dr. Suhail Madbak, the deans of the faculties of medicine at the Islamic and al-Azhar universities respectively, to Ayda Abdalbari of Gisha at meetings on April 7, 2008 and April 8, 2008, respectively.

### **Shortage of textbooks and basic medical equipment for practice**

Medical textbooks are not printed in Gaza, but are rather bought by the universities from Egypt and Jordan. Since June 2007, no such books have entered the Gaza Strip. Carrying books in hand luggage from Egypt stopped with the closure of Rafah Crossing, and Israel prevents the entry of textbooks into Gaza from Jordan. The solutions reached by the medical faculties in Gaza, such as making black-and-white photocopies of textbooks from libraries, are limited in their ability to meet academic needs.

Basic medical equipment, such as blood pressure gauges, microscopes, syringes and stethoscopes, were previously bought by the medical faculties directly from Egypt for their students and transferred manually through Rafah Crossing. Since the crossing was closed in June 2007, this has no longer been possible. As an alternative, the universities are forced to rely on the Gaza Ministry of Health for their routine supply. That supply is irregular and sometimes arrives late, because it depends on existing surpluses in the ministry's warehouses.

### **Blocking access to study courses not available in Gaza**

As part of the curriculum, medical students from the Islamic University were required to go to Egypt to study certain fields not taught in Gaza, as part of agreements between the Gaza medical faculty and three universities in Cairo: Al-Azhar, Ain Shams and Tanta. For example, second-year medical students went to Egypt for a month for theoretical and practical studies in anatomy. This was necessary because Gaza does not have an anatomy laboratory or the possibility to practice on cadavers, due to societal norms against donating cadavers for that purpose. Students from Al-Quds University also participated in elective courses in the UK, funded by the Al-Quds Foundation.

Rafah Crossing served the students as an exit gate for training at universities in Egypt and other countries. The closure of the crossing put an end to those study arrangements, and since June 2007, students from Gaza have not been able to study practical anatomy in Egypt and the UK. Missing the anatomy courses – an area considered very basic in medical studies – causes real harm to the training process of students and their future ability to provide medical services to the population of the Gaza Strip.



Due to the continued closure of the crossing, the Islamic University has found a substitute to working on cadavers by using software programs and plastic dolls in Gaza. That substitute is not an adequate response and does not meet the accepted standards of the field in the Western world.

#### **Harm to the teaching faculty**

Contact with the international medical community through conferences, training and conventions was an integral part of the routine work of the members of the teaching faculty at the Gaza medical schools, and it is vital for maintaining high academic standards in the institutions where they teach. Egypt, as well as Gulf countries, host medical academic conferences on an average of twice a year. Through those conferences, the Gaza faculty was able to learn new teaching methods and current teaching programs, to be brought up to date on new medical research, and to maintain academic cooperation with universities abroad.

The closure of Rafah Crossing put an almost complete end to the participation of lecturers from the Gaza medical faculties in such events. The isolation of the Gaza medical teaching faculty from the rest of the medical community undermined its ability to teach the profession to its students in the most professional and current way.

### **Blocking student access to training and international conferences**

Medical students in Gaza are members of the International Federation of Medical Students' Associations, which regularly organizes training and conferences on various subjects related to the profession. A goal of the meetings is to impart knowledge about developments and updates in treatment methods. Until June 2007, students from Gaza attended such events, which took place in countries such as Egypt, Indonesia, Turkey and Yemen. Because of the closure of Rafah Crossing, the exit of students to conferences and training abroad is no longer possible. This harms the students' process of professionalization and specialization and prevents them from coming into contact with regional and international medical communities and building ongoing working relations, considered vital for their future work as doctors.

### **Difficulties in accessing medical services outside the Gaza Strip**

Between 2003 and the middle of 2008, an average of 815 patients were referred each month by the Palestinian Health Ministry to medical care outside the Gaza Strip. Since the closure of Rafah Crossing, 15% of patients referred outside the Strip for treatment have been referred to hospitals in Egypt and 85% of them to hospitals in Israel, the West Bank, east Jerusalem and Jordan.<sup>15</sup> The closure of the crossings out of the Gaza Strip, including Rafah Crossing, makes it difficult for those patients to reach the hospital to which they were referred, and sometimes completely prevents them from receiving the medical treatment they need.

### **Limited openings of Rafah Crossing to Egypt**

As part of Egypt's periodical ad hoc openings of Rafah Crossing since March 2008, limited numbers of patients from Gaza have been going to Egypt for medical care, coordinated between the Egyptian authorities and Hamas. Responsibility for the registration of the patients and the coordination of their exit with the Egyptian side was initially undertaken by the management of Shifa Hospital in Gaza, and in July 2008 was transferred to the Palestinian Ministry of Health. Patients who want to go through Rafah Crossing are called upon to register with the Ministry of the

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15. WHO, *supra* note 4, p. 100.

Interior, while presenting medical documents and a referral to a hospital in Egypt from their Gaza doctors. Before the list of patients is given to the Egyptians, the Palestinian authorities conduct a medical screening of the cases, at Egypt's demand.

The mechanism for the exit of patients through Rafah is irregular, informal and does not provide an adequate solution to the medical needs of the population of the patients referred to care in Egypt, from a number of aspects that will be hereby enumerated:

**The mechanism for the exit of patients through Rafah is irregular, informal and does not provide an adequate solution to the medical needs of the population of the patients referred to care in Egypt.**

**Limited number of openings:** From March 2008, when Egypt began to open Rafah Crossing ad hoc, until December 2008, Rafah Crossing opened to the exit of patients only five times officially and publicly; that is an average of only once every two months.<sup>16</sup> Three of those five exits were under "special circumstances:" in March 2008, the crossing was opened following the injury of hundreds of Palestinians by Israeli Air Force strikes, while in August and September 2008, the crossing was opened as an Egyptian gesture for the month of Ramadan.

**Screening for irrelevant reasons:** PHR-Israel received many complaints from patients about the Palestinian coordination mechanism, which operates through the Interior Ministry in Gaza opposite the Egyptian authorities for the ad hoc exit of patients through Rafah Crossing. Patients complained of nonmedical considerations entering the purportedly medical screening, specifically that priority is given to those politically identified with the government in the Gaza Strip and its cronies, at the expense of citizens who are not politically affiliated or who are affiliated with the Fatah movement. A representative of the Palestinian Ministry of Health denied those charges and claimed that in all cases treatment is guided by exclusively medical considerations.<sup>17</sup>

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16. Additionally, sometimes a handful of injured and ill patients go out of Rafah Crossing when the border is opened but not publicly, especially people close to the Hamas government.

17. Related by Dr. Yousef al-Mudallal, head of the Palestinian Health Bureau in Gaza, to Ayda Abdalbari of Gisha in a phone call from February 9, 2009.

**A limited number of passengers:** Egypt limits the number of patients it allows into its territory every time Rafah Crossing is opened, and therefore the number of patients actually allowed out of Gaza is much smaller than the number of patients referred to Egypt by the Palestinian Ministry of Health. Therefore, for instance, of 500 patients referred by the ministry to Egypt in July 2008, only 72 were approved for exit, and only 18 of them ultimately entered Egypt. Of the 800 patients referred to Egypt in August 2008, only 400 entered, and of the 400 patients the ministry referred to Egypt in September 2008, only 250 entered.

One of the ways Egypt limits the number of entrants is by conducting a medical screening of the applications by a committee of Egyptian doctors that operates at Rafah Crossing.<sup>18</sup> Another obstacle is difficulty receiving the required financial commitment from the Palestinian Ministry of Health in Ramallah, because of inter-Palestinian tensions between Fatah and Hamas.

Estimates of the number of patients who actually managed to leave for medical treatment in Egypt through Rafah Crossing between March 2008 and the end of October 2008 range between 1,300 and 1,500.<sup>19</sup> That number is in comparison with about 400 patients who went to Egypt every month before Rafah Crossing was closed. The rest of the patients can only wait for "humanitarian gestures" on the part of Egypt, which occur on unpredictable occasions and with quotas limiting the number of patients, or they can try to leave through Erez to hospitals in Israel, the West Bank or Jordan.

**Short notice before opening the crossing:** Notice that the crossing is going to be opened to patients is usually given only two or three days before the opening. Patients who do not manage to arrange their trip in that short a time frame may miss the opportunity to exit for medical care.

**Pressure on the crossing:** In the first few months in which Rafah Crossing opened to patients in 2008, the openings were attended by disturbances that disrupted the orderly exit of patients. On the days the crossing was opened, thousands of people gathered on its Palestinian side in an attempt to cross into Egypt, creating

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18. Related by WHO to PHR-Israel by e-mail on April 16, 2008.

19. The estimates were given to PHR-Israel by OCHA, the WHO and the Palestinian Ministry of the Interior in Gaza.

heavy pressure on the gate. The result was that patients, some in serious physical condition, were squeezed out. Others were forced to wait a long time until the crowds scattered, and many did not manage to get through, even though their exit had been coordinated with the Egyptian authorities. Since the summer of 2008, there has been an improvement in waiting conditions, but those wishing to leave, including patients, still have to wait for their turn for hours and even days.

**Cases of bribery at the crossing:** PHR-Israel offices have received a number of testimonials from patients that Palestinians were required to pay bribes to Egyptian officials as a condition for passing through the crossing. Therefore, in some cases only people of means were able to go to Egypt.<sup>20</sup>

**Difficulty returning to the Gaza Strip:** The fact that Rafah Crossing is closed most of the time makes it harder for patients to return to their homes in the Strip after the treatment they receive in Egypt. Many patients have to wait for days, and sometimes a number of weeks, until they manage to reenter the Gaza Strip through Rafah Crossing.

**N.H., 44-year-old resident of Gaza, a cancer patient who waited more than half a year to receive medical care outside of the Gaza Strip:**

N.H. had surgery in March 2006 at Ichilov hospital for rectal cancer and was treated by radiotherapy. In March 2008, her doctors in Gaza detected a local recurrence of the cancer with an obstructed kidney and a generally deteriorated condition. Because of the inability to deal with the complexity of the disease in the Gaza hospitals, there was an attempt to refer N.H. to Ichilov again. Dr. Bella Kaufman, a senior oncologist and director of the Breast Institute at Sheba Hospital, reviewed the patient's papers and determined: "The recommended treatment in this case is urgent intervention by chemotherapy and biotherapy, with or without surgery. If she is not treated quickly, her condition will deteriorate rapidly."

Even though N.H. had a referral to an Israeli hospital and an appointment there, the ISA prevented her exit from Gaza for security reasons. PHR-Israel appealed to

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20. The testimonies were made to PHR-Israel in phone calls from the patients N.H., M.S. and R.H., who asked not to reveal their identities. However, official Egyptian sources rejected the possibility that Egyptian officials took bribes. Related to Atty. Sari Bashi and Tania Hary of Gisha in an interview on October 28, 2008.

the Israeli military authorities on her behalf, and when it was rejected, petitioned the Israeli Supreme Court. No solution was found for the patient there either, except for exit by "shuttle" – a secured bus that is supposed to run periodically from Gaza to Jordan. After waiting for more than two months for the "shuttle" – which never left – N.H. transferred her referral to an Egyptian hospital on April 3, 2008, hoping to get there through Rafah Crossing.

Since then, Rafah Crossing opened to patients only twice. At the beginning of July 2008, N.H. and her husband waited at the crossing for 36 hours – including a night spent there – but did not manage to get into Egypt. During the two days when the crossing was opened in September 2008, N.H. was hospitalized at the Shifa Hospital in Gaza, following a deterioration in her condition, so that she was unable to make the trip to Egypt.

After she had waited for more than six months to receive medical care outside of the Gaza Strip, PHR-Israel appealed on behalf of N.H. on October 6, 2008, to a group of members of Knesset, to the embassy of the rotational presidency of the EU, and to other embassies, requesting their intercession on her behalf. On October 13, 2008, PHR-Israel was told that N.H.'s entry into Israel was approved. The patient reached Ichilov hospital only a week later because of a hermetic closure imposed on Gaza during the Jewish holiday of Sukkot, which occurred during those days.

Exceptionally, from December 31, 2008 to February 5, 2009, Egypt opened Rafah Crossing every day for the exit of patients from the Gaza Strip into Egypt, because of the collapse of the Palestinian health care system, due to the thousands of injured that converged on hospitals during the Israeli offensive against the Gaza Strip in December 2008-January 2009.<sup>21</sup> During those weeks, 608 patients from the Gaza Strip were transferred to hospitals in Egypt through Rafah Crossing.<sup>22</sup> On February 5, 2009, Egypt closed the border and declared a return to the format of periodical ad hoc openings.<sup>23</sup>

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21. OCHA, "Protection of Civilians Weekly Report," 28 Jan – 3 Feb 2009, p. 1 (supra note 48, p. 52).

22. Related by the WHO to PHR-Israel in an e-mail from February 9, 2009.

23. OCHA, supra note 21.





## The "shuttle" mechanism for passage to Egypt and Jordan

In response to a PHR-Israel petition to the Israeli Supreme Court, the court recommended on November 28, 2007 that the State of Israel establish a mechanism to allow the exit of patients from the Gaza Strip to Jordan through the Erez Crossing.<sup>24</sup> In the spirit of that recommendation, Israel renewed the "shuttle" mechanism it had used in the summer of 2007, by which Palestinian residents of Gaza exited in buses guarded by Israeli security forces directly from Erez Crossing to Jordan (through the Allenby Bridge) or to Egypt (through Nitzana Crossing).

The mechanism was for patients from Gaza whose independent exit through Erez Crossing for medical care Israel had prevented for security reasons. In practice, the arrangement had run on a very limited basis and did not provide an adequate response for all patients. In the few months in which the mechanism was supposed to operate, PHR-Israel asked to coordinate the exit of 238 patients to Egypt and to Jordan. Only 44 of them – 18% – actually left on four transports to Jordan and two to Egypt. In July 2008, Israel admitted officially at a Supreme Court hearing that the mechanism had ceased to function and no longer constituted an option for patients from Gaza.<sup>25</sup>

A number of reasons caused the failure of that mechanism:

- A limit on the number of seats allocated for patients in each transport.
- Short notice regarding departure, which caused many patients to miss the transport.
- The cancellation of eight planned transports between April and August 2008.

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24. From ruling in HCJ 9522/07, **PHR v OC Southern Command**, handed down on February 12, 2008. The petition was made by PHR-Israel on behalf of 11 patients from Gaza, whose exit for lifesaving medical care was prevented by the Erez Crossing authorities.

25. Related during an HCJ hearing on July 21, 2008 on eight petitions submitted by PHR-Israel (HCJ 4487/08; HCJ 4495/08; HCJ 4498/08; HCJ 4499/08; HCJ 4500/08; HCJ 4501/08; HCJ 4502/08; HCJ 4503/08) on behalf of 13 patients from Gaza who needed to leave the Gaza Strip through Erez Crossing to receive urgent and lifesaving medical care, and were rejected by Israel (the cases of five of the petitioners were resolved before the beginning of the hearing). Representatives of the State Atty.'s Office said orally at the hearing that the shuttle mechanism had stopped functioning because of the final objection of the Jordanian authorities to receive patients in that way. See below. As an exception, and without restarting the "shuttle" arrangement, on July 27, 2008 Israel drove two families to the Jordanian border under military escort for medical treatment.

- According to representatives of the State Attorney's Office, in March 2008 Egypt refused to continue the shuttle arrangement into its territory, and Jordan objected to it in July 2008. Egypt and Jordan, according to Israel, refused to receive Palestinians whom the Israeli security system considered security risks, and objected to the long wait of patients in their territories at the end of the medical treatment before they returned to the Gaza Strip.<sup>26</sup>

### **Problems accessing medical services in Israel and via Israel**

Since Rafah Crossing was closed in June 2007, the number of referrals to leave the Gaza Strip for medical care in hospitals in Israel, the West Bank and Jordan doubled. At the same time, Israel toughened its policy regarding exit from Gaza through Erez Crossing, the crossing route which is crucial for access to those hospitals. In response to a petition to the Israeli Supreme Court, in which Gisha and PHR-Israel demanded Erez Crossing be opened to the passage of patients, Israel announced in June 2007 that while residents of the Gaza Strip do not have the right to enter Israel, as a gesture of leniency it would make an effort to allow the entry of patients into Israel, when that is necessary to save their lives.<sup>27</sup> The State added that because of the risk involved in opening Erez Crossing, in its words, it did not intend to allow the entrance of patients who needed medical care in order to improve their "quality of life," and as a result it rejected, on security grounds, exit requests by patients who faced the risk of losing a limb or organ – leg, arm or eye – but whose lives were not in danger.<sup>28</sup>

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26. Related orally by representatives of the State Advocacy at an HCJ hearing on July 21, 2008, *ibid.* Egyptian representatives told Gisha on March 19, 2008 that Egypt was willing to allow and to coordinate the entry of Gaza residents into its territory by "shuttles," but it was Israel that decided to stop them; later, official Egyptian sources added in an interview with Gisha on October 28, 2008 that the shuttle arrangement had been stopped because it was decided that the ad hoc border openings Egypt initiated after the border breeching in January 2008 would replace it. Esam al-Bdour, the Jordanian Consul to Israel, declined to answer the questions addressed to the Embassy by PHR-Israel in a letter from February 12, 2009 about Jordan's position on the "shuttles."

27. HCJ 5429/07, **PHR and Gisha v the Defense Minister**, State response from June 20, 2007 [Hebrew], available at <http://www.gisha.org/UserFiles/File/Legal%20Documents%20/June2007/state%20responde%2020.6-n-o%20details.pdf>

28. *Ibid.*, updated State response from June 24, 2008, available at [http://www.gisha.org/UserFiles/File/Legal%20Documents%20/June2007/state%20responde%205429-07%2024\[1\].5.07.pdf](http://www.gisha.org/UserFiles/File/Legal%20Documents%20/June2007/state%20responde%205429-07%2024[1].5.07.pdf)

In September 2007, Israel made that policy even stricter following the Israeli cabinet declaration of Gaza as a "hostile territory" and the attendant decision to even further restrict movement.<sup>29</sup> Beginning in October 2007, there was a rise in the number of applications received by PHR-Israel from patients, including cancer and heart patients, whose requests to receive life-saving medical care outside of Gaza had been rejected by Israel on security grounds.

As a direct result of that policy there was a rise in the percentage of patients whose requests to leave for medical care had been rejected by Israel: from 10% in the first half of 2007 to 39% in 2008.



**Diagram 8: Percentage of patients whose application to leave for medical treatment through Erez Crossing was approved, 2007-2008**

Source: World Health Organization in Gaza<sup>30</sup>

29. See supra pp. 41-42.

30. Related by AbdelNaser Soboh, WHO representative in Gaza, in e-mails to PHR-Israel from November 15, 2008 and February 12, 2009.

The total number of patients leaving through Erez Crossing in 2008 dropped by more than 10% compared to the previous year. Besides the toughening of the medical criteria for exiting through Erez Crossing, the drop is a result of a number of additional factors:

- Israel's periodic closure of Erez Crossing, leading to the cancellation of exit permits from Gaza that were given to patients.
- Bureaucratic delays by Israel in handling exit applications, preventing patients from leaving for medical treatment at the time set by their doctors.
- Rejection of requests on security grounds by the ISA, either following a security interrogation or without one having taken place.<sup>31</sup>

Beginning in June 2007, patients asking PHR-Israel to press their cases before the Israeli Supreme Court to allow passage for medical care have come up against a decision by the Court not to interfere in the considerations of the Israeli security system when it prevents the passage of patients for medical care. A number of patients even died in Gaza after a petition submitted on their behalf was rejected by the Court, and attempts to treat them in the Gaza Strip failed.

In the past, in cases when their requests to exit through Erez Crossing were rejected, patients could leave for medical care in Egypt through Rafah Crossing. Since Rafah Crossing closed in June 2007, those patients have remained in Gaza without an alternative for appropriate care.

**The closure of Rafah Crossing has a negative impact on the medical system in the Gaza Strip and on its ability to adequately meet the medical needs of the population.**

The closure of Rafah Crossing has a negative impact on the medical system in the Gaza Strip and on its ability to adequately meet the medical needs of the population. That situation even further increases the dependence of the Palestinian health care system on external health care systems, as well as complicating any attempt to develop and establish an independent health care system in Gaza.

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31. According to testimonies PHR-Israel collected from patients who underwent such investigations, patients are often required to provide information about relatives and acquaintances and/or collaborate with the Israeli security forces on a regular basis as a condition for going out for medical care, see PHR-Israel, "Holding Health to Ransom: GSS Interrogation and Extortion of Palestinian Patients at Erez Crossing," August 2008, [http://www.phr.org.il/phr/files/articlefile\\_1217865604015.pdf](http://www.phr.org.il/phr/files/articlefile_1217865604015.pdf)



## Chapter 5

# Who Is Closing Rafah Crossing?

For nearly three years, since June 2006, Rafah Crossing between Egypt and the Gaza Strip, the only crossing that could allow travel between the Gaza Strip and the outside world in light of Israel's closure of all the other crossings, has been closed most of the time. There are a number of parties involved in operating Rafah Crossing, and they are involved in its closure. In this chapter, we will outline the positions of the various parties – declared or implied – regarding Rafah Crossing, as well as present their actual policy. Our goal is to understand why the crossing remains closed and who has the ability to open it; from this we wish to draw conclusions about how to allocate responsibility for the closure and the resulting violation of the rights of Gaza Strip residents.

### Israel's position

**Since Hamas took over the Gaza Strip, it became impossible to implement the AMA, which is based on PA control of the Gaza Strip, and therefore Rafah Crossing has remained closed. Israel does not control Rafah Crossing but has an interest in keeping it closed and declares that the crossing will not open until Gilad Shalit is freed:**

- "Israel has no effective-physical control of the crossing, which is controlled by Hamas on one side and the Egyptian authorities on the other."<sup>1</sup>
- "Indeed, it is **possible** that at this time Israel has an **interest** in acting to keep Rafah Crossing closed, as part of its policy towards the terrorist organization that controls the Gaza Strip."<sup>2</sup>
- "Unless Gilad Shalit is freed, Rafah Crossing will not be opened."<sup>3</sup>

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1. HCJ 7761/08, **Bur'i v Defense Minister**, Respondents' response from September 22, 2008, para. 6. (In the possession of the authors).  
2. *Ibid.*, para. 8 (Emphasis in the original).  
3. Amos Gilad, head of Israeli political-security bureau, quoted in Ynet, Roni Sofer, "Amos Gilad: a truce – the only way to free Shalit," June 18, 2008 [Hebrew], available at <http://www.ynet.co.il/Ext/Comp/ArticleLayout/CdaArticlePrintPreview/1,2506,L-3557522,00.html>

In response to a query by Gisha, a representative of the Defense Ministry described Rafah Crossing during the time of the AMA as a crossing operated under the supervision of the European Union, with the agreement of the PA, Egypt, the US and Israel.<sup>4</sup> During the time the AMA was operational, from November 2005 to June 2007, Israel controlled the opening and closing of Rafah Crossing, despite the physical absence of its forces from it. It did so by deciding whether or not to discharge its role, prescribed in the agreement, of supervising by remote and by controlling the entrance of the European force to the crossing.

**An internal discussion in the Defense Ministry on August 22, 2006 showed that closure of Rafah Crossing was a general policy of Israel's, whose goal was to put pressure on the Gaza Strip in an effort to achieve progress regarding the return of the captured soldier.**

Since the soldier Gilad Shalit was captured in June 2006, Israel discontinued regular traffic through Rafah and left it closed most of the time. During that time, State representatives argued before the Supreme Court that passage through the crossing takes place "without any control by Israel."<sup>5</sup> In contrast, in various documents received by the Gisha office, government officials recognized Israel's control of Rafah Crossing and the fact that it considers itself authorized to decide whether to close or open the crossing. Thus, for example, a representative of the Military Advocacy General wrote explicitly to Gisha regarding the opening of Rafah Crossing: "that decision is in the hands of the Defense Minister, and he has not yet decided about the upcoming opening dates."<sup>6</sup>

Usually, government officials chose to explain the closure of the crossing with arguments about the security risks to the crossing itself. Thus, a Defense Ministry official wrote Gisha that Rafah Crossing "constitutes a venue of passage between

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4. Letter from Shai Lev, head of Public Inquiries at the Israeli Defense Ministry to Atty. Sari Bashi of Gisha from November 18, 2008, sections 1, 3. The full text of the letter appears as appendix 1 to this report.
  5. HCJ 10265/05, **PHR v Defense Minister**, Respondent's response from July 11, 2006, para. 27. See also HCJ 11120/05, **Hamdan v OC Southern Command**, Respondents' response from March 20, 2007, para. 44.
  6. Letter from Lieut. Chaim Sharvit of International Law Department of Military Atty. Gen. to Atty. Noam Peleg of Gisha from April 19, 2007.



the Gaza Strip and Egypt for terrorist operatives," but Israel allows it to open periodically for humanitarian needs.<sup>7</sup> On the other hand, an internal discussion in the Defense Ministry on August 22, 2006 showed that closure of Rafah Crossing was a general policy of Israel's, whose goal was to put pressure on the Gaza Strip in an effort to achieve progress regarding the return of the captured soldier. Thus, a representative of the Israeli army's planning branch argued in the discussion that "the opening of the crossing should be allowed periodically only after the return of the captured soldier and the cessation of shooting from the Gaza Strip (the crossing as a means of pressure)." The ISA objected to opening the crossing, even for a few hours, "so long as the issue of the captured soldier remains unchanged and the pressure should be continued at this point." The discussion summary concludes: "In the short-term, there is a need to open the crossing and release the existing pressure [...] and the issue will be brought for approval by the Defense Minister."<sup>8</sup>

Since Hamas took over the Gaza Strip in June 2007, Israel's official position has been that Rafah Crossing is closed because of the inability to uphold the AMA, because the agreement is based on PA control of the Gaza Strip, which is no longer possible.<sup>9</sup> In order to reopen Rafah Crossing, according to Israel, "we must wait until it is possible to forge a coordinated and identical position between the relevant parties," namely renewed agreement between the PA, Egypt, the US and Israel to operate the crossing under European supervision, with the PA in control of the Gaza Strip.<sup>10</sup>

Once the implementation of the AMA was discontinued, the Israeli authorities resumed renouncing their control of Rafah Crossing. As State representatives declared to the Israeli Supreme Court in July 2007: "Today Israel has no control, effective or otherwise, over Rafah Crossing, its opening or its closing."<sup>11</sup> However, Israel voiced its objection to opening the crossing without its supervision.<sup>12</sup> Later,

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7. Letter from Ruth Bar, Defense Minister's Assistant to Atty. Sari Bashi of Gisha from January 14, 2007.

8. The status of Rafah Crossing: Summary of discussion at Defense Minister's office, August 24, 2006. The full text appears in Gisha, "Disengaged Occupiers," pp. 56-58 (supra note 29, p. 27).

9. Letter from Shai Lev, head of Public Inquiries at the Israeli Defense Ministry to Atty. Sari Bashi of Gisha from November 18, 2008, sections 4-5.

10. Ibid, section 5.

11. HCJ 6475/07, **Abu Laban v Defense Minister**, Respondents' response from July 29, 2007, para. 4 (supra note 8, p. 38).

12. Ibid.

Israel stressed in September 2008 that even though it did not control the closure of Rafah, the closure is consistent with Israel's needs and policy, and Israel wished to perpetuate it: "Indeed, it is **possible** that at this time Israel has an **interest** in acting to keep Rafah Crossing closed, as part of its policy towards the terrorist organization that controls the Gaza Strip."<sup>13</sup>

It would seem from the above statements that Israel is working to keep Rafah Crossing closed, and thereby to prevent the exit and entry of Gaza residents, in protest of the Hamas regime in the Gaza Strip and in an attempt to pressure that regime. Thus, the closure of Rafah is one of a series of restrictions Israel has imposed on the civilian population of Gaza since June 2007, when Hamas took over the Gaza Strip, in accordance with the cabinet decision from September 2007 defining the Gaza Strip under Hamas rule as a "hostile territory."<sup>14</sup> Those measures include the reduction to almost nil of the exit of Palestinians to Israel through Erez Crossing and the prohibition on allowing goods into the Gaza Strip beyond those vital to the basic subsistence of the population.<sup>15</sup> The restrictions are imposed as a general policy, regardless of concrete security threats to one crossing or another.

**Beyond the general protest against Hamas, Israel continues to act for the perpetuation of the closed status of Rafah as a means of pressure to lead to the release of captured soldier Gilad Shalit.**

Beyond the general protest against Hamas, Israel continues to act for the perpetuation of the closed status of Rafah as a means of pressure to lead to the release of captured soldier Gilad Shalit, as it did even during the implementation of the AMA, before Hamas took over the Strip. As part of the ceasefire agreement achieved between Israel and Hamas in June 2008, the opening of Rafah was presented in the Israeli media as a measure linked to Shalit's release. Thus, it was reported that Israel offered to allow the opening of Rafah Crossing to the passage

13. HCJ 7761/08, **Bur'i v Defense Minister**, Respondents' response from September 22, 2008, para. 8. (In the possession of the authors. Emphasis in the original.)

14. Security cabinet decision from September 19, 2007, supra note 21, p. 42.

15. HCJ 9132/07, **al-Bassiouni v the Prime Minister**, Respondents' response from November 1, 2007, paras. 72-73; HCJ 2450/08, **Afana Brothers Ltd. v Minister of Agriculture**, State response from September 18, 2008, para. 6.



of Palestinians in exchange for transferring captured soldier Gilad Shalit to Egypt;<sup>16</sup> Israel promised the Shalit family that Rafah Crossing would not be opened as part of the ceasefire agreement;<sup>17</sup> the head of the Defense Ministry's diplomatic-security bureau, Amos Gilad, was quoted in the press as saying: "Unless Gilad Shalit is freed, Rafah Crossing will not be opened."<sup>18</sup> In its Security Cabinet decision of February 2009, Israel decided that it would discuss expanding the

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16. Ha'aretz, Barak Ravid, Fadi Iyadat, Amos Harel and Avi Issacharoff, "Israel: Rafah Crossing in exchange for Shalit transfer," May 13, 2008 [Hebrew], available at <http://www.haaretz.co.il/hasite/pages/ShArt.jhtml?more=1&itemNo=982872&contrassID=2&subContrassID=1&sbSubContrassID=0>

17. HCJ 5551/08, **Shalit v State of Israel**, Respondents' response from June 22, 2008, para. 5.

18. Ynet, Roni Sofer, "Amos Gilad: a truce – the only way to free Shalit," June 18, 2008 [Hebrew], available at <http://www.ynet.co.il/Ext/Comp/ArticleLayout/CdaArticlePrintPreview/1,2506,L-3557522,00.html>

activities of Gaza's crossings upon the release of Gilad Shalit, and that Rafah Crossing would re-open only according to the principles of the 2005 AMA.<sup>19</sup>

During most of the first year of Shalit's captivity, Israel was able to close Rafah Crossing by preventing the implementation of the AMA; after its implementation was discontinued in June 2007, according to media reports, Israel asked Egypt to keep the crossing closed until Shalit's return, and Egypt agreed.<sup>20</sup> Gisha asked the Defense Ministry in a series of letters whether Israel had asked Egypt not to open Rafah,<sup>21</sup> but the State representatives chose not to address the question and gave the general response quoted at the end of this report.<sup>22</sup> Official representatives of Egypt chose not to answer Gisha's question whether Israel had asked Egypt specifically not to open Rafah Crossing until the return of captured soldier Gilad Shalit and noted that Egypt keeps the border closed regardless of the Shalit issue, because of the inability to uphold the AMA.<sup>23</sup> Other Egyptian sources told Gisha that there is pressure from Israel not to open Rafah until the return of Shalit, but according to them, Egypt ignores that demand.<sup>24</sup>

Upon the discontinuation of the implementation of the AMA, Israel, on a number of occasions, expressed its willingness to allow the movement of Palestinians between the Gaza Strip and Egypt through the Kerem Shalom Crossing located in its territory, allowing it control and supervision of those passing through it as an alternative to the closed Rafah Crossing.<sup>25</sup> However, at no stage did that passage actually take place because of the objection of Hamas, expressed by its shelling the crossing with mortar fire.<sup>26</sup> Israel also discontinued the "shuttle" arrangement it instituted for several months for the limited passage of people between the Gaza Strip and Egypt or Jordan in transports. Since then, Israel has consistently

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19. Ministerial Committee on National Security Statement of February 2, 2009, available at <http://www.pmo.gov.il/PMOEng/Communication/Spokesman/2009/02/spokecabi180209.htm>

20. Ha'aretz, Yoav Stern, Barak Ravid and news agencies, "Egypt to Israel: we will not open Rafah Crossing until Gilad Shalit is returned," June 25, 2008 [Hebrew], available at <http://www.haaretz.co.il/hasite/spages/995798>

21. Letter to Ruth Bar, Defense Minister's Assistant, from Atty. Sari Bashi of Gisha from July 31, 2008; reminders on September 28, 2008, October 26, 2008, and November 5, 2008.

22. Letter from Shai Lev, head of Public Inquiries at Israeli Defense Ministry to Atty. Sari Bashi of Gisha from November 18, 2008.

23. Related by official Egyptian sources to Atty. Sari Bashi and Tania Hary of Gisha in an interview on October 28, 2008. See below.

24. Related by official Egyptian sources to Gisha in an interview on October 12, 2008.

25. Related for example in a letter from Lieut. Asaf Baharal, COGAT, to Atty. Noam Peleg of Gisha, July 15, 2007.

26. HCJ 6475/07, **Abu Laban v. Defense Minister**, Respondents' response from July 29, 2007, para. 5 (supra note 8, p. 38).

barred any alternative land passage to the closed Rafah Crossing through the crossings with the Gaza Strip that are under its direct control, and Israel also continues, as it has been doing for years, preventing travel by sea or air.

Egyptian officials told Gisha that Israel discontinued the transport arrangement after March 2008, because at that time, Egypt began opening Rafah Crossing periodically, with Israel's agreement and knowledge, and Israel decided that that was sufficient to replace the transport arrangement.<sup>27</sup> In response to Gisha's question as to Israel's position regarding the ad hoc openings of Rafah by Egypt, Israeli officials did not express opposition, saying that: "[...] the crossing is periodically opened for various activities which are essentially humanitarian, and this is under the responsibility of Egypt."<sup>28</sup>

## Egypt's position<sup>29</sup>

### **Egypt objects to the regular opening of Rafah Crossing without the agreement of Israel and the PA:**

- Refuses to open Rafah Crossing regularly opposite the Hamas regime in the Gaza Strip.
- Supports the reopening of Rafah Crossing according to the AMA, or on the basis of any other agreement between Israel and the PA.
- Opens the border, ad hoc, in response to the humanitarian needs of the Gaza Strip population.

Egypt supported the signing of the AMA and operated Rafah Crossing according to its arrangements until June 2007, when the implementation of the agreement

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27. Related by official Egyptian sources to Atty. Sari Bashi and Tania Hary of Gisha in an interview on October 28, 2008. The interview took place in response to questions addressed by Gisha to the Egyptian Foreign Ministry through the Egyptian Embassy in Tel Aviv.

28. Letter from Shai Lev, head of Public Inquiries at Israeli Defense Ministry to Atty. Sari Bashi of Gisha from November 18, 2008, section 6.

29. Unless stated otherwise, the information about Egypt's position is based on an interview conducted by representatives of Gisha on October 28, 2008, with official Egyptian sources, who asked to remain anonymous. The interview took place in response to questions addressed by Gisha to the Egyptian Foreign Ministry through the Egyptian Embassy in Tel Aviv, with the approval of the Egyptian Foreign Ministry, after clarifying that the information conveyed in the interview constitutes Egypt's official position.

was discontinued by the parties. Since then, Egypt has been the only party that can decide when Rafah Crossing will actually open, and it has been permitting ad hoc humanitarian openings of the border.

According to the official Egyptian position presented to Gisha, Egypt considers itself committed to the AMA, which it says regulates control of the Palestinian side of Rafah, even though Egypt is not a party to the agreement. Therefore, Egypt says it has not been able to open Rafah to regular traffic since the Hamas takeover of the Gaza Strip in June 2007; the reason is that doing so would violate the AMA, which requires the presence of the PA and the European force on the Palestinian side of the border, and Israel's presence at Kerem Shalom – conditions which have not been fulfilled since that date.<sup>30</sup>

**The closure of Rafah and Egypt's refusal to open the border for regular travel with Hamas on the other side are part of an overall Egyptian position of non-recognition of Hamas as a legal regime.**

The closure of Rafah and Egypt's refusal to open the border for regular travel with Hamas on the other side are part of an overall Egyptian position of non-recognition of Hamas as a legal regime. Egypt views Hamas as devoid of international legitimacy and recognizes the PA as the sole legitimate leadership of the Palestinian people. That position also led Egypt to close its diplomatic offices in Gaza and transfer them to Ramallah in June 2007. Egypt says it would be willing to reopen the Egyptian side of the border only if there is renewed agreement of all the parties who consented to the AMA – Israel, the PA, the US and the EU – regarding opening the Palestinian side of the border.<sup>31</sup>

To the question why Israel's consent is necessary for Egypt to open Rafah Crossing, official Egyptian representatives replied that Israel continues controlling the West Bank and the Gaza Strip, and that the peace process, which Egypt supports, includes the gradual transfer of power from Israel to the PA, the legitimate representative of the Palestinians, according to Egypt. In addition,

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30. Related by official Egyptian sources to Atty. Sari Bashi and Tania Hary of Gisha in an interview on October 28, 2008.

31. Ibid.



Egyptian officials said that Israel and Egypt have a good relationship; each one of them is interested in the stability of the neighboring country, and they maintain security cooperation.<sup>32</sup> Other Egyptian sources told Gisha that Egypt's relationship with Israel has implications for Egypt's policy vis-à-vis Rafah, because Egypt is committed to avoiding measures that could threaten Israel, such as opening Rafah opposite Hamas.<sup>33</sup>

According to the media, Egyptian President Hosni Mubarak promised Israeli Prime Minister Ehud Olmert that Rafah Crossing would remain closed until an agreement was reached to free captured soldier Gilad Shalit;<sup>34</sup> a source close to the Egyptian Foreign Ministry told Gisha the same.<sup>35</sup> In contrast, Egypt's official position is that it closes Rafah because of the non-implementation of the AMA, regardless of Shalit; simultaneously, it points out that the non-release of Shalit is an obstacle to restoring the AMA and refers to its mediation between Israel and Hamas, in the talks that led to the ceasefire that went into effect in June 2008, which included an attempt to bring about the release of Gilad Shalit and the opening of Rafah Crossing. According to Egypt's official position, Egypt did so in order to ease the suffering of the population in the Gaza Strip and contribute to stability in Israel and in Gaza.<sup>36</sup>

Interviews with unofficial Egyptian sources revealed that there were also broader considerations related to its international relations that dictated Egypt's policy vis-à-vis Rafah: according to those sources, Egypt is under pressure from the international community, including the US, not to violate the internationally recognized AMA, and that is one of the reasons for its policy regarding closure of the border;<sup>37</sup> other sources said that the very objection of Israel, the US and the international community to opening the border, on the other side of which is

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32. Ibid.

33. Related by Egyptian sources to Gisha in an interview on October 12, 2008.

34. Ha'aretz, Yoav Stern, Barak Ravid and AP, "Egypt to Israel: we will not open Rafah Crossing until Gilad Shalit is returned," June 25, 2008 [Hebrew], available at <http://www.haaretz.co.il/hasite/spages/995798>

35. In an interview with Atty. Sari Bashi of Gisha.

36. Related by official Egyptian sources to Atty. Sari Bashi and Tania Hary of Gisha in an interview on October 28, 2008. Likewise, the Egyptian Information Service website quotes a speech by Mubarak at talks with Israeli Pres. Shimon Peres in Sharm a-Sheikh, October 23, 2008: "We are making the utmost efforts and the Israeli side is well assured of the Egyptian efforts to release Cpl. Shalit." See: <http://www.sis.gov.eg/Ar/Politics/PInstitution/President/Interview/000002/0401010300000000001027.htm>. The truce agreement was implemented until early November 2008.

37. Related by Egyptian sources to Gisha in an interview on March 19, 2008.



Hamas, constitutes an Egyptian political consideration that contributes to Egypt's refusal to open the border on a regular basis opposite Hamas.<sup>38</sup> Moreover, interviews with additional Egyptian sources uncovered internal Egyptian considerations, political and military, that dictate its position towards Rafah: besides Egypt's position in principle as to the illegality of the Hamas government, Egypt is not interested in strengthening Hamas by opening its shared border, because of the organization's ties with the Muslim Brotherhood in Egypt,<sup>39</sup> which constitutes opposition to the ruling party in Egypt.

Egypt supports strengthening the PA headed by Abbas vis-à-vis Hamas, according to other Egyptian sources, because only the former is committed to the peace process and the Oslo accords, which Egypt is trying to maintain.<sup>40</sup> The Oslo accords, to which Egypt is a signatory as witness, along with the US and Russia, link the Gaza Strip to the West Bank and define them as "a single territorial unit."<sup>41</sup> The Egyptian interest in promoting those agreements stems from its aversion to a scenario in which, due to their failure, Israel will completely renounce Gaza, completely disconnect it from the West Bank, and "dump" the Gaza Strip on Egypt.<sup>42</sup> According to a source close to the Egyptian Foreign Ministry, Israel does in fact threaten Egypt that that will happen if the latter does not honor its position regarding the closure of Rafah.<sup>43</sup>

Egyptian sources stress that the Gaza Strip is a territory under Israeli occupation, and therefore the latter bears responsibility for it. They say that is the reason Egypt refuses to operate an independent border crossing point between its territory and the Gaza Strip, and why it also avoids allowing the transfer of goods on behalf of international humanitarian organizations from its territory directly into the Gaza Strip through Rafah Crossing. Egypt's official position is that humanitarian goods

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38. Related by Egyptian sources to Gisha in an interview on October 12, 2008.

39. Related by Egyptian sources to Gisha in an interview on March 19, 2008.

40. Related by Egyptian sources to Gisha in an interview on October 12, 2008.

41. Interim Agreement, chapter 2, section 11.

42. Related by Egyptian sources to Gisha in an interview on March 19, 2008. The Egyptian reservation about merging with the Gaza Strip – a district with a high population density, high unemployment rates and inadequate infrastructures – is not new and was in evidence even between 1948 and 1967, when Egypt occupied the Strip. During that time Egypt declined to annex the Strip to its territory, declined to give the Palestinians legal status in its sovereign territory and limited their number in its territory. See Ayelet Yechiav, "The Egyptian presence on the Philadelphi Route – regional interests, local challenges," 8(3) Adkan Astrategi, November 2005 [Hebrew].

43. Related in interview with Atty. Sari Bashi of Gisha.

are shipped from its territory into the Gaza Strip through the Kerem Shalom Crossing in full coordination with Israel,<sup>44</sup> and in fact subject to the restrictions Israel imposes on the entry of goods into the Strip. Egypt refuses to be responsible for Gaza in terms of the security or humanitarian situation, because it considers that to be Israel's duty as the occupying power.<sup>45</sup>

**Egyptian sources stress that the Gaza Strip is a territory under Israeli occupation, and therefore the latter bears responsibility for it. They say that is the reason Egypt refuses to operate an independent border crossing point between its territory and the Gaza Strip.**

In January 2008, the Gaza-Egypt border was breached by Hamas, and hundreds of residents of the closed Strip poured into

Egypt. This led Egypt, notwithstanding its objection to the regular opening of Rafah Crossing in coordination with Hamas, to conclude that a hermetically closed border between it and the Gaza Strip constitutes a threat. According to media reports, in February 2008, Egypt began operating on the diplomatic level with the goal of leading to a regular and agreed opening of the border, while at the same time, in March, it began opening the crossing periodically with Israel's knowledge.

In order to reach a new or renewed international arrangement on opening Rafah, Egypt is negotiating with various parties including Israel, Hamas and the PA, and offers various initiatives to open the border, including the involvement of the EU and the US.<sup>46</sup> According to its official position, Egypt supports reinstalling the

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44. Related by official Egyptian sources to Atty. Sari Bashi and Tania Hary of Gisha in an interview on October 28, 2008. In January 2009, exceptionally, Egypt allowed the entrance of tens of ambulances and trucks with medical equipment through Rafah to the hospitals in the Gaza Strip that were buckling under the burden of treating thousands of casualties injured in the Israeli offensive against the Gaza Strip, in conditions of a severe shortage of medical equipment. Source: OCHA, "Protection of Civilians Weekly Report," January 16-20, 2009, p. 4, available at [http://www.ochaopt.org/documents/ocha\\_opt\\_protection\\_of\\_civilians\\_weekly\\_2009\\_01\\_20\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_2009_01_20_english.pdf)

45. Related by Egyptian sources to Gisha in an interview on March 19, 2008.

46. See for instance Ha'aretz, Yoav Stern, Avi Issacharoff and Barak Ravid, "Egypt promoting: Hamas and Fatah will operate Rafah Crossing together," February 4, 2008 [Hebrew], available at <http://www.haaretz.co.il/hasite/spages/951013.html>; Amos Harel, Avi Issacharoff and Yuval Azoulay, "Head of Egyptian intelligence will try to advance opening of Rafah Crossing in Israel," February 28, 2008 [Hebrew], available at <http://www.haaretz.co.il/hasite/spages/958680.html>; Zvi Bareil, "Until the vision of the end of days comes true," March 7, 2008 [Hebrew], available at <http://www.haaretz.co.il/hasite/spages/964974.html>

AMA, but would also cooperate with any other agreement, as long as Israel and the PA sign on.<sup>47</sup> Other Egyptian sources stress that, at the same time, Egypt is acting so that Rafah Crossing be operated in coordination between Hamas and the PA, and to that end is holding talks with representatives of both sides and trying to pressure them to reach agreement. According to the same sources, the Palestinian parties refuse to compromise on dividing control of the crossing, and therefore constitute the greatest obstacle to opening Rafah.<sup>48</sup>

Egypt periodically opens Rafah Crossing ad hoc, according to its official position, for humanitarian needs, in order to "let off steam" and let people breathe.<sup>49</sup> Other Egyptian sources also name security considerations and considerations related to public opinion in Egypt and the Arab world as underlying the decision to open the border ad hoc: they say that the pressure created in the closed Strip is perceived in Egypt as a threat, because it believes it could blow up in Rafah. As these sources said, "the balloon that Israel is inflating in the Gaza Strip will ultimately burst in Rafah,"<sup>50</sup> and that Gaza is "a ticking bomb, that will blow up in the face of the Egyptians, not the Israelis."<sup>51</sup> It is an explosion that Egypt is trying to prevent by opening the crossing periodically. By way of those border openings, Egypt is also trying to send a message to Hamas that it controls the crossing, and to provide it with an incentive to maintain quiet on the border.<sup>52</sup> In addition, according to Egyptian sources, by opening the border, Egypt is hoping to reduce the security problem it faces as a result of the passage of people in tunnels to Sinai, due to the closure of Rafah.<sup>53</sup>

The border openings are also a response to internal Egyptian pressure by non-government organizations, academics and the media, as Egyptian sources told Gisha.<sup>54</sup> For instance, in the summer of 2008, 23 Egyptian and Arab human rights organizations published a petition demanding Egypt open Rafah Crossing to

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47. Related by official Egyptian sources to Atty. Sari Bashi and Tania Hary of Gisha in an interview on October 28, 2008.

48. Related by Egyptian sources to Gisha in an interview on March 19, 2008.

49. Related by official Egyptian sources to Atty. Sari Bashi and Tania Hary of Gisha in an interview on October 28, 2008.

50. Related by Egyptian sources to Gisha in an interview on March 19, 2008.

51. Related by Egyptian sources to Gisha in an interview on October 12, 2008.

52. Related by Egyptian sources to Gisha in an interview on March 19, 2008.

53. Related by Egyptian sources to Gisha in an interview on October 12, 2008.

54. Ibid.

students;<sup>55</sup> various organizations, including professional associations, political movements and academics, periodically try to send supply convoys from Cairo to Gaza in protest against Egypt for preventing the transfer of goods into the Gaza Strip, and as an expression of support for the Palestinians;<sup>56</sup> those convoys are forcefully stopped by Egyptian authorities long before they reach Rafah.

The Muslim Brotherhood also stages various public protests, including attempts to send humanitarian aid to the Gaza Strip, and calls on Egypt to open Rafah Crossing.<sup>57</sup> Public opinion in the Arab and Muslim world towards Egypt's policy toward the Palestinians in Gaza also contributes to the Egyptian decision to open the border periodically, according to Egyptian sources, because Egypt suffers from a negative image among those publics, in which the president of Egypt is presented as the one who imposed the closure on Gaza.<sup>58</sup>

**Even in light of the severe humanitarian crisis in the Gaza Strip in December 2008-January 2009 as the result of Israel's military offensive against the Gaza Strip, under harsh criticism from the Arab world and Egyptian public opinion, Egypt refused to open Rafah Crossing to regular traffic.**

Even in light of the severe humanitarian crisis in the Gaza Strip in December 2008-January 2009 as the result of Israel's military offensive against the Gaza Strip, under harsh criticism from the Arab world and Egyptian public opinion, Egypt refused to open Rafah Crossing to regular traffic. Egyptian President Hosni Mubarak declared upon the outbreak of the crisis: "We in Egypt are not about to contribute to perpetuating the rift [between Hamas and the PA] by opening Rafah Crossing in the absence of the PA and the EU monitors, in violation of the 2005 agreement."<sup>59</sup>

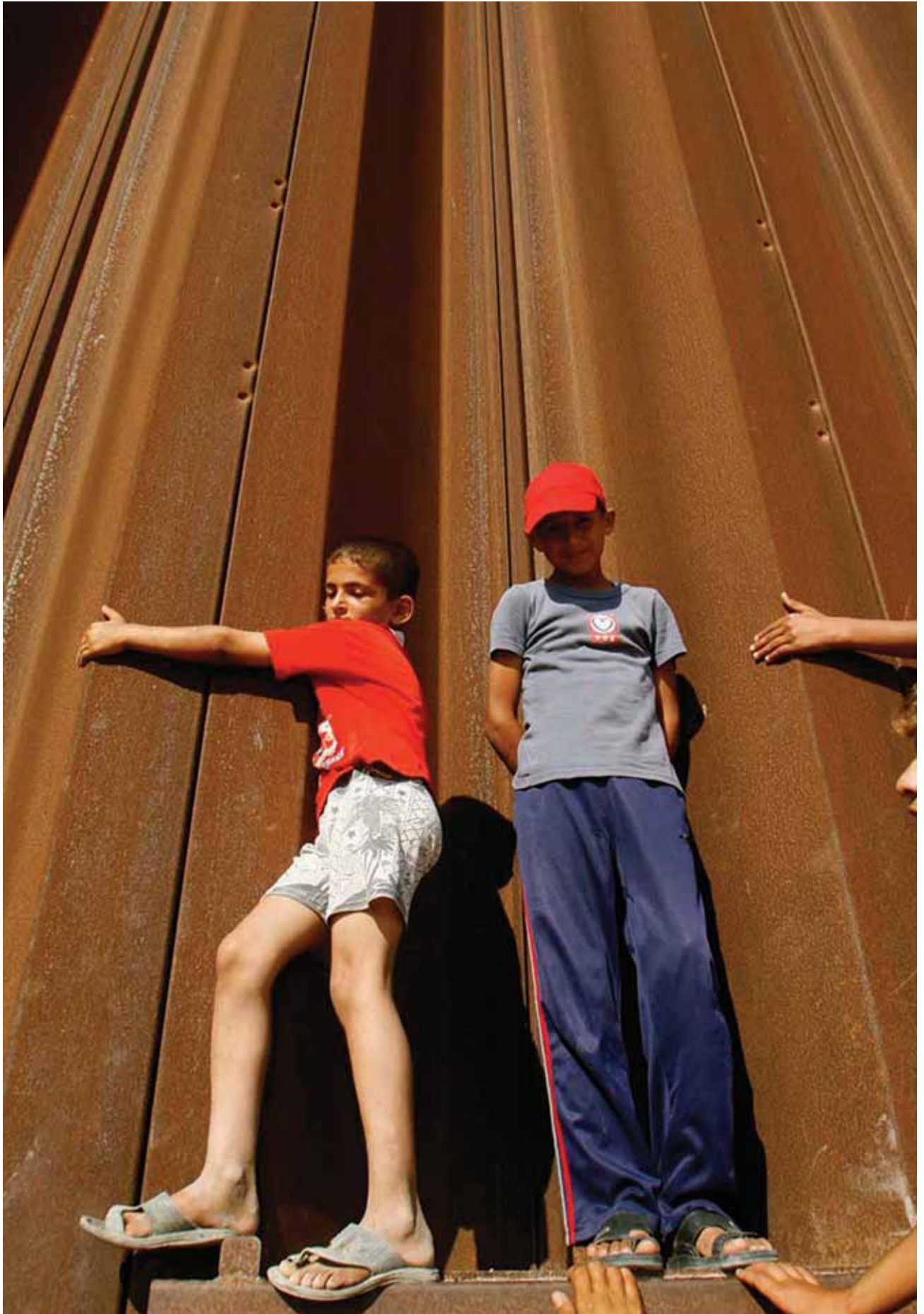
55. See Bahrain Center for Human Rights, Press Release from August 19, 2008, available at <http://www.bahrainrights.org/en/node/2388>

56. Related by Egyptian human rights activist to Atty. Sari Bashi of Gisha on October 20, 2008. See also Al Jazeera, "Cairo preventing aid to the Gaza Strip, Hamas confirms deadlock in Shalit talks," October 7, 2008 [Arabic], available at <http://www.aljazeera.net/news/archive/archive?Archiveld=1100673>

57. See for instance Muslim Brotherhood website, "Students in Cairo protest for Gaza," November 11, 2008 [Arabic], available at <http://www.ikhwanonline.com/Article.asp?ArtID=42075&SecID=304>  
See also Al-Basheer News, "Egypt arrested 21 members of Muslim Brotherhood because they tried to help the people of Gaza," December 19, 2008 [Arabic], available at <http://www.islamtoday.net/albasheer/artshow-12-105576.htm>

58. Related by Egyptian sources to Gisha in an interview on October 12, 2008.

59. Al-Arabiya News Channel, "Mubarak Says: Egypt to keep Gaza border closed unless Abbas regains control over the territory," December 30, 2008, <http://www.alarabiya.net/articles/2008/12/30/63123.html>



## The position of the Hamas regime in the Gaza Strip

**Hamas objects to any Israeli control of movement between Gaza and Egypt and renounces the AMA:**

- The AMA is not valid.
- Rafah Crossing is an Egyptian-Palestinian border crossing, and should be operated by agreement between the Palestinian and Egyptian governments.
- Objection to any Israeli control of the movement of residents between the Gaza Strip and Egypt.
- Agreement to European monitoring if it helps open Rafah.

As opposed to the other parties, the Hamas government in the Gaza Strip does not recognize the validity of the AMA, whose implementation was discontinued since Hamas began ruling the Gaza Strip.<sup>60</sup> The Hamas representatives believe that the Israeli occupation of the Gaza Strip is over and declare their opposition to any Israeli control

**Hamas representatives claim that Rafah Crossing is an Egyptian-Palestinian border crossing, which must be operated by agreement between the Palestinian and Egyptian governments, without any Israeli involvement.**

of the movement of residents between the Gaza Strip and Egypt, whether by Israeli control of the crossing with video cameras, as was the case under the AMA, or by operating the Kerem Shalom Crossing between the Gaza Strip and Egypt, with direct Israeli control of the travelers.<sup>61</sup> In addition to its objection in principle to Israeli involvement in the border between Egypt and the Gaza Strip, Hamas objects to Israeli inspection of the travelers out of concern that Israel will refuse passage on an individual basis or even detain some of the travelers.<sup>62</sup>

60. Related by Dr. Bassem Naim, Minister of Health in Gaza, to Ayda Abdalbari of Gisha in an interview on December 17, 2008.

61. Ibid. Also related by Ihab al-Ghasin, a senior Interior Ministry official in Gaza to Ayda Abdalbari of Gisha in interview on October 1, 2008.

62. Related by Dr. Bassem Naim, Minister of Health in Gaza, to Ayda Abdalbari of Gisha in an interview on December 17, 2008.



Hamas representatives claim that Rafah Crossing is an Egyptian-Palestinian border crossing, which must be operated by agreement between the Palestinian and Egyptian governments, without any Israeli involvement. Hamas is willing to accept European inspection of the crossing if it will ease Rafah's opening, but not if doing so poses an obstacle.<sup>63</sup>

Hamas declares its willingness to share security in Rafah with the PA Presidential Guard, but demands to retain the power to personally approve anyone slated to staff the Palestinian side of the crossing.<sup>64</sup> As a matter of fact, in the absence of a power-sharing agreement, Hamas does not allow the activity of the Presidential Guard in the Gaza Strip, including at Rafah Crossing.

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63. Ibid. Ihab al-Ghasin, of Interior Ministry (supra note 61) added that Hamas would agree to European supervision on condition that the European supervisors lived in the Gaza Strip so that Israel could not prevent their reaching the border.

64. Related by Dr. Bassem Naim, Minister of Health in Gaza, to Ayda Abdalbari of Gisha, in an interview on December 17, 2008.

## The Palestinian Authority's position

### The PA objects to opening Rafah Crossing until it regains control of the Gaza Strip:

- "Rafah Crossing will not open until the previous situation is restored,"<sup>65</sup> namely Hamas control of Gaza Strip is stopped, the AMA is reinstated and the Presidential Guard is allowed at the border.
- Support for passage between the Gaza Strip and Egypt through the Israeli-controlled Kerem Shalom Crossing, as a temporary solution.
- Support for ad hoc openings for humanitarian purposes.

The PA is a signatory to the AMA, and members of its Presidential Guard staffed the Palestinian side of Rafah crossing when the agreement was functioning properly. Since Hamas took over the Gaza Strip and its crossings, it has prevented the activity of the Presidential Guard at Rafah Crossing and in the Gaza Strip in general.

The consistent position of the PA since then has been that the reopening of Rafah has to be in accordance with the AMA, while restoring the members of the PA's Presidential Guard to the Palestinian side of the border. As long as that is not possible, the PA objects to opening the crossing on a regular basis by Egypt opposite Hamas, so as not to legitimize the latter's rule.<sup>66</sup>

According to a senior source in Mahmoud Abbas' office, "President Abbas supports any strategy that will put an end to the suffering of his people."<sup>67</sup> In order to ease the suffering of the people, according to one senior PA official, the PA

**The PA objects to opening the crossing on a regular basis by Egypt opposite Hamas, so as not to legitimize the latter's rule.**

65. Related by Nabil Amr, Palestinian ambassador in Cairo, to Arabiya Mansour of Gisha, in phone call from October 20, 2008.

66. Related by senior official in Mahmoud Abbas' office to Atty. Sari Bashi of Gisha, in phone interview from July 22, 2008, and by Nabil Amr, Palestinian ambassador in Cairo, to Arabiya Mansour of Gisha, in phone call from October 20, 2008.

67. Related by senior official in Mahmoud Abbas' office to Atty. Sari Bashi of Gisha, in phone interview from July 22, 2008.



supports Kerem Shalom Crossing as a temporary alternative and is trying to convince Israel to operate the crossing, which is in Israeli territory and allows movement between the Gaza Strip and Egypt under Israeli supervision.<sup>68</sup> According to PA representatives, the PA wishes to continue the peace process, to put an end to the occupation, to win international support and to control the borders. The PA views the continued Hamas control of the Gaza Strip as a factor that undermines all of those goals and objects to opening Rafah before the previous situation is restored to what it was before the Hamas military coup, in its words.<sup>69</sup>

Like Egypt, the PA is concerned that the opening of Rafah by Hamas will bring the Gaza Strip into a closer relationship with Egypt and move it away from the West Bank. The PA wishes to lead the entire Palestinian population of the OPT, in the West Bank as well as the Gaza Strip, and continue the Oslo process that established its power to do so. It considers agreement to opening Rafah in the presence of Hamas as recognition of Hamas rule of the Gaza Strip and a renunciation of its aspiration to rule that area exclusively.

The PA welcomes Egypt's ad hoc openings of the border, because it views them as easing the suffering of the Palestinians in Gaza. However, until "the previous situation is restored," that is, the Presidential Guard is returned to Rafah, the PA objects to pressuring Egypt to open Rafah Crossing to regular traffic.<sup>70</sup>

## The EU's position

### **The EU cannot fulfill its role in the AMA without Israel's agreement and the presence of the PA at Rafah Crossing:**

- Suspension of the activity of the EU force in Rafah, as long as the crossing is being staffed by Hamas representatives.

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68. Related by Hussein al-Sheikh of the Civil Affairs Committee in Ramallah to Atty. Sari Bashi and Arabiya Mansour of Gisha, in interview from August 31, 2008.

69. Related by senior official in Mahmoud Abbas' office to Atty. Sari Bashi of Gisha, in phone interview from July 22, 2008.

70. Related by Nabil Amr, Palestinian ambassador in Cairo, to Arabiya Mansour of Gisha, in phone call from October 20, 2008. The PA's response to this report is included as Appendix 2.

- Continuing to keep the EU force in Israel to await resuming its activities, as soon as the AMA is resumed.
- The opening of the crossing depends on agreement between Israel and Hamas, including the release of Shalit, agreement between the PA and Hamas, and Israeli agreement concerning how the border will be opened.

As part of the implementation of the AMA, an EU force supervised Rafah Crossing (EUBAM) as a third party. The agreement gave the European force a neutral status in relation to the crossing, without a mandate to open or close the border itself without the agreement and cooperation of both sides, Israel and the PA. During most of the time the AMA was in effect, Rafah Crossing was closed by Israel's decision; the European force's monitors would receive Israel's announcement that the crossing was closed for security reasons and would refrain from coming to the border.<sup>71</sup> On the diplomatic level, the EU tried during that time to cause the crossing to open, especially for humanitarian needs, by appealing to Israel and mediating between the sides.<sup>72</sup>

**The agreement gave the European force a neutral status in relation to the crossing, without a mandate to open or close the border itself without the agreement and cooperation of both sides, Israel and the PA.**

According to EUBAM's website, the force's mandate focuses on monitoring, verifying and assessing the functioning of the PA regarding implementation of the AMA.<sup>73</sup> Once Hamas took over the Gaza Strip in June 2007, the PA was prevented from being present at Rafah Crossing. At that time, EUBAM stopped its operation in Rafah because of the EU policy not to speak to Hamas, and out of concern for the safety of the force, which until that time was protected by the PA Presidential Guard forces.<sup>74</sup> Since then the EU has suspended its operation in Rafah, as long as the crossing is staffed by representatives of Hamas rather than representatives of

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71. Letter from Ms. Maria Telleria, spokeswoman of EUBAM, to Atty. Noam Peleg from January 15, 2007.

72. EUBAM, Press Release from November 14, 2006, available at <http://www.eubam-rafah.eu/portal/en/node/396>

73. EUBAM website, see <http://www.eubam-rafah.eu/portal/en/node/8>

74. Related by Maria Telleria, spokeswoman of EUBAM, to Atty. Sari Bashi of Gisha, in phone call from June 28, 2007.



the PA. However, the force remains in Israel, in reduced numbers, and maintains its operational capability, expressing its willingness to renew its activity immediately upon resumption of the implementation of the AMA.<sup>75</sup>

In order for Rafah to reopen, according to the EUBAM website, several conditions need to be met: agreement between Hamas and Israel on a prisoner exchange, including the release of the soldier Gilad Shalit and hundreds of Palestinian prisoners; an agreement between the PA and Hamas; substantial progress by Egypt in stopping the arms smuggling from Egypt to the Gaza Strip through the tunnels, and Israel's agreement to arrangements for the operation of the border crossing.<sup>76</sup> According to its representatives in Israel, the EU is "trying to contribute positively to a concrete solution on the ground, in coordination with the government of Israel and the PA,"<sup>77</sup> and is maintaining diplomatic and political activity at high levels with both sides, to cause the crossing to reopen.<sup>78</sup>

## The US position

### **Support for the reopening of Rafah on the basis of the AMA, with the participation of the PA and Israel.**

The US, like the EU, mediated between Israel and the PA in the negotiations that led to signing the AMA. Since Hamas took over the Palestinian side of Rafah Crossing, and the implementation of the AMA was discontinued, the US has engaged in little activity regarding Rafah Crossing, at least publicly. The US State Department, which Gisha contacted through the US Embassy in Tel Aviv, declined to answer questions about US policy regarding Rafah Crossing. According to public statements, the US supports the reopening of Rafah only on the basis of the principles of the AMA, in the presence of PA forces and European monitors.<sup>79</sup>

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75. Related by Maria Telleria, spokeswoman of EUBAM, to Tania Hary of Gisha, in e-mail from August 3, 2008.

76. EUBAM website, see <http://www.eubam-rafah.eu/portal/en/node/457>

77. Related by Ramiro Cibrian-Uzal, head of European Council Delegation to Israel, to Atty. Sari Bashi of Gisha in letter from August 8, 2007.

78. Related by Maria Telleria, spokeswoman of EUBAM, to Tania Hary of Gisha, in e-mail from August 3, 2008.

79. US State Department Daily Press Briefing, January 6, 2009, available at <http://www.state.gov/r/pa/prs/dpb/2009/jan/113610.htm>

The US is pressuring Egypt to prevent smuggling from its territory into the Gaza Strip through tunnels in the Rafah area and to locate and destroy them; it also decided to impose an economic sanction on Egypt in that context, and later replaced the sanction with economic aid to help Egypt act against the tunnels.<sup>80</sup> According to Egyptian sources, the US is also pressuring Egypt not to violate the AMA and not to open Rafah Crossing outside the terms of the agreement.<sup>81</sup>

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80. *Supra*, pp. 54-55.

81. Related by Egyptian sources to Cisha in interview from March 19, 2008.



## Chapter 6

# Analysis of the Parties' Responsibility for the Closure of Rafah Crossing

In the previous chapter, we presented the parties' positions on the conditions under which they would agree to allow Rafah Crossing to open. Now we shall analyze two main questions: first, who is responsible for closing Rafah Crossing, meaning what is the role of each party in its closure? Second, what are the obligations of each party, as a result of its control over the ability of Gaza residents to exit and enter the Strip, and considering the actions of the other parties?

### Israel

Even though Israeli forces are not stationed on the Egypt-Gaza border permanently, Israel continues to exert substantial and indirect control over the possibility of opening Rafah Crossing and uses that control to exert pressure on the residents of Gaza, as part of a policy of collective punishment. Israel controls all the other Gaza Strip crossings and closes them, thereby creating dependence upon Rafah Crossing as the only channel between the Gaza Strip and the outside world.

Israel's control of the Gaza border crossings, in addition to its control of other significant aspects of life in the Gaza Strip, makes Israel responsible for allowing

freedom of movement in and out of Gaza. According to Gisha and PHR-Israel, that control rises to the level of effective control. Therefore, Israel owes obligations under the laws of occupation.

However, even for those who believe that Israel's control of Gaza is not an occupation, its control – in the past and in the present – subjects Israel to obligations towards the residents of the Gaza Strip under human rights law; because of

**Israel has argued that "Israel has no effective-physical control of that crossing," while on the other hand it announced that "unless Gilad Shalit is freed, Rafah Crossing will not be opened."**

the right of passage for residents of a land-locked area; and as a consequence of the laws of "post-occupation." That responsibility requires Israel to allow the regular operation of Rafah Crossing or alternatively, to allow passage through the other crossings, by sea, air or land.

Israel owes a special responsibility for the health care system in Gaza, including the access of patients to medical treatment that is not available in the Gaza Strip, for a number of reasons, including because of its closure of Gaza, which prevents the health care system there from developing.

## **Israel's control of Rafah and the other Gaza Strip border crossings**

Since the implementation of the disengagement plan in the summer of 2005, Israel has not maintained a regular ground presence on the border between Gaza and Egypt or at Rafah Crossing. Does that mean that it does not exert control over the opening of Rafah Crossing? Official Israeli spokesmen profess an absence of Israeli control of Rafah but simultaneously declare that the crossing will remain closed on their terms. Thus, Israel has argued before its Supreme Court that "Israel has no effective-physical control of that crossing," while on the other hand its representatives announce that the decision to open Rafah Crossing "is in the hands of the Defense Minister, and he has not yet decided about the upcoming opening dates," and that "unless Gilad Shalit is freed, Rafah Crossing will not be opened." How are we to understand the mixed message conveyed by Israel's representatives about Israeli control of Rafah Crossing?



We can not enter inner, private rooms and eavesdrop on discussions in which the Israeli authorities set their policy about Rafah Crossing and act to implement it through their contacts with Egypt, the US, the PA and the EU. However, it is clear that none of those parties adopts a policy without coordinating its position with the others, and that is especially true concerning Egypt and Israel, the main parties that can bring about the opening of Rafah Crossing. Therefore it follows that when Egypt chooses not to open Rafah Crossing, that decision is connected to Israel's position, even though Egypt has its own interests in not opening the crossing opposite the Hamas regime.

When Israeli officials declare that Rafah Crossing will not be opened unless Gilad Shalit is freed, they are not expressing a mere wish or offering an informative observation by an uninvolved bystander. At the crux of these messages, and at the crux of the obedience of the relevant parties to Israel's refusal to allow the implementation of the AMA and its declarations about closing Rafah, lies the use of indirect – but substantial – control over the opening of the crossing.

That control is exerted through Israel's ability to veto the opening of the crossing to regular traffic, as expressed by its refusal to participate in the AMA and its objection to alternative agreements to allow regular traffic through Rafah. From Shalit's capture until June 2007, Israel was the only one of the parties that opposed the regular implementation of the AMA, and that is why Rafah Crossing was closed for most of the time during that period, opening only when the Israeli Defense Minister decided to open it. Since June 2007, the rest of the relevant parties have also opposed implementing the agreement: the PA, which is a party to the agreement, Hamas, which de facto controls the Palestinian side of Rafah Crossing and objects to its opening under Israeli supervision, Egypt, which controls the Egyptian side of the crossing, and the EU, which served as a monitoring force. And that is why Rafah Crossing is closed to regular traffic.

Without detracting from the responsibility of the other involved parties, Israel's objection to opening the crossing constitutes a central factor in its closure, because of Israel's indirect control of Rafah Crossing. That control derives from the fact that even after implementing the disengagement plan, Israel is a signatory to the AMA, which is supposed to regulate the opening of Rafah Crossing. It derives also: from the fact that all parties except Hamas view Israel's consent as a necessary condition for opening the crossing; from its ability to deploy forces on



the border between Gaza and Egypt – an ability that was actualized a number of times since the disengagement; from its ability, as a matter of fact, to exert influence over Egypt, which de facto holds the keys to Rafah Crossing from the Egyptian side, to keep it closed; from the control it exercises over the PA and over the space in which it is permitted to operate, as an authority that is not a sovereign, but rather derives its authority from powers transferred to it by Israel, as part of the Israeli-Palestinian interim agreements;<sup>1</sup> and by Israel's ability to channel all the traffic in and out of the Gaza Strip to Rafah Crossing, by closing all the other borders of the Gaza Strip – sea, air and land. All of the above indicate the continuation of indirect but substantial control by Israel over the possibility of opening Rafah Crossing. Israel has been using that indirect control since June 2006 to close Rafah Crossing in order to exert pressure on the residents of Gaza,

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1. Gisha, "Disengaged Occupiers," pp. 56-58 (supra note 29, p. 27).

whether it does so to press for the release of captured soldier Gilad Shalit<sup>2</sup> or as part of the restrictions it imposes on the civilian population of Gaza, with the goal of weakening the Hamas regime in the Gaza Strip.<sup>3</sup>

The control Israel exerts over Rafah Crossing should be analyzed in the context of its control of the other Gaza Strip crossings, for two reasons. First, Israel controls the Gaza Strip tightly from the outside, while preventing the residents of the Gaza Strip from traveling through Gaza's territorial waters and air space and almost completely barring the use of the land crossings with Israel. That control, along with its control of other significant aspects of life in the Gaza Strip, imposes on Israel special obligations towards the residents of Gaza, especially in regard to their right to freedom of movement.

Second, by closing the other crossings from the Gaza Strip, Israel has turned Gaza into a land-locked territory and Rafah Crossing into the practically exclusive channel of traffic in and out of the Gaza Strip. There is nothing natural about that situation geographically or in terms of Gaza's cultural affinity, nor is it a necessary state of affairs: Gaza has an air space, where an airport once operated, territorial waters, where a port was supposed to be built, and a land crossing with Israel, that used to connect Gaza with Israel and the West Bank. It would have been natural for the regular traffic of people and goods to move through those passages as well, but that is not possible because of the Israeli policy of closure. By its efforts to perpetuate the closed status of Rafah, Israel has completed the closure of Gaza and put an end to the freedom of movement of its residents.

Egypt's obligation to open Rafah Crossing stems from the Israeli closure of the other Gaza crossings. In contrast, as a comparative example, before the peace agreement between Israel and Egypt, Egypt was not obligated to open its border with Israel, even though all of Israel's land borders were closed, because the latter had sea and air ports for contact with the outside world. On the other hand, as will be explained below, Israel's closure of the Gaza Strip's crossings – sea, air and land – is what creates an obligation upon the other parties, mainly Egypt, to open Rafah Crossing.

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2. The status of Rafah Crossing: Summary of a discussion at the defense minister's office, *supra* note 8, p. 121; Comments of Amos Gilad, *supra* note 18, p. 123.

3. Security cabinet decision from September 19, 2007, *supra* note 21, p. 42.

## Israel's control of the Gaza Strip

Even since Israel pulled its permanent troops out of the Gaza Strip in 2005, it has continued to control significant aspects of life in the Gaza Strip, especially the passage of people and goods by sea, land and air;<sup>4</sup> the population registry, including the determination of who is a resident of Gaza;<sup>5</sup> and the tax system and, through it, the funding of public services.<sup>6</sup> It is the position of Gisha and PHR-Israel that Israel's control of the Gaza Strip rises to the level of effective control. When such control exists, it constitutes a situation of occupation, according to international law.<sup>7</sup> The organizations thus believe that the Gaza Strip is still a territory under Israeli occupation, and therefore Israel owes obligations to the civilian population of the Gaza Strip, under international humanitarian law.<sup>8</sup> That position is shared by the United Nations,<sup>9</sup> the International Committee of the Red Cross<sup>10</sup> and many other international parties.

**When it comes to control of the crossings, Israel bears overall responsibility for traffic in and out of the Gaza Strip, whether as an occupying power or by its control of Gaza's border crossings – sea, air and land.**

The Israeli Supreme Court, on the other hand, does not apply the laws of occupation to the Gaza Strip, holding that Israel does not control what goes on inside the Gaza Strip, and therefore it does not bear a "general obligation to see to the welfare of the residents of the Gaza Strip;" however, the Supreme Court did

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4. Gisha, "Disengaged Occupiers," pp. 32-49 (supra note 29, p. 27).

5. Ibid, pp. 50-54. See also supra pp. 57-63.

6. Ibid, pp. 54-55.

7. Ibid, chapter 4.

8. Ibid.

9. Related by Yves Sorokobi of the UN Secretary-General spokesman's office, to Adv. Sari Bashi of Gisha, in an e-mail from February 27, 2007.

10. "The position of the ICRC is that the Gaza Strip continues to be occupied by Israel [...] the obligations incumbent upon Israel as an occupying power in this situation are reduced, because Israel no longer has a permanent presence on the ground. Those obligations are related to the element of control maintained by Israel, such as control of the borders [...]." Related by Larry Maybee, head of the legal apartment of ICRC in Israel and the Occupied Territories, to Adv. Sari Bashi of Gisha, in e-mail from February 4, 2009.

decide that Israel continues to owe obligations to the residents of Gaza which derive, among other things, from its continuing control of Gaza's borders and from the strong dependence of Gaza on services from Israel, as a result of the years in which Israel did control the Gaza Strip directly, 1967-2005.<sup>11</sup>

Whether it is by virtue of Israel's continued occupation of Gaza, or because of Israel's control of Gaza's borders and its long-standing control of the Gaza Strip before the disengagement, Israel still bears responsibility towards the Gaza Strip and its residents. The kind of responsibility and its extent derive, among other things, from the areas in which Israel exerted control and from the degree of that control. That principle is evident both from the rulings of the Israeli Supreme Court and from the practice introduced since the Israeli-Palestinian interim agreements took effect, transferring certain powers to the Palestinian Authority, while Israel continued to exercise other powers and owe obligations in the areas of responsibility it continued to control. Therefore, Israel's responsibility for the Gaza Strip extends to the areas which Israel controls, including the passage of people and goods in and out of Gaza. In the areas in which Israel gave up its control and allowed others to exercise control, its responsibility is reduced, and the responsibility of the other relevant parties increases.<sup>12</sup> When it comes to control of the crossings, Israel bears overall responsibility for traffic in and out of the Gaza Strip, whether as an occupying power or by its control of Gaza's border crossings – sea, air and land.

The next section discusses the sources of obligations under international law and Israeli law. The legal analysis will address the different kinds of obligations and present alternative arguments according to different views regarding the status of the Gaza Strip. Based on the laws of occupation, the laws of post-occupation, human rights law and Israeli administrative law, this analysis will substantiate the general principle anchored in international and Israeli law: control creates responsibility.

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11. HCJ 9132/07, **al-Bassiouni v Defense Minister**, para.12 of decision by Chief Justice D. Beinisch (unpublished, January 30, 2008).

12. See on this matter Gisha, "Disengaged Occupiers," pp. 81-82. The ICRC has a similar position.

## Israel's obligations

### Obligations under international humanitarian law

Regulation 43 of the Hague Regulations, which are part of international customary law, binding upon all the countries in the world by virtue of the custom of nations, imposes upon an occupying power the obligation to maintain public order and guarantee the existence of normal public life ("la vie publique") for the civilian population. That obligation includes the responsibility to see to the development of a proper economy, education and health care systems and the range of public life needs.<sup>13</sup> Therefore, as

**Freedom of movement in and out of the Gaza Strip is necessary to guarantee normal life, because its realization is a precondition for the realization of other rights and provision of the basic needs of the population.**

the occupying power in Gaza, Israel is responsible to see that its policy regarding the crossings allows the residents of the Gaza Strip a normal life, as required by regulation 43 of the Hague Regulations. Freedom of movement in and out of the Gaza Strip is necessary to guarantee normal life, because its realization is a precondition for the realization of other rights and provision of the basic needs of the population, such as maintaining family ties, acquiring an education, conducting trade, running a health care system and developing businesses.

It should be noted that Israel would owe obligations to Gaza residents under the international humanitarian law of occupation but also according to the position that Gaza is no longer under Israeli occupation. As noted above, even according to the Israeli Supreme Court, Israel's very control of the crossings imposes obligations regarding passage. The Fourth Geneva Convention on the Protection of Victims of International Armed Conflicts, to which Israel is a party, states in article 27 – which applies to any situation of armed conflict, occupation, or the

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13. See regulation 43 of Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulation concerning the Laws and Customs of War on Land, 3 Martens Nouveau Recueil (ser. 3) 461, 187 Consol. T.S. 227, entered into force Jan. 26, 1910, and the interpretation it has been given in Israeli rulings: HCJ 10356/02, **Hess v Commander of IDF Forces in the West Bank**, PD 58(3) 443, 460; HCJ 393/82, **Jam'iyat Iskan al-Mu'allimoon a-Ta'awuniyah v Commander of the IDF Forces in the Area of Judea and Samaria**, PD 37(4) 785, 804.

use of force and control over a population – the basic principle regarding the status of the people whom it seeks to protect: "Protected persons are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs."<sup>14</sup> The right to freedom of movement is derived from the basic right to honor and the autonomy of the individual's will.<sup>15</sup> Article 33 says: "No protected person may be punished for an offence he or she has not personally committed," and adds that collective punishments are prohibited. It should be stressed that the prohibition on collective punishments exists not only in states of occupation but also in other conditions under which residents find themselves under the rule of a foreign power.<sup>16</sup>

However, the obligations that derive from the special status of protected persons are heightened in a state of occupation; thus, for instance, the state controlling an occupied territory must ensure the supply of food and medical supplies to the population (articles 55, 59), ensure and maintain the medical institutions in the occupied territory (article 56), and facilitate the rapid distribution of aid consignments (article 61). Under article 69 of the First Protocol to the Geneva Conventions, the occupying power must also ensure the supply of clothing, bedding, means of shelter and other supplies essential to the survival of the civilian population of the occupied territory.<sup>17</sup>

Under the Geneva Convention, therefore, Israel is obligated to allow residents to move in and out of the Gaza Strip and to ensure them a supply of food and medicine; likewise, the convention obligates Israel to avoid restricting the movement of the residents of the Gaza Strip as an act of collective punishment, which harms all residents of the Gaza Strip, for acts that they did not personally commit.

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14. Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949, 75 U.N.T.S. 287, entered into force Oct. 21, 1950. [Hereinafter: IV Geneva Convention].

15. Common Article 3 of the Geneva Conventions; article 27 of the IV Geneva Convention; article 75 of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 U.N.T.S. 3, entered into force Dec. 7, 1978. [Hereinafter: Geneva Protocol I].

16. Articles 27 and 33 both appear in the chapter of the IV Geneva Convention that applies not only to occupied territories but to anyone defined as protected in article 4 of the Convention. Moreover, article 75 of Geneva Protocol I states explicitly that collective punishment is prohibited at all times and all places against people who are under the control of a foreign power.

17. Article 69 of Geneva Protocol I.

## Obligations under international human rights law

International human rights law applies in parallel to humanitarian law everywhere Israel operates and exerts control, as part of an armed conflict<sup>18</sup> or during an occupation.<sup>19</sup> Human rights law applies, at least to an extent, even to government actions performed outside of the borders of the state. The extraterritorial application of human rights laws derives from their universal nature and is anchored in the decisions of various international forums, as well as the practices of states.<sup>20</sup> This approach has also received a certain amount of support in the rulings of the Israeli Supreme Court.<sup>21</sup>

The UN Human Rights Committee, responsible for the implementation of the International Covenant on Civil and Political Rights, asserted in General Comment 31 that the Covenant applies to anyone "within the power or effective control of that State Party, even if not situated within the territory of the State Party."<sup>22</sup> According to that statement, the provisions of the Covenant on Civil and Political Rights (as well as the provisions of other human rights covenants) apply wherever Israel exercises power over a person, even if it does not exercise effective control there (i.e., occupation). The closure of the Gaza Strip and the control of its life arteries rise to the level of exercising power and decisive influence over the residents of the Gaza Strip and thereby impose on Israel obligations under international human rights law.<sup>23</sup>

According to human rights law, Israel is obligated to honor the right of the residents of the Gaza Strip to freedom of movement, including maintaining the basic principle that "every person is entitled to leave any country, including his own country and return to his country."<sup>24</sup> In addition, Israel is obligated by

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18. Legality of the Use by a State of Nuclear Weapons in Armed Conflict, 1996 (I) I.C.J. 66, 240.

19. In July 2004 the International Court of Justice ruled unequivocally that human rights law applies simultaneously with humanitarian law in the OPT. See Legal Consequences of a Wall in the Occupied Palestinian Territory, 2004 I.C.J., 43 I.L.M. 1009.

20. Orna Ben-Naftali and Yuval Shany, "Living in Denial: The Application of Human Rights in the Occupied Territories," 37 *Isr. L. Rev.*, p. 17, 2003-04.

21. *Ibid.*, pp. 87-96.

22. Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, para. 10, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004).

23. Yuval Shany, "The Law Applicable to Non-Occupied Gaza," forthcoming in 42 *Isr. L. Rev.*, 2009.

24. Article 13 (2) of the Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948) [Hereinafter: UDHR]. See also article 12(2) of the International Covenant on Civil and Political Rights (ICCPR). The former has the status of customary law; as for the latter, The UN Human Rights Committee decided that



international conventions to honor the right of the residents of the Gaza Strip to health,<sup>25</sup> to education,<sup>26</sup> to appropriate living conditions,<sup>27</sup> to freedom of occupation,<sup>28</sup> to freedom of religion and worship<sup>29</sup> and to family life.<sup>30</sup> All these rights are violated to some extent in the absence of freedom of movement into and out of the Gaza Strip; Israel's failure to develop an independent economy and adequate services in the Gaza Strip for the 38 years it controlled Gaza increases dependence on freedom of movement, in order to access services and realize some of those rights.

### "Post-occupation" obligations

As cited above, the position of Gisha and PHR-Israel is that Israel still controls the Gaza Strip as an occupying power. However, even according to the position of the Israeli Supreme Court, that Israel does not effectively control the Gaza Strip since the withdrawal of permanent Israeli military forces from Gaza in 2005, Israel is still responsible for opening the crossings and guaranteeing freedom of movement of residents of the Gaza Strip in and out of the Strip, deriving, among other things, from the prolonged occupation and the dependence that it cultivated.

Based on the principles of the responsibility of states for internationally wrongful acts, an occupier that fails to discharge its duties as an occupying power under international law may continue to bear responsibilities even after the end of the occupation.<sup>31</sup> The laws of "post-occupation" would obligate Israel to remedy the

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it applies to Israel even in the OPT (see: Concluding Observations of the Human Rights Committee, Israel, § 11 U.N. Doc. CCPR/CO/78/ISR (2003)). The Israeli Supreme Court habitually assumes that international commitments Israel took upon itself apply also to the OPT, and analyzes Israel's obligations there according to those obligations – including the obligation to protect the freedom of movement. See HCJ 769/02, **The Public Committee Against Torture in Israel v. the Government of Israel** (unpublished, December 14, 2006); the case of **Mara'bah**, para. 27 and more. On recognition of the right to freedom of movement as a basic right in Israeli law, see section 6 of Basic Law: Human Dignity and Freedom: "Every person is free to leave Israel" (see Aharon Barak, Interpretation in Law – Constitutional Interpretation (Nevo, 1994) [Hebrew], pp. 428-429; see also HCJ 5016/96, **Horev v Minister of Transportation**, PD 51(4) 1, 59.

25. UDHR, article 25; International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, article 12.

26. UDHR, article 25. ICESCR, article 13.

27. UDHR, article 25. ICESCR, article 11.

28. ICESCR, article 6.

29. UDHR, article 18. ICESCR, article 18.

30. UDHR, article 16. ICCPR, article 23; ICESCR, article 10; Convention on the Rights of the Child, article 1; Convention on the Nationality of Married Women, article 3(1).

31. Responsibility of States for Internationally Wrongful Acts, G.A. Res. 56/83, U.N. Doc. A/56/10 (Dec. 12, 2001) [Hereinafter: Draft Articles on States Responsibility or Draft Articles]. See Gisha, "Disengaged Occupiers," pp. 89-91 and references there (supra note 29, p. 27).

damages of the occupation<sup>32</sup> and to guarantee that public order and civilian life continue normally even after the end of the actual occupation.<sup>33</sup> The extent of the obligations depends directly on the length of the occupation and the depth of the population's dependence on the occupying power, which in turn derives from the extent of the involvement of the occupying power in managing daily life, controlling public institutions and having contact with the local population.<sup>34</sup> Non-fulfillment of that obligation in itself constitutes an internationally wrongful act.<sup>35</sup>

**The laws of "post-occupation" would obligate Israel to remedy the damages of the occupation and to guarantee that public order and civilian life continue normally even after the end of the actual occupation.**

Israel's obligations in the post-occupation period would also derive from human rights law, which applies in any case when a state that is party to the conventions exerts control over a particular territory.<sup>36</sup> The obligation of the occupying power is to take all possible measures under the prevailing circumstances to ensure the continuation of the effective protection of human rights law, even after its withdrawal.<sup>37</sup> Those obligations are particularly valid in the area of health care, in which Israel cultivated the dependence of the Palestinian health care system on health services that are outside of the Gaza Strip and avoided developing or even allowing the development of an independent and adequate health care system. As part of its continued control over the main traffic lifelines in the Gaza Strip to

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32. According to article 31(1) of the Draft Articles on States Responsibility, when the state commits an internationally wrongful act, as defined by article 2 of the Draft Articles, it bears responsibility "to fully remedy the damage caused by the wrongful act." Article 32(2) of the Draft Articles defines damage as including "any damage, material or psychological, caused by an internationally wrongful act by a state."

33. Eyal Benvenisti, "The Law on the Unilateral Termination of Occupation," forthcoming in *Veröffentlichungen des Walther-Schücking-Instituts für Internationales Recht an der Universität Kiel* (Andreas Zimmermann & Thomas Giegerich eds. 2009), p. 6, available at <http://law.bepress.com/cgi/viewcontent.cgi?article=1099&context=taulwps> (February 23, 2009).

34. *Ibid.*, p. 7.

35. See section 2 of the Draft Articles. Likewise, according to article 41 of the Draft Articles, a state that preserves or helps preserve an illegal situation caused by serious internationally wrongful acts is violating international law.

36. *Legal Consequences of a Wall in the Occupied Palestinian Territory*, 2004 I.C.J., 43 I.L.M. 1009; *Case Concerning Armed Activities on the Territory of the Congo: Democratic Republic of the Congo v Uganda*, I.C.J. Reports 2005, paras. 173, 177.

37. Eyal Benvenisti, *supra* note 33.



this day, Israel restricts both the passage of people, including the exit of medical personnel for training, and the supply of energy and the passage of goods, including humanitarian aid, food and medicine. That control makes Israel responsible for the condition of the health care system in Gaza, including access for patients to medical treatment not available there. The strict restrictions on the ability of patients from the Gaza Strip to receive medical treatment outside Gaza, including medical treatment in Israel, are inconsistent with those obligations, as is Israel's argument that it is not responsible for the situation created in the Gaza Strip as the result of the closure of its borders.

The position of Gisha and PHR-Israel is that it is too early to speak about obligations under "post-occupation" law, because Israel continues to exert effective control over the Gaza Strip. However, even according to those who believe that the occupation of the Gaza Strip has ended, Israel's responsibility to allow freedom of movement in and out of Gaza has not ended.

## Obligations under Israeli administrative law

Israel's obligations towards the Gaza Strip derive also from Israeli administrative law, a basic principle of which is that an administrative authority that exercises power is obligated to do so according to binding legal norms. The Israeli Supreme Court has stated that "the public authority must use its discretion [...] based on 'the accepted standards according to the principles of good government' [...], namely the legal norms that apply to the exercise of any administrative discretion."<sup>38</sup> Those legal norms include the basic principles of Israeli law, which include respect for the human rights of those affected by the exercise of the power and the principles of international human rights law.<sup>39</sup>

Once the Israeli authorities decided it was within their power to exercise discretion regarding the opening and closing of Rafah Crossing and the other crossings of the Gaza Strip, they undertook the responsibility to do so in ways consistent with the rights of those who wish to pass through them.

## Obligations under the right of transfer

According to the custom of nations, it is incumbent on states to allow passage through their land to the residents of a neighboring territory, in cases when that territory has become land-locked. As early as the Biblical period, the difference between passing through the territory of a country and entering that country for work or settlement was recognized. The right of passage is first mentioned in the Book of Numbers:

[21] And Israel sent messengers unto Sihon king of the Amorites, saying, [22] Let me pass through thy land: we will not turn into the fields, or into the vineyards; we will not drink [of] the waters of the well: [but] we will go along by the king's [high] way, until we be past thy borders. [23] And Sihon would not suffer Israel to pass through his border: but Sihon gathered all his people together, and went out against Israel into the wilderness: and he came to Jahaz, and fought against Israel. (Num., 21:21-23)<sup>40</sup>

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38. HCJ 389/80, **Golden Pages Ltd v Broadcasting Authority**, PD 35(1) 421, 435. On this matter see also HCJ 935/89, **Uri Gannor v Attorney-General**, PD 44 (2) 485, 514. See also Baruch Bracha, *Administrative Law* (volume 1, 1997) [Hebrew], p. 131; Yitzhak Zamir, *Administrative Power* (volume 1, 1996) [Hebrew], pp. 700-702.

39. See Gisha, "Disengaged Occupiers," p. 92 (supra note 29, p. 27).

40. The Bible, the King James Version.

The right of transfer is recognized in international law as a customary right, according to which a state is obligated to allow transfer through its territory to foreign nationals who wish to reach another country. The principle of the right of transfer developed in light of the situation of land-locked states (such as Switzerland or Caucasian countries), and it also applies to enclaves surrounded by another state (such as West Berlin before the unification of Germany and the Mt. Scopus enclave in Jerusalem during the years 1948-1967) and areas that are geographically split, such as the Palestinian territories. According to international law expert Elihu Lauterpacht, it is a customary right that appears in the same form in countless bilateral and multilateral conventions.<sup>41</sup>

The only conditions for transfer through the territory of a neighboring state are the necessity of the transfer and the absence of harm to that state. To fulfill the second condition, the transfer may be contingent upon paying for the expenses involved, or demands such as quarantine, to prevent the spread of disease. Likewise, the state through which the transfer takes place may establish regulations to address security considerations, but its discretion in this context is limited to establishing the preferred transfer route or conditions for its use.<sup>42</sup>

This approach is reflected in conventions which anchored the general principle of the right of transfer in concrete circumstances and which determined that the right does not cease to exist in times of emergency, nor even in times of war. According to one of those conventions, the New York Convention on Transit Trade of Land-locked States (1965), the right of transfer can be restricted according to circumstances, but the restriction must be as minimal as possible, both in its extent and its duration.<sup>43</sup> Article 13 of the convention says that it continues to be enforced even during wars, subject to the rights and obligations of the fighting parties and neutral parties during war.

The Gaza Strip may be situated on the seashore, but the access of its residents to the sea, for transfer to other countries, has been blocked by Israel for nearly 42 years. That blockage makes the Gaza Strip, *de facto*, land-locked, and obligates Israel to allow the passage of residents of Gaza through its territory, whether to

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41. E. Lauterpacht, "Freedom of Transit in International Law", *Transactions of the Grotius Society*, Vol. 44 (1958), pp. 313-356, p. 320.

42. *Ibid.*, p. 340.

43. Convention on Transit Trade of Land-locked States, New York, 8 July 1965, Art. 12, 597 U.N.T.S. 3, *entered into force* June 9, 1967.

travel abroad or on their way to the other enclave of the Palestinian territories in the West Bank. That obligation is heightened by Israel's blockage of the Gaza Strip's air space.

If the exit and entry of the residents of the Gaza Strip through Rafah Crossing is not possible for one reason or another, Israel must respect their right to pass through its own territory, on their way abroad or to the West Bank.



There are different ways to anchor Israel's legal obligations towards the residents of the Gaza Strip, which create a duty to allow the regular operation of Rafah Crossing or alternatively to allow passage through the other crossings, by land, air or sea. Under humanitarian law, under human rights law, because of the right of transfer or as a consequence of the laws of "post-occupation" – Israel is responsible for the violations that stem from the closure of Rafah Crossing, because it exerts indirect control over the operation of the passage, and it is Israel that created the absolute dependence on Rafah, through its policy of closure. Or to put it simply: control creates responsibility.

Whether because of Israel's effective control of Gaza in the past and present; because of the prolonged occupation in the past and the dependency it created; because of the closure and Israel's de facto control of the movement and living space of the Gaza Strip – Israel is responsible for the results of its control. It is obligated to stop the violations caused by its actions and to remedy the damage caused by its actions so far.

The actions Israel takes in order to close Rafah Crossing – whether directly, by refusing to participate in the AMA, or by exerting pressure on Egypt not to open the crossing – are taken in order to exert pressure on the residents of the Gaza Strip with the goal of weakening the Hamas government and bringing about the release of captured soldier Gilad Shalit. They therefore constitute collective punishment – forbidden by the Fourth Geneva Convention – of 1.5 million residents of the Gaza Strip, for acts for which they are not responsible.<sup>44</sup>

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44. For further information on this subject, see Gisha, "Gaza Closure Defined: Collective Punishment," December 2008, available at [http://www.gisha.org/UserFiles/File/publications\\_english/Publications%20and%20Reports\\_English/Gaza%20Closure%20Defined%20Eng\(1\).pdf](http://www.gisha.org/UserFiles/File/publications_english/Publications%20and%20Reports_English/Gaza%20Closure%20Defined%20Eng(1).pdf)

Israel prevents the residents of the Gaza Strip from leaving by sea, air or the land crossings to Israel and acts to close Rafah Crossing. By doing so, Israel is shirking its obligation to allow residents of the Gaza Strip to enter and leave, ignoring its obligation to allow passage through its territory to residents of a land-locked territory such as the Gaza Strip, and violating their right to freedom of movement and many other rights that cannot be fully realized in the absence of freedom of movement, such as the right to health, education and family life.

**Israel prevents the residents of the Gaza Strip from leaving by sea, air or the land crossings to Israel and acts to close Rafah Crossing. By doing so, Israel is shirking its obligation to allow residents of the Gaza Strip to enter and leave.**

It should be stressed that Israel bears a broad responsibility for the right to health care in the Gaza Strip, because of dependence created, throughout the years, on external health care services, and because of the continued restrictions Israel imposes on the passage of people and goods. These restrictions undermine attempts to provide necessary health care services inside the Gaza Strip. In that respect, and considering the fact that for gravely ill patients the only practical alternative is leaving through Erez Crossing for medical treatment in Israel, the West Bank or Jordan, Israel is obligated to allow such passage, and would be obligated to do so even if Rafah Crossing were open.

Israel's adherence to the AMA leads to a situation where, as long as the agreement is not resumed, the right of the residents of the Gaza Strip to enter and exit their territory continues to be violated. It should be noted that even when the AMA was being implemented, Israel closed Rafah Crossing frequently, so that a return to the previous state of affairs would not adequately protect the rights of Gaza Strip residents.

#### **Gisha and PHR-Israel call on Israel:**

- To immediately implement an arrangement to allow the free movement of residents of the Gaza Strip to other countries and to allow them to return home as they choose.

- If the right of the residents of the Gaza Strip to freedom of movement out of their territory cannot be realized through Rafah Crossing, for one reason or another, Israel must allow them such passage through the other crossings – whether by land through the Kerem Shalom or Erez crossings, or by air or sea from the Gaza Strip to the outside world.
- To allow the passage of patients into Israel for medical treatment, whether they are to receive treatment in Israeli hospitals or to pass through Israeli territory to the West Bank, east Jerusalem or Jordan.
- To allow the development of an independent and advanced health care system in Gaza, by allowing the passage of medical teams so that they can have contact with the Palestinian medical community in the West Bank and east Jerusalem and the international medical community, and by allowing in medical equipment and medications, according to the accepted standards of a developed health care system.

## Egypt

Egypt, which has the physical capacity to open Rafah Crossing, closes it as a result of pressure exerted on it by Israel and other parties and in order to promote its own interests, not to recognize the Hamas government in the Gaza Strip and not to allow a connection between Hamas and Egyptian entities that oppose the government. The closure of the Gaza Strip and the suffering of its residents create pressure on Egypt to open the crossing, and it does so for humanitarian purposes, sporadically and ad hoc, informing Israel of these openings. Those openings satisfy the travel needs of only a fraction of the residents of Gaza.

Meanwhile, Egypt is mediating between the parties in order to reach agreement on opening the crossing. Even in the absence of an agreement between the other parties, Egypt is obligated to open Rafah Crossing; that obligation derives from the actions of Israel, which is closing the other crossings to and from the Gaza Strip and uses Rafah Crossing to implement a policy of collective punishment. The Israeli closure of the Gaza Strip creates an obligation for Egypt to open Rafah by virtue of its obligation to respect the right of transfer of the residents of the blocked Gaza Strip, and by virtue of its obligation to act against the violation of the Fourth Geneva Convention by Israel. Likewise, Egypt is obligated to allow the passage of humanitarian aid from its territory into the Gaza Strip.



Even though Egypt is not a party to the AMA, it undertook to open Rafah Crossing only based on the terms of the agreement. Therefore, when the agreement was implemented, Egypt opened the border from its side every time Israel allowed the border to open on the Palestinian side. Since the implementation of the AMA was stopped in June 2007, Egypt has argued that as long as it is impossible to fulfill it, or to reach an alternative agreement between Israel and the PA, Egypt is unable to open Rafah Crossing for regular traffic. Egypt refuses to cooperate with Hamas to open the crossing regularly, but periodically opens the border on an ad hoc basis, to address the humanitarian needs of the population of the Gaza Strip. Egypt explains its refusal to reach a different agreement on opening Rafah with Hamas, since Hamas took over the Gaza Strip in June 2007, by the fact that it does not recognize Hamas as a legitimate government in the Gaza Strip. Egypt considers the PA as the recognized representative of the Palestinian people, and Israel as an occupying power in the Gaza Strip and the West Bank, whose permission is needed to determine border arrangements.

**Egypt refuses to cooperate with Hamas to open the crossing regularly, but periodically opens the border on an ad hoc basis, to address the humanitarian needs of the population of the Gaza Strip.**

As the representatives of Egypt stress themselves, the decision to close Rafah Crossing from the Egyptian side is Egypt's independent decision, stemming from its interests to leave the crossing closed and its perception of its international commitments, including its obligation to honor the AMA and the status of the PA and Israel in establishing arrangements regarding the Gaza Strip. Meanwhile, by its decision to maintain the closed status of the border, Egypt is responding to diplomatic or economic pressures from Israel; in at least one case Israel managed to cause the United States to impose economic sanctions on Egypt, in order to pressure it to take action against smuggling tunnels from Egypt to Gaza, tunnels that serve as a passage point for weapons materials and also for civilian commodities such as cheese, shoes and many other products, whose supply has been prevented through the other crossings. The pressures Israel exerts on Egypt to close the border are consistent with Egypt's own aversion to opening Rafah Crossing for regular traffic; thus, the combination of Egyptian and Israeli interests makes it possible to keep Rafah Crossing closed.

In order to analyze Egypt's responsibility, we must separate its ability to open Rafah Crossing from its obligation to do so. Egypt has the physical ability to open Rafah Crossing. Is it obligated to do so? Under normal circumstances, in accordance with its sovereign power to decide who and what shall enter its territory, Egypt does not have an obligation to allow passage through its border, except for its obligation to allow the passage of humanitarian aid for the residents of the Gaza Strip, who are affected by a case of armed conflict. However, Israel's actions create Egypt's obligation to open Rafah Crossing, for two reasons. First, the prohibition by Israel on travel by sea or air or via the land crossings into Israel have turned the Gaza Strip into a land-locked territory, whose residents have the right to demand passage through a neighboring country. Second, the closure of the Gaza Strip crossings by Israel as a means of pressure on the residents of the Gaza Strip as part of a policy of collective punishment constitutes a violation of the Fourth Geneva Convention. Egypt, like any country in the world, is obligated to act against a violation of the Convention and not to facilitate it by completing the closure, in the form of closing Rafah Crossing.

### **Obligations under the right of transfer**

As noted above, countries located next to a territory that has become land-locked are obligated under the custom of nations to allow passage for residents of the land-locked territory through their sovereign land. Since Israel has turned the Gaza Strip into a land-locked territory, Egypt – the Gaza Strip's only neighbor except Israel – is obligated to open Rafah Crossing to the residents of the Gaza Strip, for passage through Egypt.

### **The obligation to allow the passage of humanitarian consignments to a population affected by armed conflict**

Even though this report does not focus on the passage of goods, it is important to note that Egypt is obligated to allow the passage of humanitarian aid into the Gaza Strip from its territory.<sup>45</sup> This obligation is grounded in article 23 of the

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45. Of course, it is primarily Israel that is obligated to allow the passage of humanitarian consignments to the Gaza Strip, which it is doing on a very limited basis. See Gisha, "Gaza Closure Defined," supra note 44, p. 158.

Geneva Convention and article 70(2) of the First Protocol, requiring states to allow "rapid and unimpeded passage" of humanitarian consignments for the civilian population affected by a state of armed conflict.<sup>46</sup> This article of the Protocol forbids imposing restrictions on passage or impeding passage, except for technical restrictions related to the passage and measures to ensure that the distribution does not involve adverse distinction.<sup>47</sup> According to the interpretation of the ICRC, the obligation to allow humanitarian supplies applies to states that are parties to a conflict or to the Geneva Convention, and whose geographical location makes the shipment of humanitarian consignments through their territory "necessary, or even simply useful."<sup>48</sup>

Israel exercises exclusive control over the passage of goods into the Gaza Strip and drastically restricts such passage, creating a shortage in the Gaza Strip of vital products such as food, medicine and fuel. The geographic location of Egypt – next to the Gaza Strip – allows it to directly transfer to the Gaza Strip humanitarian aid, which the residents of Gaza need. Therefore Egypt is obligated by the First Protocol to allow the rapid entry of such aid into the Gaza Strip. By requiring that humanitarian consignments from its territory be routed through the Kerem Shalom crossing, Egypt is not fulfilling its obligation in that respect, because it knows that Israel limits the entrance of goods through Kerem Shalom Crossing, not because of security considerations, related to the need to inspect the consignment, but as part of deliberate restrictions on the entry of goods, imposed for the purpose of collective punishment.

### **The obligation to act against violations of the Fourth Geneva Convention and not to facilitate them**

The first article of the Fourth Geneva Convention states that "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances."<sup>49</sup> According to the ICRC interpretation, this article requires all states which are signatories to the convention both to respect

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46. Article 70(2) of Geneva Protocol I.

47. *Ibid*, article 70(3).

48. ICRC, Commentary on the Additional Protocol of June 8, 1977 to the Geneva Conventions of August 12, 1949 (Yves Sandoz, Christophe Swinarski, Bruno Zimmermann eds.) 1987, paras. 2824-2825, available at <http://www.icrc.org/IHL.nsf/WebList?ReadForm&id=470&t=com>

49. IV Geneva Convention, article 1.

its provisions and to ensure their respect by others. When a party to the convention is not fulfilling its undertakings, the other parties to the convention are required to act in order to change that situation and "do everything in their power to ensure that the humanitarian principles underlying the Convention are applied universally."<sup>50</sup>

Article 146 of the Fourth Geneva Convention states, among other things, "Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention [...]." The ICRC interpretation of the article states that the amendment covers "everything which can be done by a State to avoid acts contrary to the Convention being committed or repeated."<sup>51</sup>

**Israel has created Egypt's obligation to open the crossing, by virtue of Egypt's obligations to allow passage out of a land-locked territory, to avoid complicity in the violation of the Geneva Convention, and to allow the passage of humanitarian aid.**

In its opinion on the legality of building the separation wall in the West Bank

by Israel, the International Court of Justice relied on article 1 of the Fourth Geneva Convention in asserting that all parties to the Geneva Convention are obligated "to ensure compliance by Israel with international humanitarian law as embodied in that Convention."<sup>52</sup> The opinion further stated that "All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction."<sup>53</sup>

The UN International Law Commission, which is responsible for the codification and development of customary international law and enjoys broad international recognition, expanded on the prohibition against states helping other states

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50. ICRC, *Commentary on the IV Geneva Convention: Relative to the Protection of Civilian Persons in Time of War* (Jean Pictet ed.) 1958, p.16.

51. *Ibid.*, p. 594.

52. *Legal Consequences of a Wall in the Occupied Palestinian Territory*, 2004 I.C.J., 43 I.L.M. 1009, para. 163.

53. *Ibid.* In a series of conferences in 1999, 2002 and 2005, the U.N. tried to define the obligations of the countries party to the IV Geneva Convention, due to violations of the convention by Israel in the OPT. The conferences concluded without deciding on any action.

commit violations of international law. In the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, defined as acts contrary to the state's undertakings under international law, the commission decided that "A state which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if, a) That state does so with knowledge of the circumstances and b) The act would be intentionally wrongful if committed by that State."<sup>54</sup>

Egypt, which is a party to the Fourth Geneva Convention, is under a general obligation to prevent Israel from violating the regulations of the convention. Furthermore, Egypt is prohibited from aiding Israel in violating the provisions of the convention, including the prohibition on collective punishment; the duty to ensure the honor of protected persons; the obligation to facilitate normal public life; and the obligation to facilitate the supply of food and medicine.



Egypt, which controls the only passage out of the Gaza Strip that is not directly controlled by Israel, is obligated to respect the rights of the residents of the Gaza Strip to pass through its territory, because all other avenues have been blocked by Israel. The prohibition Israel imposed on sea and air traffic to and from the Gaza Strip, together with its closure of the land border between it and the Gaza Strip, have turned Gaza into a land-locked territory and increased the dependence of its residents on Rafah Crossing. Therefore, Israel has created Egypt's obligation to open the crossing, by virtue of Egypt's obligations to allow passage out of a land-locked territory, to avoid complicity in the violation of the Geneva Convention, and to allow the passage of humanitarian aid.

Egypt allows the residents of the Gaza Strip to pass through its territory on a limited and very partial basis, by opening Rafah Crossing sporadically and ad hoc, allowing the exit and entrance of a limited number of people. Those border

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54. Article 16 of the Draft Articles on States Responsibility, *supra* note 31. Official Records of the General Assembly, 56th Session, Supplement No. 10 (A/56/10), p. 47. Even though the regulations themselves do not have the status of binding law, reliance on them by international courts, including the International Court of Justice, shows that they have been accepted as advisory legal standards. See Stephen Mathias, *Current Developments: The 2007 Judicial Activity of the International Court of Justice*, 102 A.J.I.L. 588, 595 (2008).



openings address the need of only a fraction of the residents of the Gaza Strip to exit and enter. Meanwhile, Rafah remains closed to regular traffic, under circumstances that inherently involve the violation of the Geneva Convention by Israel, a violation which Egypt is obligated to do all it can to prevent. Since the ad hoc openings by Egypt do not meet the needs of the residents of Gaza, do not allow them normal public life and do not give adequate expression to their right to freedom of movement and other rights whose realization depends on freedom of movement, those openings do not remedy the violation of the Geneva Convention. Egypt is indeed mediating between the parties – Israel, the PA and Hamas – in an attempt to reach an agreement to open Rafah Crossing, and it has a clear interest in its opening for regular traffic; however, insofar as those efforts do not lead to opening the crossing, Egypt's responsibility increases to open the crossing even without the agreement of all of the parties, as part of its obligations to ensure the Geneva Convention is respected and to avoid complicity in its violation. That is because closing Rafah facilitates the perpetuation of the Israeli closure of the Gaza Strip.

In addition, because the passage of humanitarian provisions into the Gaza Strip is being restricted by Israel, and because Egypt's location next to the Gaza Strip makes the passage of humanitarian provisions from Egypt to the Gaza Strip vital for the residents of the Gaza Strip, Egypt is obligated to permit such passage. That obligation is being violated by Egypt, because it refuses, as a rule, to allow the passage of humanitarian consignments through Rafah and prevents aid organizations from using the crossing for that purpose. Egypt reroutes the passage of humanitarian aid to the Kerem Shalom Crossing, but the volume of goods allowed through Kerem Shalom is limited by Israel; thereby, Egypt de facto accepts the restrictions imposed by Israel on the entrance of humanitarian provisions, even though such restrictions stem from wrongful considerations of collective punishment.

Egypt prevents the adequate and regular exit and entry of residents of the Gaza Strip through Rafah Crossing and refuses to allow humanitarian provisions through it into the Gaza Strip, even though it is aware of the humanitarian distress from which the residents of the closed Gaza Strip are suffering. By refusing to open Rafah to humanitarian provisions and failing to do everything it can to prevent the closure of Gaza, Egypt is violating its international commitments.

**Gisha and PHR-Israel call on Egypt to open Rafah Crossing regularly for the passage of residents of the Gaza Strip through Egypt and to allow the sufficient passage of humanitarian provisions from its territory into the Gaza Strip.**

## **The Hamas regime in Gaza**

In contrast to the other parties – Israel, Egypt, and the PA – Hamas is the only party that wants Rafah Crossing to open immediately and fully. However, Hamas' objection to Israeli involvement in operating the Gaza Strip border crossings constitutes an obstacle to their opening. In addition, Hamas' control of the Palestinian side of Rafah Crossing prevents the Presidential Guard from operating there, causing the other parties to keep the crossing closed. Rafah Crossing is therefore an arena for the political struggle between Hamas, the PA and Israel, with the victims being the residents of the Gaza Strip, who are under direct Hamas control, and for whose rights it is responsible.

Even though it is not a state, Hamas is required to maintain the rights of the residents of Gaza in the areas it controls. Various UN parties have consistently reiterated that non-State parties have duties under the law of international human rights. As a joint report by four UN commissioners on Lebanon and Israel said:

"Although Hezbollah, a non-State actor, cannot become a party to these human rights treaties, it remains subject to the demand of the international community, first expressed in the Universal Declaration of Human Rights, that every organ of society respect and promote human rights"<sup>55</sup>

Moreover, the authors of the report stressed that:

"It is especially appropriate and feasible to call for an armed group to respect human rights when it 'exercises significant control over territory and population and has an identifiable political structure'"<sup>56</sup>

Since taking control of the government in Gaza in June 2007, Hamas has exercised broad ruling powers in the Gaza Strip, reaching every area of the population's daily life such as education, health, domestic security and sanitation, as well as controlling the Palestinian side of Rafah Crossing. By virtue of its control of the Gaza Strip in general and Rafah Crossing in particular, Hamas bears responsibility for the residents of the Gaza Strip and their rights, including their right to freedom of movement, inasmuch as that is under its control.

Likewise, as a party involved in an armed conflict, Hamas has obligations according to international humanitarian law, regardless of its legal status or the fact that it is not a party to international agreements. This is consistent with a clear trend in international law, to impose obligations on non-state parties who are parties to armed conflict. The Institute of International Law, for example,

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55. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston; the Special Rapporteur on the right of everybody to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt; the Representative of the Secretary General on human rights of internally displaced persons, Walter Kalin; and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, UN Doc. A/HRC/2/7, 2 October 2006, para. 19.

56. Ibid. Based on that principle the UN determined, for example, that the Liberation Tigers of Tamil Ealam (LTTE), a party to the armed conflict in Sri Lanka, is subject to the principles of human rights accepted by the international community. See Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mission to Sri Lanka, paras. 25-26 U.N. Doc. E/CN.4/2006/53/Add.5 (2006); the UN Security Council reached a similar conclusion regarding Afghanistan. See SC Resolution on the situation in Afghanistan S/RES/1214 (1998).



established in 1999 that even non-state parties involved in armed conflicts, whether internal or international, are subject to the obligations and principles of international humanitarian law, as well as the obligations of international human rights law.<sup>57</sup> Likewise, various UN Security Council resolutions regarding the conflict in the former Yugoslavia attributed significant obligations to various non-state parties who were involved in the conflict, including official and unofficial militias, as well as a number of political parties. Both parties were required, among other things, to enforce agreements, to allow humanitarian aid, to honor commitments, to stop violating international humanitarian law and to cooperate with those rendering humanitarian assistance.<sup>58</sup> We can conclude from the aforementioned that the obligations that apply to parties to armed conflict should be imposed on Hamas. Therefore, in addition to its obligations under human rights law, Hamas is also subject to the obligations of humanitarian law, especially those of a customary nature.

**Rafah Crossing is therefore used as a battleground in the conflict between Hamas and the PA, and the victims are the residents of the Gaza Strip, whom Hamas controls directly and for whose rights it is responsible.**

Even though Hamas professes willingness to negotiate an agreement in which the PA-run Presidential Guard would resume operating Rafah Crossing together with Hamas, as a matter of fact, in the absence of a power sharing agreement, the Hamas regime in Gaza does not permit the Presidential Guard to operate in the Gaza Strip or at Rafah Crossing. Simultaneously, Hamas objects to Israeli involvement in operating Rafah Crossing, as well as to the movement of residents between the Gaza Strip and Egypt through the Kerem Shalom crossing, which is under Israeli control. International law allows Israel, as an occupying power, to control the Gaza crossings, as long as it exercises that control in accordance with its obligations towards the residents of Gaza. Under the present circumstances,

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57. Institute of International Law, Berlin session, *The Application of International Humanitarian Law and Fundamental Human Rights in Armed Conflicts in which Non-State Entities are Parties*, 1999.

58. Theo C. Van Boven, "Non-State Actors; Introductory Comments," in *Human Rights from Exclusion to Inclusion; Principles and Practice: An Anthology from the Work of Theo van Boven* (Fons Coomans & others eds.) 2000, pp. 363-9, available at <http://www.uu.nl/uupublish/content/01vanBoven.pdf>

Hamas' objection to allowing Israeli involvement in operating the Gaza Strip border crossings constitutes an obstacle to their opening.

Hamas' declarations as to the degree of its willingness to allow the PA to operate Rafah Crossing are not unambiguous. In fact, Hamas' very takeover and control of Gaza prevent the activity of the PA Presidential Guard in the Gaza Strip, which in turn poses an obstacle to opening Rafah Crossing. That is because Israel, the PA, Egypt and the EU condition their consent to opening Rafah on the return of the Presidential Guard. Rafah Crossing is therefore used as a battleground in the conflict between Hamas and the PA, and the victims are the residents of the Gaza Strip, whom Hamas controls directly and for whose rights it is responsible.

**Gisha and PHR-Israel call on Hamas to make the rights of Gaza residents its top priority and not to allow disputes and power struggles over control of the crossing and arrangements for opening it to violate the right of the residents of the Gaza Strip to freedom of movement.**

## The Palestinian Authority

The Palestinian Authority continues to exercise a certain amount of control over the residents of the Gaza Strip and therefore also continues to bear responsibility for their rights. The power struggle between the PA and Hamas leads to the PA objecting to opening Rafah Crossing until the Presidential Guard resumes control over the Palestinian side of the crossing, which may be dependent on the reinstatement of PA control over the Gaza Strip. The refusal of the PA to compromise with Hamas over control of Rafah Crossing contributes to the perpetuation of its closed status, and thereby the PA is violating its commitment to guarantee the rights of the residents of the Gaza Strip.

All of the aforementioned regarding the obligations of non-state parties under international law applies to the PA, too, and with greater force. The PA has declared its commitment to complying with international law and the major human rights treaties both in its basic laws<sup>59</sup> and in international agreements,

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59. The Palestinian Basic Law is available at <http://www.palestinianbasiclaw.org/2002-basic-law>. The second chapter of the Basic Law (sections 9-33) regarding "Public Rights and Freedoms" promises a series of political, social and economic rights. Article 10, for example, states that "Basic human rights and freedoms shall be binding and respected," and that "The Palestinian National Authority shall work without delay to join regional and international declarations and covenants which protect human rights."

including the Oslo accords.<sup>60</sup> These declarations establish the obligation of the PA to respect and uphold the provisions of customary international law, in addition to the concrete provisions of the agreements to which it is a party.

Since June 2007, when Hamas took over the government of the Gaza Strip, the PA's direct control of the Gaza Strip has been minimal and marginal, compared to the de facto control of Hamas. However, PA officials continued to staff positions in the Gaza Strip necessary to coordinate crossing between the Gaza Strip and Israel. In addition, the Palestinian government in Ramallah exercises exclusive powers that apply to all Palestinian residents living in the West Bank and Gaza, such as issuing passports and identity cards, financing a substantial part of the public services, and representing the residents before international parties. Because the PA continues to exercise a certain degree of control over the residents of the Gaza Strip, it also continues to bear responsibility for their rights.

**Because Egypt and Israel condition their consent to open Rafah on the restoration of the Presidential Guard, the PA's refusal to compromise with Hamas over control of Rafah Crossing contributes to perpetuating its closure.**

The power struggles between the PA and Hamas have led the PA to object to opening Rafah Crossing until "the former situation is restored," namely, control of the Presidential Guard over the Palestinian side of the crossing, which may be dependent on PA control of the entire Gaza Strip. Because Egypt and Israel condition their consent to open Rafah on the restoration of the Presidential Guard, the PA's refusal to compromise with Hamas over control of Rafah Crossing contributes to perpetuating its closure. Those who pay the price are the residents of the Gaza Strip. The PA is therefore failing to fulfill its commitments under international law to safeguard the rights of Gaza residents, as well as obligations under its own laws, and mainly the civil rights detailed in the 2002 Basic Law,

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60. For example, in the Oslo accords the PA and Israel declared they would both exercise their powers while respecting international human rights and the rule of law; in 1995 the PA undertook to respect the provisions of the UN Charter, the principles of the UDHR and other rules from human rights law, as part of its membership in the Euro-Mediterranean Partnership, established in November 1995 with the adoption of the Barcelona Declaration (Barcelona Declaration and Euro-Mediterranean Partnership, 27-28 November 1995, available at <http://europa.eu/scadplus/leg/en/lvb/r15001.htm>)

including the right to freedom of movement (article 20); the right to education (article 24); the right to work (article 25); and the prohibition on illegal restrictions on freedoms (article 11).<sup>61</sup>

**Gisha and PHR-Israel call on the PA to take part in all initiatives to operate the Palestinian side of Rafah Crossing, in coordination with any relevant party, including Hamas, while making the rights of the residents of the Gaza Strip its top priority.**

## The European Union

The European Union, the presence of whose forces as monitors allowed the opening of Rafah Crossing as part of the AMA, does not have the ability to open the crossing itself; however, the EU chooses to continue its involvement in the agreement and to support its renewed implementation, under the terms set by the other parties. The EU's involvement in Rafah Crossing obligates it, under the Geneva Convention, to do everything it can to prevent the violations of the convention involved in the closure of Rafah. If its efforts do not put an end to the violation, the EU must renounce its involvement in the AMA so that its actions do not constitute recognition, tacit approval or complicity in an act of collective punishment, in violation of the Geneva Convention.

The EU took an active part in the negotiations that led to the AMA, and the presence of its forces at Rafah Crossing as a third party allowed the crossing to open during the period when the agreement was implemented. The EU does not have the ability to open Rafah Crossing itself, but when the AMA was being implemented, every time that Israel announced it was closing the crossing, the EU accepted that announcement and did not demand that Israel open the crossing. Since June 2007 and so long as Hamas controls Rafah Crossing, the EU has refused to station its monitoring force at the crossing. Meanwhile, the EU continues to keep the monitoring force in Israel, waiting for the reopening of the crossing. The EU states that it is making efforts to get the parties to agree to open the crossing.

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61. Palestinian Basic Law, supra note 59.

As stated above, the Fourth Geneva Convention requires every state-party to act to ensure that the other parties to the convention respect its provisions. Likewise, the Geneva Convention forbids any state-party from assisting other states in violating the convention, including the prohibition on collective punishment.<sup>62</sup> Thus, regarding the closure of Rafah Crossing to the passage of people under the AMA, the EU's obligations resemble Egypt's obligations: the EU must do everything it can to prevent the violations of the Fourth Geneva Convention inherent in the closure of Rafah Crossing.

**The EU's obligations resemble Egypt's obligations: the EU must do everything it can to prevent the violations of the Fourth Geneva Convention inherent in the closure of Rafah Crossing.**

According to the EU's position, the reopening of Rafah depends on political and military actions, such as a prisoner exchange between Hamas and Israel, the release of captured soldier Gilad Shalit, an agreement between the PA and Hamas and actions by Egypt to stop the arms smuggling from Egypt to the Gaza Strip through tunnels. The EU states that it is acting to facilitate efforts to bring about the fulfillment of those conditions and thereby allow the opening of Rafah Crossing. Thus, the EU is accepting the conditions for opening the crossing set by Israel, Egypt and the PA, at least some of which constitute pressure on the residents of Gaza with the aim of achieving political goals, as part of a policy of collective punishment.

As long as it continues its involvement in arrangements that allow opening Rafah Crossing, the EU, which is subject to international law and European Community law, is obligated to ascertain that its actions regarding the crossing do not provide de facto recognition of a situation that constitutes a violation of the Geneva Convention, and that they do not help perpetuate the results of the violation. Israel is refusing to participate in the AMA out of considerations of collective

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62. Articles 1 and 146 of the IV Geneva Convention.

punishment, and the EU must take action to prevent that violation as best it can. If the EU's efforts do not end the violation, the EU must renounce its involvement in the AMA, so that its actions do not constitute recognition, tacit approval or complicity in an act of collective punishment, in violation of the Geneva Convention.

**Gisha and PHR-Israel call on the EU to do everything it can to bring about the renewed and regular opening of Rafah Crossing or to bring about an alternative way of ensuring the regular and free movement in and out of Gaza for all residents. If that is not within the capacity of the EU, it must withdraw its involvement in the arrangements regarding Rafah Crossing and act vis-à-vis the other involved parties to ensure respect for the Fourth Geneva Convention and the rights of the residents of the Gaza Strip.**

## The United States

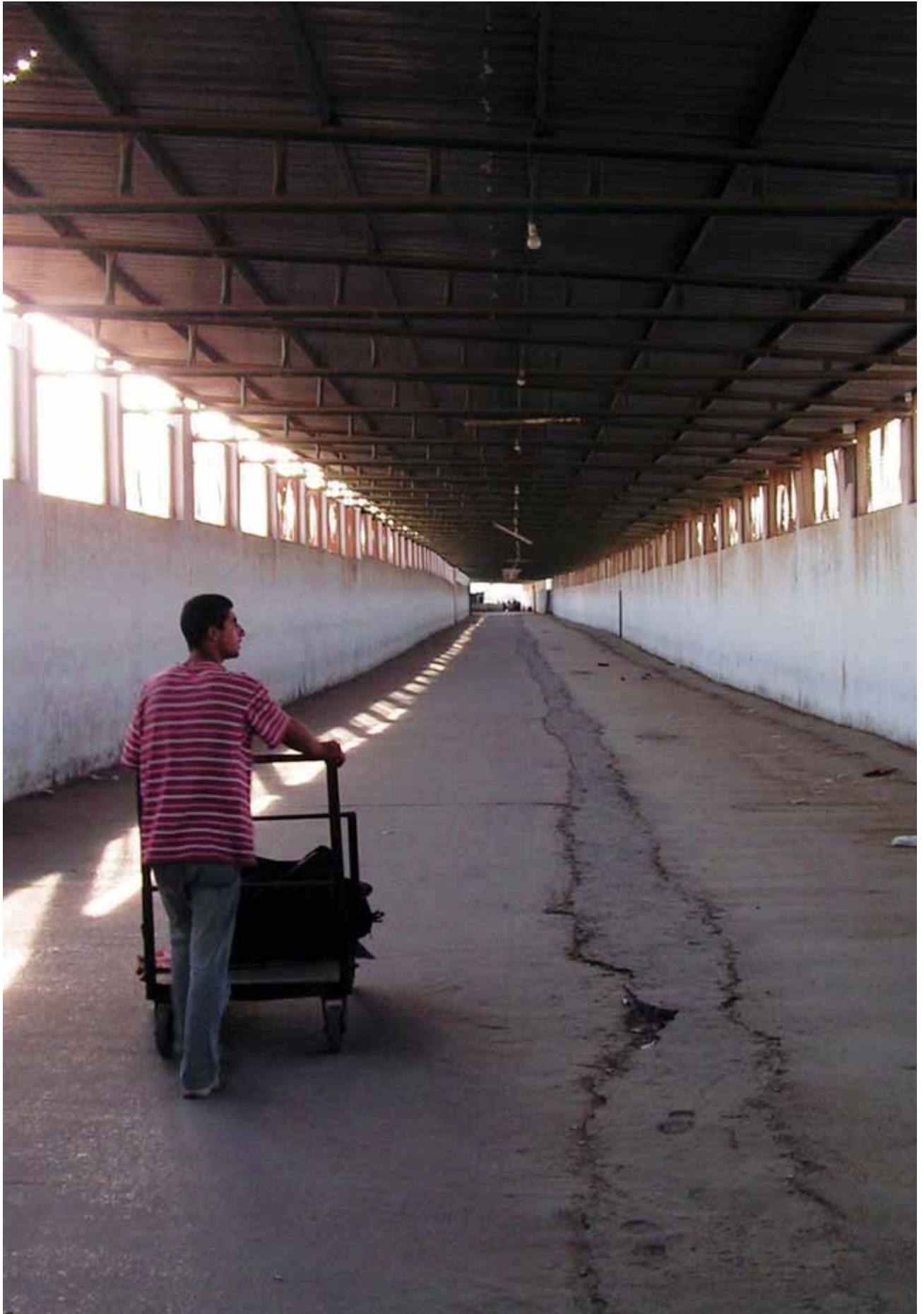
The United States chose to be involved in what happens on the Gaza-Egypt border by having placed the AMA under its auspices without insisting on its implementation and by exerting pressure on Egypt to prevent smuggling into the Gaza Strip through tunnels. At the same time, it has not taken action against the human rights violations caused by the closure of Rafah nor acted to find alternatives to facilitate freedom of movement for Gaza Strip residents. Its involvement in the border arrangements obligates the United States to act to promote the opening of Rafah Crossing or another crossing in and out of the Gaza Strip, and as part of its duty not to be party to a violation of the Geneva Convention.

The United States gave its auspices to the AMA without insisting it be implemented; exerts pressure on Egypt not to allow passage between Gaza and Egypt through alternative channels – i.e. through the tunnels; and objects to opening Rafah without the presence of PA representatives there. Meanwhile, the US is not known to be acting against the human rights violations caused to the residents of the Gaza Strip by closing Rafah or working for alternatives to facilitate freedom of movement for Gaza residents.

The United States is pressuring Egypt – including by threatening to withdraw financial aid – to prevent smuggling into the Gaza Strip through tunnels in the Rafah area by locating and destroying them. On the other hand, the United States is not demanding that Israel and Egypt allow the sufficient entrance of vital goods into the Gaza Strip, many of which find their way to the residents of Gaza only through tunnels. It should be made clear that the tunnel network does not constitute a solution for the provision of goods and for respecting the rights of the residents of the Gaza Strip to freedom of movement, and this report does not recommend the tunnels as an alternative to Rafah Crossing. However, the pressure that the United States is exerting on Egypt regarding the tunnels attests to the United States' involvement in the arrangements for passage between Gaza and Egypt, and especially in the arrangements upon which Israel insists.

That involvement by the US in the Gaza-Egypt border obligates it to act to open Rafah Crossing, by virtue of its obligation not to recognize any violation of the Geneva Convention, let alone to encourage it – a violation created by the closure of Rafah crossing as an act of collective punishment.

**Gisha and PHR-Israel call on the United States to do everything it can to bring about the renewed and regular opening of Rafah Crossing or to bring about an alternative way of ensuring the regular and free movement in and out of Gaza for all residents. The United States must act to ensure that all involved parties respect the Fourth Geneva Convention and the rights of the residents of the Gaza Strip.**





## Conclusion

On December 27, 2008 Israel launched a military offensive against the Gaza Strip, whose declared goal was to stop the firing of rockets from the Gaza Strip at Israeli civilian towns. Israel attacked the Gaza Strip for three weeks, using bombardment from the air, sea and land. As a result of the attacks, 1,440 Palestinians were killed, including 431 children and 114 women, and 5,380 Palestinians were injured, including 1,872 children and 800 women. In Israel during that time three civilians and one soldier were killed, and 182 civilians were injured, as a result of rocket fire by Palestinians from the Gaza Strip. As part of the offensive, ten Israeli soldiers were killed, and 340 were wounded.<sup>1</sup>

The Israeli assaults severely damaged civilian targets in the Gaza Strip: as a result of the bombardments, more than 4,000 homes were completely destroyed and 17,000 were partially destroyed, leaving tens of thousands of residents without shelter. Likewise, more than 50 UN facilities were hit, as were eight hospitals and 26 clinics, schools and universities, government offices, factories, workshops and commercial facilities, water, sewage and electricity facilities, agricultural fields and roads. The direct economic damage of the assaults is estimated at \$2 billion.<sup>2</sup>

Beyond the grave loss of life, limb and property, the massive Israeli offensive against the Gaza Strip seriously damaged the civilian infrastructure in the Gaza Strip, which had already been on the brink of collapse.

The Israeli attack on the Gaza Strip was against an area with one of the highest population densities in the world, without shelters or alarm systems, and suffering from a prolonged closure. During the fighting, thousands of families received

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1. OCHA, "Field Update on Gaza from the Humanitarian Coordinator," 3-5 Feb 2009, available at [http://www.ochaopt.org/documents/ocha\\_opt\\_gaza\\_humanitarian\\_situation\\_report\\_2009\\_02\\_05\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_gaza_humanitarian_situation_report_2009_02_05_english.pdf). The figures on the number of Palestinians killed or wounded as civilians on involved in the fighting are not available yet.
  2. OCHA, "Protection of Civilians Weekly Report," 16-20 Jan 2009. Supra note 48, p. 52.

phone calls to their homes in which a recorded message from the Israeli army warned them they could be harmed if they stayed in their homes. Those people, and the other residents under attack, did not have a safe place to flee, because the fighting took place throughout the Gaza Strip, whose borders remained closed. In addition, Gaza residents could not receive sufficient aid, food or medical equipment during the attacks. This experience illustrated the desperate need of the residents of the Gaza Strip for open passage to the outside world and the urgency of finding a solution to the closed Rafah Crossing.

Talks are presently under way between the various parties to find a future solution for Rafah Crossing. Gisha and PHR-Israel call on all the involved parties to urgently find a solution to allow regular passage between the Gaza Strip and Egypt, to ensure the needs of the residents and respect their rights, including the right to freedom of movement. Those rights should be at the core of any arrangement made. In reaching an agreement, the parties should take past experience into account and establish mechanisms to prevent the frequent closure of Rafah Crossing, as occurred during the implementation of the AMA beginning in June 2006.

The reopening of Rafah Crossing and the rest of Gaza's crossings to permanent and regular traffic is vital to restore normal life to the residents of the Gaza Strip, rebuild and develop the economy, and build an open, educated and thriving society.

**APPENDIX**



## Appendix 1

### Letter from Israel Defense Ministry

(The letter was translated from Hebrew)



The State of Israel

A handwritten signature in black ink, appearing to be in Hebrew, located to the right of the State of Israel emblem.

Ministry of Defense  
The Unit for Public Inquiries and Complaints  
Date: 20 Cheshvan, 5769  
November 18, 2008  
Reference: PZ-13684-75H3

To:

**Gisha – Legal Center for Freedom of Movement (registered association)**

For Ms. Sari Bashi  
POB 20111  
Tel Aviv-Jaffa 61200

Dear Mdm.,

**Re: response to questions on political issues regarding  
arrangements made at the Rafah Crossing**

Your letter of October 27, 2008

My letter of November 6, 2008 (identical reference)

Subsequent to my referenced letter and after studying your questions we are honored to reply as follows:

1. The Rafah Crossing served as a passage for entry from Egypt into the Gaza Strip and was managed under the supervision of a "special task force" of the European Union, EUBAM.

2. As part of the operation of the border crossing the Palestinians were supposed to act in accordance with the directives of EUBAM, which tried to enforce "Western" working procedures regarding inspection, documentation, customs, storage of items for inspection and so forth.
3. The activity of EUBAM was coordinated and accepted by all parties including the PA, Egypt, the US and Israel.
4. Agreement between all of the parties regarding the operation of the border crossing – Egypt, the US and the PA – was based on the assumption that the PA controlled the Gaza Strip.
5. Once Hamas took over the Gaza Strip it was no longer possible to implement the understandings, and nothing could be done but to wait for a situation in which a coordinated and identical position was reached between the relevant parties.
6. It is important to note that the crossing is periodically opened for various activities which are essentially humanitarian, and this is under the responsibility of Egypt.

**Sincerely,**

Shai Lev

Head of Public Inquiries Department

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הקריה, תל-אביב 64734. טלפון: 03-6975540, פקסי: 03-6976711, דואר אלקטרוני: [pniot@mod.gov.il](mailto:pniot@mod.gov.il)  
מענה טלפוני בימים ראשון עד חמישי, בשעות 08:00 עד 15:30  
מידע אודותינו מפורסם באתר האינטרנט של משרד הביטחון, בכתובת [www.mod.gov.il](http://www.mod.gov.il) / פניות הציבור

## Palestinian Authority Official Response

**Palestine Liberation Organization**  
 Palestine National Authority  
 Office of the President



منظمة التحرير الفلسطينية  
 السلطة الوطنية الفلسطينية  
 الرئاسة  
 ديوان الرئاسة

#### Official Response to GISHA Report "Who Holds the Keys to Rafah Crossing?"

The Palestine Liberation Organization (PLO) and the Palestinian National Authority (PNA) welcome, in principle, every effort to raise public awareness of the suffering of the Palestinian civilian population resulting from Israel's occupation of Gaza and the West Bank, including East Jerusalem.

However, it is our view that this Report misrepresents the PLO's and PNA's position as to the opening of the Rafah crossing, and bases its conclusions on erroneous and insufficient information derived from unauthorized sources. This is wholly regrettable, as authorized representatives of the PLO responded positively to queries by the authors, who were provided with accurate information on this issue.

Our official position has always been, and continues to be, that all Gaza crossings with Israel and Egypt should be opened immediately and operated on a continuous basis for the normal movement of people and goods (import and exports) in accordance with international laws and standards. Furthermore, we have consistently opposed the use of Kerem Shalom crossing for anything other than commercial imports from and through Egypt on a temporary basis as defined in the 2005 *Agreement of Movement and Access* and associated annexes.

Moreover, the PLO and the PNA have made every effort to open and operate Rafah crossing in accordance with international standards and the applicable agreements for the benefit of the Palestinian people living in Gaza, as evidenced by the many reports of the European Union Border Assistance Mission. Even after June 2007, the PLO and the PNA made good faith efforts to get Israel to reopen Rafah crossing.

This official position was clearly conveyed to GISHA representatives by authorized representatives of the PLO Negotiations Affairs Department on behalf of the Chairman of the PLO and President of the PNA, and of the Prime Minister of the PNA, in a meeting that took place on 29 July 2008. Yet, the Report fails to reflect this information.





While it may be that the authors sought to prepare a “balanced” report, the fact of the matter is that it was Israel who unilaterally imposed and maintains the closure of Rafah crossing through the threat of force. Past experiences, reaffirmed by Israel’s recent aggression on Gaza, confirm the credibility of the Israeli threats to bomb Rafah crossing. Therefore, responsibility for closing the crossing falls squarely upon the Israeli government.

We reiterate our call for the immediate restoration of the normal movement of Palestinian people and goods through the immediate and full implementation of the AMA, including:

- opening and operating Rafah crossing for the movement of both passengers and cargo in accordance with international standards;
- continuous and unfettered operation of all Gaza crossings with Israel;
- free movement of people and goods between Gaza and the West Bank;
- free movement of people and goods within the West Bank; and
- commencing construction of the Gaza seaport, and repair and operation of Gaza airport.

Dr. Rafiq Husseini  
Chief of staff







**“The purpose of this report is to dispel the haze and lack of transparency, and to answer the question: who is closing Rafah Crossing, and who is therefore responsible for the resulting violation of the rights of the residents of the Gaza Strip?”**

**Gisha – Legal Center for Freedom of Movement** is an Israeli human rights organization, founded in 2005, whose goal is to protect the freedom of movement of Palestinian residents of the West Bank and the Gaza Strip. Gisha, whose name means both "access" and "approach," uses legal assistance and public advocacy to protect that right, which is guaranteed by international and Israeli law. Because freedom of movement is a precondition for exercising other basic rights, Gisha's work has a multiplier effect in helping residents of the occupied territories realize their rights to education, livelihood, medical care and family unity.

**[www.gisha.org](http://www.gisha.org)**

**Physicians for Human Rights-Israel (PHR-Israel)** believes that every person has the right to health in its widest possible sense, as defined by the principles of human rights, social justice and medical ethics. It is the responsibility of the State of Israel to ensure the fulfillment of this right in an egalitarian manner for all populations under its legal or effective control: residents of Israel who are eligible for National Health Insurance, Bedouin residents of unrecognized villages in the Negev desert, prisoners and detainees, migrant workers, refugees and asylum seekers, and Palestinian residents of the occupied Palestinian territory.

**[www.phr.org.il](http://www.phr.org.il)**