



**המוקד להגנת הפרט**  
**HAMOKED** Center for the Defence of the Individual  
המוקד - مركز الدفاع عن الفرد

בפרשם



## One Big Prison

Freedom of Movement to and from the  
Gaza Strip on the Eve of the Disengagement Plan

March 2005



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Cover photo: Palestinians wait for relatives at Rafah Crossing (Muhammad Sallem, Reuters)

ISSN 0793-520X

**B'TSELEM - The Israeli Center for Human Rights in the Occupied Territories** was founded in 1989 by a group of lawyers, authors, academics, journalists, and Knesset members. B'Tselem documents human rights abuses in the Occupied Territories and brings them to the attention of policymakers and the general public. Its data are based on independent fieldwork and research, official sources, the media, and data from Palestinian and Israeli human rights organizations.

**HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger** is an Israeli human rights organization founded in 1988 against the backdrop of the first intifada. HaMoked is designed to guard the rights of Palestinians, residents of the Occupied Territories, whose liberties are violated as a result of Israel's policies.

## Introduction

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“The only thing missing in Gaza is a morning line-up,” said Abu Majid, who spent ten years in Israeli prisons, to Israeli journalist Amira Hass in 1996.<sup>1</sup> This sarcastic comment expressed the frustration of Gaza residents that results from Israel’s rigid policy of closure on the Gaza Strip following the signing of the Oslo Agreements. The gap between the metaphor of the Gaza Strip as a prison and the reality in which Gazans live has rapidly shrunk since the outbreak of the intifada in September 2000 and the imposition of even harsher restrictions on movement. The shrinking of this gap is the subject of this report.

Israel’s current policy on access into and out of the Gaza Strip developed gradually during the 1990s. The main component is the “general closure” that was imposed in 1993 on the Occupied Territories and has remained in effect ever since. Every Palestinian wanting to enter Israel, including those wanting to travel between the Gaza Strip and the West Bank, needs an individual permit. In 1995, about the time of the Israeli military’s redeployment in the Gaza Strip pursuant to the Oslo Agreements, Israel built a perimeter fence, encircling the Gaza Strip and separating it from Israel. This barrier, which runs along the Green Line, consists of an electronic fence, patrol roads alongside the fence, and observation posts. As a result of the perimeter fence, there is no way to escape the permit regime in the Gaza Strip, unlike the situation in the West Bank.

Since the beginning of the occupation, Palestinians traveling from the Gaza Strip to Egypt through the Rafah crossing have needed a permit from Israel. During the first intifada (1987-1993), Israel frequently took advantage of its ability to prevent Palestinians from leaving the Gaza Strip to go abroad. Since the perimeter fence was built, Palestinians have been unable to enter or leave the Gaza Strip without Israel’s approval.

The primary body charged with administering the permit system is the Israeli District Coordination Office (DCO), which was established pursuant to the interim agreement (Oslo II) and inherited a few of the major functions of the Civil Administration. The Israeli DCO in the Gaza Strip is located inside the closed army compound in the industrial zone at the Erez checkpoint. Unlike the Civil Administration, the DCO does not have direct contact with the Palestinian population. It conducts its business through the Palestinian DCO, which acts as a kind of broker in permit matters. Yet this change was only a procedural one. The extent of Israel’s control over the movement of people and goods to and from the Gaza Strip remained the same following the Oslo Agreements and the establishment of the Palestinian Authority. The permit regime governing Palestinian movement is one of the main components of Israeli control over Palestinians since the beginning of the occupation.

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1. Amira Hass, *Drinking the Sea at Gaza* (Tel Aviv: Hakibbutz Hameuchad, 1996) 255.

The demographic and economic features of the Gaza Strip, some of which have characterized the area since the 1948 war, have increased the feeling of “incarceration” resulting from Israel’s restrictions on movement. First and foremost, the Gaza Strip is one of the most densely populated areas on earth, with more than 1.4 million people living on 365 square kilometers of land, which translates into 4,000 people per square kilometer. This figure is somewhat misleading because Israel has allocated fifteen percent of the Gaza Strip (fifty-four square kilometers) for the use of 7,800 settlers; this area is not accessible to the Palestinian population. Other areas inside Gaza are under army control. Therefore, in practice, the population density among Palestinians is at least 4,700 people per square kilometer. In comparison, the population density in Israel is 305 people per square kilometer. More than sixty percent of the Palestinians in the Gaza Strip are refugees, many of whom live in eight refugee camps, where the population density is even higher. The population density is accompanied by a severe lack of infrastructure and public services, and by disgraceful levels of unemployment and poverty – thirty-five and seventy-seven percent, respectively, as of the end of 2004.<sup>2</sup>

On 8 February 2005, a summit was held in Sharm el-Sheikh between the president of the Palestinian Authority, Mahmud Abbas, and Israel’s prime minister, Ariel Sharon. At the end of the meeting, the two leaders declared a cease-fire. Since then, the violence on both sides has diminished, as is evident from the

sharp drop in the number of people who have been killed and wounded, both Palestinian and Israeli. Following the Abbas-Sharon meeting, Israel decided to take a number of measures to significantly improve the human rights situation of Palestinians, such as releasing administrative detainees, allowing Palestinians who had been expelled to return to the West Bank, ceasing punitive house demolitions, and refraining from carrying out assassinations. However, these measures had only a minimal affect on the subject of this report – freedom of movement of Palestinians and goods to and from Gaza.

On 20 February 2005, the Israeli government obtained the necessary approval to carry out the Disengagement Plan, which calls for the Israeli military to leave the Gaza Strip and for the evacuation of all the Israeli settlements in Gaza. However, even after the plan is implemented, Israel will continue to maintain absolute control over the land borders of the Gaza Strip, and of the Gaza Strip’s air space and territorial waters. As a result, even after disengagement, Israel will control the movement of people and goods to and from the Gaza Strip. Despite this, the government expressly states that disengagement will “invalidate the claims against Israel regarding its responsibility for the Palestinians in the Gaza Strip.”<sup>3</sup>

This report has a dual purpose. First, the report documents the grave and prolonged violation of human rights resulting from Israel’s control of the movement of people and goods between the Gaza Strip and the rest of the world, and

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2. The population, area, and economic statistics are taken from the Website of the Palestinian Central Bureau of Statistics, and are available at [www.pcbs.org](http://www.pcbs.org).

3. Government Decision 1996, 6 June 2004, “Amended Disengagement Plan – Continuation of Discussion,” Section 1(f).

second, it challenges Israel's attempt to avoid responsibility for the population of the Gaza Strip following disengagement.

The first three chapters of the report discuss Israel's policy regarding the movement of people between the Gaza Strip and the West Bank, Israel (excluding the movement of workers), and Egypt, and analyzes the policy in

the framework of international law. The fourth chapter deals with the two principal factors that impede economic activity in the Gaza Strip – the restrictions on foreign trade and entry into Israel for work. The fifth chapter examines the question of Israel's legal responsibility for ensuring the human rights of residents of the Gaza Strip following disengagement.

# Chapter One

## Are the West Bank and Gaza Strip really “a single territorial unit”?

Despite the fifty kilometers that separate them, the West Bank and the Gaza Strip are in many important ways a single political unit. This is primarily by virtue of the common national identity of the residents (excluding, of course, the Israeli settlers). This collective consciousness has grown since 1967, when Israel occupied both of these areas and subsequently administered them in a similar and coordinated manner. Some twenty-five years later, as part of the peace process, the two sides formally recognized the two areas as a single territorial unit, in which the Palestinian people would realize their right to self-determination.

But more than consciousness and declarations are involved in the West Bank and Gaza Strip being one territorial unit. Since the beginning of the occupation, the two areas have undergone a rapid integration in all aspects of life, including family and social ties, education, culture, and economy. Upon the establishment of the Palestinian Authority in 1994, the integration increased, with the PA being responsible for both areas and administering them as one political-administrative unit. The increasing integration and interdependence made the Palestinian population particularly vulnerable to Israel's policy on movement across its territory to travel between the West Bank and the Gaza Strip.

### 1. Historical background

Shortly after the 1967 war, the Israeli army issued two orders declaring the Gaza Strip and the West Bank closed military areas.<sup>4</sup> The closed-area status changed in 1972, with the issuance of orders declaring “a general exit permit” from the two areas.<sup>5</sup> As a result, residents of the Occupied Territories were allowed to enter Israel almost without restriction, including for the purpose of moving between the Gaza Strip and the West Bank. Israel also allowed Palestinians to change their residence from one area to the other with relative ease, provided they changed their address in the population registry kept by the Civil Administration.

About eighteen months after the outbreak of the first intifada, a drastic change began in Israel's policy regarding freedom of movement. In June 1989, Israel instituted the use of magnetic cards in the Gaza Strip. These cards, which were issued to residents by the Civil Administration in the Gaza Strip following General Security Service approval, contained encoded information about the holder of the card. Only Palestinians who had magnetic cards were allowed to enter Israel in order to cross to the West Bank. The Civil Administration refused to issue magnetic cards to former prisoners or administrative detainees, or even Palestinians who had been arrested and later released without being charged. In

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4. Order Closing Area (Gaza Strip and Northern Sinai) (No. 1), 5727 – 1967; Order Regarding Closing of Territory (West Bank Area) (No. 34), 5727 – 1967.

5. General Exit Permit (No. 5) (Judea and Samaria), 5732 – 1972. A similar permit was issued for the Gaza Strip.

the West Bank, Israel issued green ID cards, which could easily be distinguished from the standard orange ID cards used at the time, to Palestinians with a “security record” and were thus forbidden to leave the West Bank.

In January 1991, during the Gulf War, Israel cancelled the general exit permit from 1972, and any resident of the Occupied Territories who wanted to enter Israel needed to obtain an individual exit permit.<sup>6</sup> This did not have an immediate effect on the residents. Initially, Israel issued many permits for relatively long periods, enabling most Palestinians to continue entering Israel as a matter of routine. However, Israel tightened its policy as time passed, and fewer and fewer Palestinians received permits.

The cancellation of the general exit permit marked the beginning of the closure policy. In March 1993, after Palestinians killed nine Israeli civilians and six security forces, Israel imposed a “general closure” on the Occupied Territories, which still remains in place. The imposition of the closure was intended to institutionalize the individual-permit policy that Israel instituted in 1991.

The closure also made it more difficult for Palestinians to change their residence from one area to the other. Changing an address listed in ID cards became a long and complicated procedure, and many requests for address changes were rejected.

In the period since 1993, in addition to the “general closure,” Israel has occasionally imposed a comprehensive closure, primarily after an attack that left many casualties, following intelligence warnings of intended attacks, and on Israeli holidays. During a comprehensive closure, all permits are automatically cancelled, and requests for permits are not accepted.

The peace process that began in September 1993 with the signing of the Declaration of Principles by Israel and the PLO brought expectations that freedom of movement between the Gaza Strip and the West Bank would improve. The hope for improvement was rooted in the statement in the Declaration of Principles that, “The two sides view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which will be preserved during the interim period.”<sup>7</sup>

The Cairo Agreement, of 1994, and the Interim Agreement, signed in 1995, state that in light of the geographic separation between the West Bank and the Gaza Strip and in order to connect them, there shall be a “safe passage” route across Israeli territory, along which Palestinians could travel between the West Bank and the Gaza Strip.<sup>8</sup> The Interim Agreement also states that the safe-passage route will include two separate roads that connect the northern West Bank and the southern Gaza Strip.

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6. Order Regarding Suspension of the General Exit Permit (No. 5) (Temporary Order) (Judea and Samaria), 5751 – 1991. A similar order was issued for the Gaza Strip.

7. Declaration of Principles on Interim Self-Government Arrangements, signed in Washington on 13 September 1993, Article 4. Similar wording is found in the Cairo Agreement (Oslo I) and the Interim Agreement (Oslo II).

8. The Agreement on the Gaza Strip and the Jericho Area (Oslo I), signed in Cairo on 4 May 1994, Annex I, Article 9; the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II), signed in Washington on 28 September 1995, Annex I, Article 10.

In October 1999, following a delay of several years, the southern safe-passage route was opened.<sup>9</sup> This road made it somewhat easier for Palestinians to move between the West Bank and the Gaza Strip. However, they still had to obtain transit permits from Israel to travel along the safe-passage route, and to undergo strict security checks before passing the exit checkpoints. Many residents were allowed to use the safe-passage route only on a special bus with an army escort. Thousands of others were classified as “absolutely forbidden” and were not allowed to use the safe-passage route even on special buses with army escort.<sup>10</sup> The safe-passage route operated for less than one year. With the outbreak of the al-Aqsa intifada in September 2000, Israel closed the safe-passage route, and it has remained closed ever since.

The Interim Agreement also stated that, “Powers and responsibilities in the sphere of population registry and documentation in the West Bank and the Gaza Strip will be transferred from the military government and its Civil Administration to the Palestinian side.”<sup>11</sup> The Palestinian side was obligated to *inform* the Israeli side of “every change in its population registry, including, inter alia, any change in the place of residence of any resident.”<sup>12</sup> In practice, Israel only enabled the Palestinian Authority to serve as a conduit for change of residence. Israel continued to

approve or reject these requests, just as it had prior to the signing of the Interim Agreement.

## **2. Separation of the West Bank and the Gaza Strip since the outbreak of the intifada**

The closing of the safe-passage route at the end of September 2000 marked the beginning of a separation of the Gaza Strip and the West Bank that was unprecedented during the course of Israel’s occupation. Freedom of movement became a rarely-granted privilege. Israel’s policy for granting travel permits has been arbitrary and lacks transparency. It has harmed all aspects of life in which there is a connection and mutual dependence between residents of the two areas, including family life, education, and access to medical treatment.

Palestinians wanting to obtain a transit permit to travel from the Gaza Strip to the West Bank, or vice versa, must submit a request at the Palestinian DCO in the area in which they reside, by filling out a form with their personal information and the reason they seek the permit. Along with the form, they need to attach a copy of their ID card and magnetic card (if they have one), and documents verifying their stated reason for making the application. The Palestinian DCO forwards the request to an Israeli DCO. In the West Bank, there are nine Israeli DCOs; in the Gaza Strip, there is only one, which is located at the

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9. Consent for the opening was obtained as part of the Wye Agreement, signed in October 1998.

10. According to PA figures, between October 1999 and May 2000, 35,876 requests to use the safe-passage route were submitted; 27,612 requests were approved, 1,918 were given permission to travel on the special buses, and 6,346 requests were rejected.

11. Interim Agreement (Oslo II), Annex III, Article 28 (1) (Protocol Concerning Civil Affairs).

12. Interim Agreement, Annex III, Article 28 (10).

Erez checkpoint.<sup>13</sup> Officers at the Israeli DCO examine the requests and attach documents and forward their decision to the Palestinian DCO within a period of seven to ten days.

Notice of denial of a request for a travel permit is given by returning the original request form, stamped with the word “Rejected,” to the Palestinian DCO. No reason for the rejection is given. Israeli DCO officials generally inform their Palestinian counterparts, either orally or by means of a handwritten note on the request form, of the general category of the rejection: security reasons, failure to prove the reason for which the permit is requested, failure to prove

the family relationship of the person whom the applicant wishes to visit, or “comprehensive closure.” The first category is the most common, and stems from the determination by the GSS that a person is rejected for security reasons. According to Brig. Gen. Ilan Paz, head of the Civil Administration in the West Bank, DCO officials do not know the reason for the security rejection and are not authorized to override the decision. The only way a Palestinian can change the decision, according to Paz, is to meet with a GSS agent.<sup>14</sup> GSS agents have always used such meetings to pressure Palestinians to collaborate.<sup>15</sup>



Israeli Arabs wait to be checked by Israeli soldiers at Erez Crossing on their return to Israel after visiting relatives in the Gaza Strip (Nir Elias, Reuters)

13. The Israeli DCOs in the West Bank are located in the following locations: near Sallem, in the northwest corner of the West Bank; near Huwarra, south of Nablus; south of Tulkarm; at the Qedumim settlement; at the Civil Administration office at the Beit El settlement; near the Ma’aleh Adumim settlement; near the Etzion intersection, south of Jerusalem; at Mt. Manuah, south of Hebron; and near the Vered Jericho settlement, southwest of Jericho.

14. Paz provided this information at a meeting B’Tselem held with leading Civil Administration officials on 20 June 2004.

15. See B’Tselem, *Forbidden Roads: The Discriminatory West Bank Road Regime*, August 2004, Chapter 3; B’Tselem, *Builders of Zion: Human Rights Violations of Palestinians from the Occupied Territories Working in Israel and the Settlements*, September 1999, Chapter 4.

## **Travel between the Gaza Strip and the West Bank other than through Israel**

Palestinians wanting to go from the Gaza Strip to the West Bank, or vice versa, can in theory do so without crossing through Israel. Residents of the Gaza Strip can enter Egypt through the Rafah crossing, go by taxi to the airport in el-Arish or Cairo, and fly to Amman, in Jordan. From there, they can take a taxi to the Allenby Bridge, and then go to anywhere in the West Bank. Usually though, this possibility exists only on paper.

First, in order for a Palestinian to travel via such a route, Israel must agree. All residents of the West Bank and the Gaza Strip who want to leave these areas to go to Egypt or Jordan require Israeli approval. For the tens of thousands of Palestinians who are denied permission to go abroad, either for individual reasons or because they belong to a certain category (a certain age group or family status, for example), this option is not available.<sup>16</sup> Another stumbling block is the requirement that a resident of the Gaza Strip wanting to enter the West Bank have an entry permit, issued by the Israeli DCO in the Gaza Strip, to cross the Allenby Bridge into the West Bank.

Second, Egyptian and Jordanian authorities must also grant approval. Residents of the Gaza Strip who want to enter Egypt to board a plane to go to another country, including Jordan, do not need a special visa, but they have to provide a reason for the travel and show relevant documentation (such as a plane ticket, appointment for surgery, or a letter of admission to a university).

There have been times when Egyptian officials at the Rafah crossing have turned back Palestinians from the Gaza Strip because they failed to provide sufficient proof as to why they wanted to travel abroad. Palestinians from the Gaza Strip also need a visa to enter Jordan, which is issued at the Jordanian consulate in Gaza City. Residents of the West Bank do not require a visa to enter Jordan, but do have to obtain a “lack of objection” document, which the Jordanian authorities in the West Bank provide.

Third, it is much more expensive to travel between the West Bank and the Gaza Strip via Egypt than it is to go through Israel. The costs include airfare from el-Arish to Amman and back, taxi fare between the crossing points and the airports, the cost of an entry visa or “lack of objection” document, airport tax for leaving via the Rafah crossing or Allenby Bridge, and the living expenses incurred along the route. In all, the travel costs come to between NIS 1,200-2,000 per person. For many residents of the Occupied Territories, these costs render this option unrealistic.

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16. For further discussion on this point, see Chapter Two.

According to the IDF Spokesperson, Israel allows Palestinians to pass between the West Bank and the Gaza Strip “in humanitarian cases, subject to the closure regulations that change from time to time.”<sup>17</sup> However, the defense establishment has consistently refused to define the kinds of cases that are considered “humanitarian” or what considerations underlie this classification. This lack of transparency readily leads to arbitrary decisions.

One example of the arbitrary nature of the decisions is the case of Ibrahim Musa, a West Bank resident, whom Israel allowed to pass through Israel in February 2003 so that he could celebrate the ‘Eid el-Adha (Feast of the Sacrifice) with his family in the Gaza Strip. However, Israel refused to let Musa visit his mother when she became sick and was hospitalized. When she died, his request for permission to go to the Gaza Strip to attend her funeral was denied. In his testimony to B’Tselem, Musa said:

I was born in Rafah in 1957. In October 1990, I was offered a job at Bir Zeit University, and I moved to the Ramallah area. A year later, I married Munira Abu Smaleh. She, too, was from the Gaza Strip. I brought her to Ramallah. The rest of my family remained in Gaza... Since the beginning of the al-Aqsa intifada, I submitted numerous requests to visit Gaza, but all of them were rejected... In 2002, my eighty-year-old mother fell ill and was hospitalized. I attached medical reports to my request to enter Gaza, but I was not given a permit. To my surprise, in February 2003, I was given

a permit for the ‘Eid el-Adha holiday. That was the only time in the last four years that I managed to get to Gaza. Ten days ago, my mother’s condition deteriorated again. She was hospitalized, and I wanted to visit her. I spoke with an acquaintance at the Palestinian DCO and asked him to try to get me a permit. He promised to contact the Israeli DCO and help me. Later, he told me that there was no chance I would get a permit because of the curfew on Gaza. He said that I shouldn’t even submit the request, so I didn’t. Three days later, on 7 October 2004, my mother passed away. I called the Palestinian DCO, and this time I submitted a request and attached the death certificate. The request was rejected without explanation. As a result, I was unable to go to my mother’s funeral and pay my last respects. The separation from our family and friends in the Gaza Strip profoundly affects my wife and me... I feel as if I am under house arrest, which causes me pain and makes me bitter.<sup>18</sup>

HaMoked: Center for the Defence of the Individual made several requests to the defense establishment to set criteria and inform the public of its procedure for handling Palestinian requests for a transit permit to travel between the Gaza Strip and the West Bank. When its request was not granted, HaMoked petitioned the High Court of Justice.<sup>19</sup> In its response to the petition, the state contended that, “these requests are handled on substantive grounds and are examined... in accordance with the specific circumstances in each particular case,”

17. Letter of 13 December 2004 from the IDF Spokesperson to B’Tselem.

18. The testimony was given to Iyad Haddad on 11 October 2004.

19. HCJ 6040/04, *Amor et al. v. Commander of IDF Forces in the Gaza Strip*.

so it would be inappropriate to set rules.<sup>20</sup> The High Court adopted the state's position.

Contrary to the state's contention that every request is examined "on substantive grounds" many requests are summarily rejected, based on sweeping criteria of age and family status that are set by the GSS, regardless of whether the defense establishment has suspicions against the applicant. In response to the petition filed by ten residents of the Gaza Strip in which they demanded that Israel allow them to travel to the West Bank to study social work at Bethlehem University, the state admitted that its refusal

is not based on a particular examination of each of the petitioners, but on the assessment made by security officials whereby individual examinations are not conducted to eliminate the fear of a threat to regional and state security inherent in granting the petitioners permits to exit the Gaza Strip, in light of their *risk profile* and because of intelligence reasons...<sup>21</sup>

The High Court accepted the state's argument and rejected the students' petition. This case reflects an extremely common phenomenon. There are only two universities and several colleges in the Gaza Strip, which offer limited fields of studies. Therefore, for many years the eight universities in the West Bank have drawn students from the Gaza Strip. The separation regime has cut off this option almost completely. According to figures provided to B'Tselem by Bir Zeit University, near Ramallah, in the 2000/2001 academic year,

110 students from the Gaza Strip registered at the university. The following year, the number dropped to eleven students, and three years after that, only two students from the Gaza Strip registered at Bir Zeit University.<sup>22</sup>

The many cases in which the defense establishment denied and then agreed to issue transit permits for travel between the West Bank and the Gaza Strip following the intervention of a lawyer or a human rights organizations indicate the arbitrariness of the denial of permits. For example, of thirty-five requests for transit permits handled by HaMoked from 2000 through 2004, in seventy-seven percent (27 requests) of the cases it succeeded in obtaining the permit: in twenty-four cases, the approval was obtained after contacting the authorities, and in the other three cases it was obtained following a petition to the High Court.

A typical case involved M.I., a twenty-year-old resident of Dir el-Balah in the Gaza Strip. In July 2003, M.I. married R.A., 30, who is a resident of Beit Ula, Hebron District. The ceremony at which the marriage contract was signed took place in Dir el-Balah. R.A.'s request to cross through Israel to get to the Gaza Strip was rejected, so he traveled to Gaza via Jordan and Egypt. A few days later, he retraced his steps and went back to the West Bank. According to Islamic law and tradition, a marriage is valid from the moment the contract is signed. However, according to Palestinian tradition, the couple may live together only after the subsequent wedding celebration.

20. Ibid. Response by the State Attorney's Office, Section 4.

21. HCJ 7960/04, *Muhammad Alrazi et al. v. Commander of IDF Forces in the Gaza Strip*. Response by the state, Section 12.

22. Letter of 22 December 2004 from Riham Barghouti, Director of Public Relations, Bir Zeit University.

In August 2003, M.I. went to the Palestinian DCO and requested a permit to go to the West Bank for the wedding. Israel denied the request without providing any explanation. M.I. then sought help from HaMoked. In December 2003, HaMoked wrote to the army's legal advisor for the Gaza Strip, requesting that the decision be reversed. In February 2004, an official from the public relations section at the Erez DCO phoned HaMoked and said that the permit could not be granted "for reasons that cannot be specified." After a few attempts to determine the reason for the refusal, HaMoked received a reply from the legal advisor to the Gaza Strip, who wrote that the applicant's "request to enter was denied for security reasons."<sup>23</sup> HaMoked then petitioned the High Court challenging this decision. In his response to the petition, the military commander for the Gaza Strip wrote that he "does not oppose the petitioner and her mother entering Israel and staying in Judea and Samaria for a period of fourteen days, in order to take part in the petitioner's wedding."<sup>24</sup>

The vast majority of Palestinians who are not allowed to travel between the West Bank and the Gaza Strip do not retain a lawyer or seek the assistance of a human rights organization, and are forced to accept the decision denying them passage. The case of Nura Wahbeh is illustrative. Wahbeh, 45, was born in Gaza City. In 1975, she moved to Ramallah after marrying Najib Wahbeh. The couple has four sons. She used to visit her parents and siblings, who were still living in the Gaza Strip, three or four times a year, and frequently hosted them at her home in Ramallah. Since the beginning

of the intifada, Wahbeh has failed in all her attempts to get together with her family, either in Gaza or in Ramallah. Over the past four years, she submitted eight requests to cross through Israel to get to the West Bank. All of these requests were rejected. In her testimony to B'Tselem, Wahbeh said:

Most of the requests were to enable visits on the holidays – 'Eid el-Fitr and 'Eid el-Adha ) – and they were all rejected. What hurt the most was when they rejected my requests to visit my family after my sister Fawziyya passed away in August 2002, and after my brother Fawzi died in September 2004. About a year ago, my brother Zohir, 47, was diagnosed with a serious kidney disease. Last February, I requested a permit to visit him. I attached a medical report describing his condition. That request was also rejected. I am very concerned that Heaven forbid, something will happen to him and that I won't be able to see him. I have stopped counting the number of family celebrations that I have been unable to attend. Separation from my family affects me emotionally, and makes me very sad, especially during the holidays... I fear that something bad will happen to me, and none of my family will be able to come to be with me.<sup>25</sup>

Israel's policy on movement has also led to the separation of couples who have been married for years, and to the separation of parents from their children. Muhammad a-Shubki was born in Gaza and moved to Hebron in 1998 to work. His nine children remained in Gaza.

23. Letter of 14 March 2004.

24. HCJ 6040/04, *Amor*. Response by the State Attorney's Office, Section 4.

25. The testimony was given to Iyad Haddad on 4 October 2004.

In February 2001, he married for the second time. He and his wife, Nahil Gheith, a resident of Hebron, had a daughter and a son. The son, now eight months old, has never seen his father. Nahil Gheith told B'Tselem about the separation from her husband:

Because Muhammad's whole family is in Gaza, he has tried to obtain a visitor's permit a number of times since the intifada began, but all of his requests were rejected. In the summer of 2003, his mother became very ill, and he submitted another request, but this one, too, was rejected. He tried to reach Gaza via Jordan and Egypt, but was turned back at the Allenby Bridge. In September 2003, surprisingly, Muhammad received a three-day visitor's permit, and he went to see his family... Since then, he has not been able to obtain a permit to return to Hebron. I submitted six requests for a permit to visit Gaza to the Palestinian DCO, but all were rejected. I made the last request to visit on 'Eid el-Fitr because the DCO told me that Israel was giving permits for the holiday...

In August 2004, my husband went to Egypt and asked me to meet him there. My father objected because he did not have money to pay for the ticket. Before I could decide what to do, Muhammad had a heart attack and rushed back to Gaza. He was hospitalized at Shifa Hospital. He sent me the medical documentation, hoping this

would convince the Israelis to give me a permit to visit in Gaza. It did not help.

When I had given up all hope of obtaining a permit, I left our home, which we rented, sold all the furniture we had bought, and went to live with my parents... Since my husband went to Gaza, my life has been unstable. I feel as if I am a burden on my father and my brothers. My husband is unemployed and has not sent me any money since he has been gone. He is in total despair and is sick... My father has financial problems. He gives me money for milk and diapers for my children, and that's it. Also, I have to sleep with my single sisters in a small room. I feel like such a bother for the whole family. I cry a lot and sometimes wish I was dead.<sup>26</sup>

Comparison of the extent of travel between the West Bank and the Gaza Strip before and after the outbreak of the current intifada indicates the dramatic change in the situation.<sup>27</sup> In the first nine months of 2000, (i.e., prior to the intifada), Israel issued 12,252 transit permits a month to residents of the Gaza Strip for travel on the safe-passage route.<sup>28</sup> From 2001-2004 (inclusive), Israel issued about 260 transit permits a month on average. Thus, under the separation regime, travel from the Gaza Strip to the West Bank declined by ninety-eight percent.

26. The testimony was given to Musa Abu Hashhash on 8 December 2004.

27. The information on the number of transit permits issued by Israel was provided to B'Tselem by the IDF Spokesperson's Office in a letter of 13 December 2004. The figures relate to the number of permits issued and not the number of persons who received permits, as some individuals received more than one permit during the year.

28. According to the army's statistics, 110,884 permits were issued in 2000. Figures were not provided for the first nine months of 2000, the period that preceded the outbreak of the intifada. The average monthly figure is based on the assumption that the average number of permits issued in the last three months was the same as the average monthly figure for 2001, which was 204 permits a month.

### 3. Expulsion of “individuals staying in the West Bank illegally”

One of the gravest aspects of the separation policy implemented by Israel is the practice of expelling to the Gaza Strip Palestinian residents of the Gaza Strip who have transferred their place of residence to the West Bank. The Israeli authorities argue that these Palestinians were illegally present in the West Bank. In response to a petition brought by HaMoked to the High Court of Justice against one such expulsion, the State Attorney’s Office explained that:

Israel’s position is that the military commanders’ approval to move from Gaza to the West Bank (and vice versa) was also required prior to the armed conflict that has existed since October 2000. Israel retained this power even after the transfer of civil powers to the Palestinians... Thus, for years, the Palestinian Authority used to transfer requests to change residence, as stated, to the Israeli side for approval. After the [armed] conflict broke out... it was decided that, as a rule, requests to permanently move from one region to the other would not be handled.<sup>29</sup>

Despite these comments, there is no provision in the military legislation that authorizes the military to expel a person from one area to another simply for failing to update the “place of residence” in their IDs. According to this legislation, the only obligation imposed on Palestinian residents in this context is that they should inform the authorities retroactively of the change in their place of residence. As noted in the first section of this chapter, this practice is also contrary to the provision in

the Interim Agreement between Israel and the Palestinian Authority that states that the handling of the change of residence will be transferred to the authority of the Palestinian Authority, which is in turn required to provide Israel with notification of changes made in the Population Registry. Despite this, as noted in the reply of the State Attorney’s Office, Israel acts as if it has the authority to approve the change of place of residence from one locale to another.

Cases handled by B’Tselem and HaMoked show that detentions leading to expulsion usually occur during the course of random inspections at checkpoints and border crossings, without prior planning. If the address recorded in the ID card is in the Gaza Strip, the individual is detained for a given period, and then transferred to Erez checkpoint and released into the Gaza Strip.

The case of Nidal Samaq, who was born in the Nusseirat refugee camp in the Gaza Strip, provides an example of a Palestinian expelled for being in Israel illegally. In June 1999, Samaq and his wife Randa and their five children moved to Zeita, a village north of Tulkarm, in the hope of finding work and improving the family’s financial situation. During the years that followed, the couple had two more children. In December 2003, Nidal Samaq was arrested while in Israel without a permit. He was looking for work. Samaq was prosecuted for being illegally within the territory of the State of Israel, and sentenced to three months in prison. After being released from jail, Samaq was taken to Erez checkpoint and released into the Gaza Strip. His repeated

29. HCJ 5504/03, *Kahalot et al. v. Commander of IDF Forces in the West Bank et al.* Preliminary Response on behalf of the Respondents, Section 4.

requests to receive a permit to return to his home and family in Zeita were rejected. At the same time, requests by his wife Randa to join her husband in the Gaza Strip were also rejected. As a result, Randa and her seven children suffered grave hardship, as described in her testimony to B'Tselem:

Since my husband was expelled, I have submitted four requests to the Palestinian DCO to enter the Gaza Strip: in April, May, July, and September 2004. All of the requests were rejected. I won't give up, and will continue to request permission to enter Gaza. It is terrible how we live. I don't work, and my husband is in Gaza, where he is unemployed. I have no income, and there are times that I don't have any food to feed my children. I live off the money I get from begging and from donations from charitable organizations and neighbors. I hope this torture ends soon.<sup>30</sup>

In January 2005, after some ten months of severe suffering and degradation, Israel agreed to grant Randa and her children a transit permit to the Gaza Strip.

It should be noted that, in at least one case, expulsion to Gaza took place as the result of a deliberate initiative, rather than following a random detention. On the night of 18 November 2004, soldiers surrounded an apartment in Bir Zeit, in Ramallah District, and detained four students who lived in the apartment. The four were born in the Gaza Strip and were in their last year of studies at the Faculty of Engineering at Bir Zeit University. Walid Mahana, Bashar Abu Salim, Muhammad Matar

and Bashar Abu Shahla were ordered to gather their belongings, and were then handcuffed and taken to Ofer detention camp, where they were informed that they had been arrested for "staying in the West Bank illegally." Two days later, they were taken to Erez checkpoint and released into the Gaza Strip.<sup>31</sup> Following an international campaign initiated by Bir Zeit University against this expulsion, the Judge Advocate General's Office proposed a compromise whereby the four students would be permitted to return to the West Bank, provided they sign a document undertaking to return to the Gaza Strip after completing their studies.<sup>32</sup>

The practice of expulsion is also implemented in cases in which the address recorded in the detained person's ID card is in the West Bank if Israel claims that the change of address was not approved by the Israeli authorities and was not updated in the Population Registry of the Civil Administration. That was the case with H.K., who was born in Gaza, and moved to Ramallah in 1991 in order to pursue studies in computer science at Bir Zeit University. After completing his studies, H.K. found work as a computer engineer, married a resident of Ramallah, and settled there. In 1998, he changed the address that appears in his ID from the Gaza Strip to the West Bank. On 3 March 2002, H.K. attempted to travel to Jordan in the course of his work. When he arrived at Allenby Bridge, he was detained and transferred to Ashkelon Prison, where he underwent interrogation. During his detention, his interrogators informed him that he was living in Ramallah illegally, since, contrary

30. The testimony was given to 'Abd al-Karim S'adi on 29 September 2004.

31. Charles Strasford, "Gazan Students Fugitive Lives," *Palestine Report*, 22 December 2004.

32. Amira Hass, "Dilemma of a Student from Gaza," *Ha'aretz*, 16 December 2005.

to the information in his ID, he was actually registered as a resident of Gaza. After a day in detention, H.K. was transferred to the Erez checkpoint and released into the Gaza Strip. During the year that followed, HaMoked contacted the Civil Administration in the West Bank on his behalf and requested that H.K. be permitted to return to his home. No reply was received to any of the five requests submitted by HaMoked. In June 2003, after the authorities ignored the requests, HaMoked petitioned the High Court.<sup>33</sup> In February 2004, the State Attorney's Office notified the court that "after examining the Petitioner's special circumstances, and although not required by the law, the Respondents have decided to permit the Petitioner to enter Judea and Samaria and stay there."<sup>34</sup> This decision was made after two years during which Israel imposed a physical separation between H.K. and his wife, home, and place of work.<sup>35</sup>

In other cases, Israel prevents residents who have entered the Gaza Strip for family visits or other purposes from returning to the West Bank, effectively expelling them from their homes. S.S. and A.S., residents of the city of Gaza, moved to the West Bank with their two children in 1998 in hope of finding work. At first, the couple rented an apartment in a-Ram, a village north of Jerusalem. Later, they moved to the adjacent village of Beitunya. In 2000, the couple filed notice of their change of address with the Palestinian Ministry of the Interior in Ramallah, and in January 2001,

the change was recorded in their ID cards. Although their new place of residence was in the West Bank, S.S. preferred to be with her family in the Gaza Strip when the time came for her to give birth. S.S. was at her family's home for the birth of her fourth daughter, as well as that of her fifth daughter, who was born on 28 September 2000. However, when she tried to go back home to the West Bank with her children after her fifth birth, S.S. was informed at Erez checkpoint that she could not cross due to the comprehensive closure imposed on the Gaza Strip. S.S. contacted the Erez DCO several times and requested a permit, but she never received a reply. Some months later, she was informed that, despite the information in her ID card, according to Israeli records she was a resident of the Gaza Strip and was prohibited from returning to the West Bank.

Following these developments, HaMoked contacted the Civil Administration on behalf of the family and asked that the woman and her children be allowed to return to their home, but to no avail. At the beginning of 2003, after a separation of over two and a half years, the father went to the Erez checkpoint and managed to enter the Gaza Strip with his wife and children. After the authorities ignored our requests, HaMoked appealed to the High Court, demanding that the family be allowed to return home to the West Bank.<sup>36</sup> The state has not yet submitted its response to the petition.

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33. HCJ 5504/03, *Kahalot*.

34. *Ibid.* Preliminary Response on behalf of the Respondents, Section 3.

35. It should be noted that the mere fact that H.K. was permitted to return to the West Bank provides no guarantee that he will not be expelled if he is detained again. HaMoked insisted that an arrangement must be found to ensure that H.K. will not be expelled again, and the State Attorney's Office agreed to the request.

36. HCJ 10676/04, *Shamlak et al. v. Commander of Military Forces in the West Bank et al.*

It should be noted that expulsion to the Gaza Strip has also been implemented by Israel as a form of administrative punishment against residents of the West Bank suspected of involvement in violent acts against Israelis. Israel argues that this is a “preventive” rather than punitive measure. Whatever the case may be, this means has been authorized by the High Court,<sup>37</sup> and since the beginning of the current intifada, Israel has expelled thirty-two Palestinians to the Gaza Strip. Following the Sharm el-Sheikh summit (in February 2005), Israel allowed most of these residents to return to the West Bank. According to the military legislation, in order to remove a person from their home, the commander of the area must first issue a Designation of Residence Order notifying the candidates for expulsion of the intention to remove them, in order to enable the individual to appeal the decision before a military appeals committee and to petition the High Court.<sup>38</sup>

In contrast to the practice of expulsion as a means for punishment, individuals expelled to the Gaza Strip on the grounds of being in the West Bank illegally are denied the opportunity to present their claims before the authorities. In these cases, the expulsion takes place without a Designation of Residence Order or any other form of prior warning, and without informing the individuals of the reason for the expulsion, thus denying them the opportunity to appeal the decision prior to its implementation.

#### **4. Breach of international law**

##### **The connection between the West Bank and the Gaza Strip**

The key question in examining Israel’s obligations regarding movement of Palestinians between the Gaza Strip and the West Bank is the legal character of the ties between the two areas. As noted, the Oslo Agreements define the West Bank and the Gaza Strip as “a single territorial unit.” Following the failure of the permanent-status talks in 2000, and the subsequent intifada, it has been argued that the agreements are no longer in effect and its provisions no longer binding. Those who support this argument point out that in some matters, the parties are ignoring their obligations under the agreements. However, there is significant evidence that the agreements remain in force and effect.

First, the Oslo Agreements do not explicitly state an expiration date, and neither of the parties has formally declared them void. Second, the agreements were incorporated in their entirety in the military legislation in the Occupied Territories, and this legislation has never been revoked.<sup>39</sup> Third, despite the systematic breaches of the agreements by both sides, in some areas the Palestinian Authority and Israel continue to act in accordance with their mutual obligations in the agreements. This is true, for example, regarding economic affairs. Fourth, the Israeli government’s decision on the disengagement plan, of 6 June 2004, states that, “The plan’s activities do not derogate from the existing relevant

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37. HCJ 7015/02, *Ajuri et al. v. Commander of Military Forces in the West Bank et al.*

38. Security Provisions Order (Judea and Samaria) (No. 387), 5730 – 1970, Article 86.

39. Proclamation Regarding Implementation of the Interim Agreement (No. 7) (Judea and Samaria), 5756 – 1995; Proclamation Regarding Implementation of the Interim Agreement (No. 5) (Gaza Strip), 5756 – 1995.

agreements between the State of Israel and the Palestinians. The relevant existing agreements shall continue to apply.”<sup>40</sup>

Furthermore, in a hearing before the High Court of Justice on a petition filed by HaMoked against the army’s intention to expel a West Bank resident to the Gaza Strip for “security reasons,” the State Attorney’s Office contended that the State of Israel views the West Bank and the Gaza Strip as a single territorial unit, based on the Oslo Agreements.<sup>41</sup> For this reason, the State Attorney’s Office argued, the forced transfer from one area to the other is not “deportation,” as that term is understood in the Fourth Geneva Convention, but “assigned residence.” To support this claim, the State Attorney’s Office added that:

Not only the Israeli side administers the two areas in coordination with each other; the Palestinian side also relates to the two areas as one entity, and the two areas are subject to a single unified leadership. The fact that Israel chose to administer the two areas by means of different commanding generals is an organizational matter, and is of little significance in our case... More than a few countries have different and separate legal systems in various districts (as in federal systems, or as in China and Hong Kong),

and surely it cannot be argued that they are separate territorial units under the relevant international law.<sup>42</sup>

### **Infringement of the right to freedom of movement and its ramifications**

Given that the Gaza Strip and the West Bank are indeed “a single territorial unit,” a conclusion that the State of Israel also accepts, the question now is what significance this fact has in terms of international law. Article 12(1) of the International Covenant on Civil and Political Rights states:

Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

Israel ratified the Covenant in 1991 and is legally bound to implement its provisions in its treatment of every person under its control, which includes Palestinians living in the Occupied Territories.<sup>43</sup>

Israel may restrict the movement of residents to meet security needs, and it has the obligation to protect the lives of its citizens. This power to restrict movement is set forth expressly in the Covenant, but it is not unlimited.<sup>44</sup> One of the primary conditions for legally breaching a

40. Government Decision 1996, “Amended Disengagement Plan – Continuing Discussion,” Section 1(g).

41. HCJ 7015/02, *Ajuri*. Response of the Respondents, Section 17.

42. *Ibid.*

43. For further discussion on the applicability of the Covenant in the Occupied Territories, see Chapter Five. See, also, B’Tselem, *Forbidden Roads: The Discriminatory West Bank Road Regime*, August 2004, Chapter Four; B’Tselem, *Through No Fault of Their Own: Punitive House Demolitions during the al-Aqsa Intifada*, November 2004, pp. 39-42.

44. Article 12(3) states: “The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.” Article 4(1) states: “In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant...”

right is that the infringement be proportionate. In the language of the Covenant, states may derogate from their obligations only “to the extent strictly required by the exigencies of the situation.”<sup>45</sup> The Israeli High Court has held that Israeli administrative law also requires the State of Israel to act in accordance with the principle of proportionality, and that the objective must be related to the means; the means must harm the individual to the least extent possible; and there must be a proper proportion to the gain brought about by the means (the security objective in this case).<sup>46</sup>

Even if the motivation for separating the West Bank and the Gaza Strip lay in legitimate security considerations, the separation regime completely violates the principle of proportionality. As this chapter has demonstrated, Israel uses this regime to deny residents of the Occupied Territories their right to freedom of movement. The denial is arbitrary and sweeping, the criteria for denial are kept secret, no investigations are conducted to determine if the individuals indeed pose a security threat, no attempt is made to find less harmful alternatives, and the damage and suffering caused by the restrictions are not taken into account. The extreme lack of proportionality inevitably leads to the conclusion that Israel’s policy flagrantly breaches Article 12 of the International Covenant on Civil and Political Rights.

In addition, according to the Covenant, even “in time of public emergency,” when states may derogate from some of their obligations under the Covenant, they are not permitted to ignore their other obligations under international law, and to which the principle of proportionality also applies.<sup>47</sup> As previously demonstrated, denial of the right to freedom of movement brings about the violation of other rights, including the right to family life, to work, and to education.

The separation regime leads to the complete separation of many Palestinians from their families, and in some cases even forces spouses to live apart. The right to family life is enshrined in international conventions to which Israel is party. The International Covenant on Civil and Political Rights forbids states to interfere arbitrarily with the privacy and family of an individual.<sup>48</sup> This obligation is set forth explicitly in the Fourth Geneva Convention, which was drafted to establish the rights of civilians living under occupation: “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>49</sup> Article 74 of the First Additional Protocol to the Geneva Conventions states that, “The High Contracting Parties and the Parties to the conflict shall facilitate in every way possible

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45. Ibid.

46. HCJ 2056/04, *Beit Sourik Village Council et al. v. Government of Israel et al.* Judgment of the court, Section 41.

47. International Covenant on Civil and Political Rights, Article 4(1).

48. Article 17(1). Recognition of the family as the fundamental unit of society, as well as the obligation to aid in its establishment, are enshrined in Article 10 of the International Covenant on Economic, Social and Cultural Rights. Article 27 of the Fourth Geneva Convention also requires Israel to respect the family life of residents of residents of the Occupied Territories.

49. Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949 (emphasis added).

the reunion of families dispersed as a result of armed conflicts...<sup>50</sup>

International law goes beyond forbidding arbitrary interference, and requires states to take action to protect family life. One of these obligations can be found in the International Covenant on Economic, Social and Cultural Rights, which requires States Parties as follows:

The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.<sup>51</sup>

Even if the complex reality created in the Occupied Territories since the signing of the Oslo Agreements does not make Israel responsible for all the actions that states are required to take pursuant to the Covenant, it is required, at a minimum, to use all reasonable means at its disposal to enable married couples to live together, and for families to meet regularly.<sup>52</sup>

Prohibiting movement between the West Bank and the Gaza Strip also cuts off residents of Gaza from access to the labor market in the West Bank. The International Covenant on Economic, Social and Cultural Rights requires Israel to recognize the right of residents of the Occupied Territories to a fair opportunity to

find work and to gain a livelihood.<sup>53</sup> Taking into account security and other constraints, this obligation includes, at least, facilitating the movement of workers and job seekers between the two areas. It should be noted that access to the West Bank labor market would not solve the problem of high unemployment in the Gaza Strip: unemployment in the West Bank is also high, though less so than in Gaza.<sup>54</sup> However, this situation does not necessarily affect the chances of a particular individual with a certain skill to find a job in the other area. The right to work is individual, and a state's obligation to "use reasonable means" to enable exercise of the right relates to each and every person and not to a particular group.

The separation regime also limits the options available to young residents of the Gaza Strip in obtaining an education. Article 13(1) of the International Covenant on Economic, Social and Cultural Rights states: "The States Parties to the present Covenant recognize the right of everyone to education." The Covenant expressly provides, in Article 13(2) that, "with a view to achieving the full realization of this right...(c) Higher education shall be made equally accessible to all on the basis of capacity, by every appropriate means..."

### **The expulsion policy**

Expelling people from the West Bank to the Gaza Strip on the grounds that they were in the West Bank illegally violates the right to freely

50. Israel has not signed the protocol. However, as Prof. Yoram Dinstein has said, it never opposed this provision. See, Y. Dinstein, "Family Unification in the Occupied Territories," 13 *Iyuney Mishpat* (5649 – 1989) 208.

51. Article 10(1). See, also, Article 16(3) of the Universal Declaration of Human Rights.

52. For further discussion on the nature of the right to family life in Israeli and international law, see Yuval Marin, "The Right to Family Life and (Civil) Marriage – International and Domestic Law," in Yoram Rabin and Yuval Shani (Eds.), *Economic, Social and Cultural Rights in Israel* (Tel Aviv: Ramot Publishing, 2004).

53. Article 6.

54. For further discussion on unemployment in the Gaza Strip, see Chapter Four.

choose a place of residence. As previously noted, this right is set forth in Article 12 of the International Covenant on Civil and Political Rights.

This practice also breaches the provisions of Article 49 of the Fourth Geneva Convention, which prohibit the individual or mass forcible transfer of protected persons. The only exceptions to this prohibition are cases where the action is necessary to protect the security

of the population or for “imperative military reasons.” However, Israel has not contended that one of these reasons applied regarding the expulsion of “persons staying illegally.” Article 78 of the Fourth Geneva Convention permits a state to assign the residence of a person for imperative security reasons, but as noted above, Israel did not contend that it used this practice for security reasons, and did not issue orders assigning the residence of the Palestinians.

## Chapter Two

### Rafah Crossing and the prevention of travel abroad

There has always been a considerable movement of travelers between the Gaza Strip and the other Arab nations, particularly Egypt. The residents of the Gaza Strip have extensive and diverse ties with these countries. Many of them have relatives in Arab countries, most of whom are Palestinian refugees who settled in these countries after the 1948 war. Thousands of residents of Gaza have spent varying periods of time working in Arab countries, particularly in the Persian Gulf states. Many young Gazans study at Egyptian universities and many residents of Gaza rely on medical treatments provided in the Arab nations, particularly in Egypt and Jordan. The importance of these contacts enhances the implications of Israel's tight control over movement of Gazans to other countries.

#### 1. Historical background

The Gaza Strip was declared a "closed military area" in August 1967 and exit from the area was prohibited in the absence of a permit from the military commander of the area.<sup>55</sup> While this prohibition was removed in 1972 regarding exit from the Gaza Strip to Israel and the West Bank, it still remains in force regarding exit from Gaza to other countries. Despite this prohibition, through the late 1980s, Israel applied what was known as the "Open Bridges" policy (the reference being

to the Allenby Bridge and Adam Bridge on the Jordan River), which permitted residents of the Occupied Territories to travel to Arab countries, and allowed residents of Arab countries to visit the Occupied Territories, subject to certain conditions and restrictions as established at various times. Residents of the Gaza Strip whose departure for abroad was authorized by Israel could leave through one of three points: Rafah Crossing, in the south of the Gaza Strip; Allenby Bridge, to the east of Jericho; and Ben Gurion Airport.

Despite the "Open Bridges" policy, residents of the Occupied Territories were required to obtain an exit permit.<sup>56</sup> Securing a permit involved a lengthy and exhausting bureaucratic procedure. The permits were issued by the Internal Affairs Headquarters Officer of the Civil Administration in the resident's area of residence. The individual received a form from the Civil Administration which then had to be stamped by a number of officials, testifying that the applicant did not owe money to the authorities and was not wanted for interrogation. These offices included the police, the military governor, the local council or village elder, income tax, value added tax and property tax. The resident then returned the signed form to the Civil Administration and waited (generally for two or three weeks) until receiving a reply. After receiving the permit, the resident proceeded to one of the crossing

55. See Footnote 4.

56. For details on this matter, see B'Tselem, *Restrictions on Travel Abroad*, November 1989; HaMoked, *Restrictions on Travel Abroad for East Jerusalem and West Bank Palestinians*, 1992; Association of Civil Rights in Israel, *Restrictions on the Right of Freedom of Movement in the Administered Territories*, 1989.

points in the Gaza Strip, the West Bank, or Israel, without need for additional permits.<sup>57</sup> These permits were generally valid for three years, and could be extended for an additional three years.

Over the years, many applications for permits to travel abroad were rejected on the basis of individual or collective restrictions. For example, released prisoners and detainees were often prohibited from traveling abroad for security reasons. During the first intifada, the Israeli military often collectively punished the residents of villages that were home to key activists by imposing a sweeping restriction on travel abroad for a given period. At times, Israel imposed various restrictions and conditions, such as the requirement that those leaving spend a minimum of three to nine months abroad, or set restrictions on a particular age group.<sup>58</sup>

In September 1991, the requirement to obtain a permit prior to traveling abroad was abolished, and the residents of the Occupied Territories could go to the border crossings and obtain an exit permit on the spot. This change saved the residents from the bureaucratic obstacle course of the Civil Administration, but added an element of tremendous uncertainty since only upon reaching the border crossing could residents know whether or not they were classified by Israel as prohibited from traveling abroad.

As previously noted, also in 1991, Israel began to impose the closure policy that is still in force, according to which residents of the Occupied Territories require personal permits in order to enter Israel, including for the purpose of crossing between the Gaza Strip and the West Bank. As a result, the ability of residents of the Gaza Strip to travel abroad via Allenby Bridge, and even more so via Ben Gurion Airport, was severely curtailed. In 1997, as part of the Oslo Agreements, an international airport operated by the Palestinian Authority opened in the south of the Gaza Strip, providing a limited number of weekly flights to Arab countries. Passengers leaving from this airport were transported by bus to Rafah Crossing, where they were checked by Israel in a manner identical to those leaving for Egypt by land, before being taken back to the airport.

Israel's authority relating to the exit of residents of the Occupied Territories abroad via Rafah Crossing and Allenby Bridge were established in detail in the framework of the Interim Agreement signed in 1995 with the PLO (Oslo II).<sup>59</sup> The agreement includes, among other provisions, three situations in which Israel is entitled to prevent a Palestinian resident from leaving the Occupied Territories to travel abroad.<sup>60</sup> The three situations are: (1) for reasons specifically set forth in the agreement; (2) when a traveler does not have the required documents – in this regard, it was established that a passport or analogous document issued by the Palestinian Authority

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57. As noted in previous chapters, in 1972 the army issued a general exit permit enabling residents of the Occupied Territories to enter the State of Israel almost without restriction.

58. B'Tselem, *Restrictions on Travel Abroad*; HaMoked, *Restrictions on Travel Abroad for East Jerusalem and West Bank Palestinians*.

59. The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Washington, 28 September 1995 (Oslo II), Annex I, Protocol Concerning the Redeployment and Security Arrangements, Article 8.

60. Interim Agreement, Annex I, Appendix 5, Section I, Article 4(A).

is sufficient to enable a Palestinian resident to leave the Occupied Territories;<sup>61</sup> (3) where a warrant against the individual has been issued by the Palestinian Authority and forwarded to the Israeli authorities.

Although the agreement does not condition the right of a resident of the Occupied Territories to travel abroad after receiving a permit from Israel, either in advance or on arrival at the transit point, Israel has continued to act throughout the period of the Oslo Agreements as though nothing has changed. Numerous residents of Gaza who went to one of the crossing points equipped with the relevant documents were sent back after learning that they were classified by Israel as “prohibited from traveling abroad.”

## **2. Infringement of the right to travel abroad since the outbreak of the intifada**

In legal and bureaucratic terms, no change has occurred in terms of Israel's policy of leaving the Gaza Strip to go abroad following the outbreak of the intifada in September 2000. However, since then, Israel has effectively and substantively restricted the ability of residents of the Gaza Strip to travel abroad.

Some of the key obstacles facing residents of the Gaza Strip who wish to travel abroad are derived from Israel's decision to transform the Rafah land crossing into the sole exit point from the Gaza Strip for travel abroad. Thus,

since the beginning of the intifada, Israel has almost totally stopped issuing transit permits to the West Bank for the purpose of traveling abroad via Allenby Bridge, and all the more so in the case of permits to exit via Ben Gurion Airport. In addition, in January 2001, Israel closed the Palestinian airport near Rafah, and later destroyed it in an aerial attack. Thus, even if Israel agrees to the reopening of the airport, an extensive period of time and significant investment will be required before this can happen.

As a result, any decision by Israel to shut down Rafah Crossing is tantamount to an almost total siege on the Gaza Strip, with no possibility to enter or leave the area.

In 2004, Rafah Crossing was closed for a total of sixty-six days.<sup>62</sup> On 12 December 2004, Palestinians detonated a tunnel underneath an Israeli guard position at Rafah Crossing, killing five soldiers and injuring five others. The next day, Israel decided to close the crossing completely. This closure lasted fifty-two days, the longest period since the outbreak of the intifada. Israel claimed that the closure was due to the need to repair the facilities damaged by the explosion.<sup>63</sup> However, according to a report in *Ha'aretz*, during a visit to the Gaza Strip by Minister of Defense Shaul Mofaz on the day following the attack, he “instructed the commanders to leave the crossing closed for an extended period.” According to the report, this instruction was due to concern that additional booby-trapped tunnels might have

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61. Interim Agreement, Annex III, Appendix 1, Article 28(7).

62. UNSCO (United Nations Special Coordinator Office), *Closure in the Gaza Strip*, December 2004.

63. HCJ 11714/04, *Abu Yousef et al. v. Commander of IDF Forces in the Gaza Strip*. Statement on behalf of the Respondent.

### The crossing procedure

Travelers who wish to cross Rafah Crossing must go to the Palestinian Authority post close to the crossing, where their documents are inspected by PA personnel. Those permitted to continue take a Palestinian taxi to the Israeli checkpoint, which is situated several hundred meters from the passenger lounge of the crossing. Here, baggage is taken for inspection and the passengers undergo a body search using metal detectors. After completing this stage, the travelers are transferred by bus to a point some fifty meters from the passenger lounge and then walk to the lounge. After an additional body search, they enter the lounge and pick up their luggage. After waiting, their passports are checked and they are issued an exit permit. Those who receive the permit board another bus which takes them some 500 meters to the Egyptian side of the crossing. The others are taken back to the Gaza Strip by bus.

been prepared, as well as a result of Israel's desire to punish the Palestinian Authority.<sup>64</sup>

It should be noted that during this period, Israel permitted a small number of sick persons who required urgent medical treatment to travel abroad, as well as the departure of several thousand pilgrims headed for Mecca during 'Eid el-Adha. In these cases, the travelers left Gaza through Erez Crossing and traveled through Israel to the Egyptian side of Rafah Crossing.<sup>65</sup> This arrangement was only made after numerous requests and pressure from Israeli and international bodies, as well as dozens of High Court petitions filed by Israeli and Palestinian human rights organizations.<sup>66</sup>

In addition to the extensive harm caused to Gazans unable to travel abroad, the closure of Rafah Crossing also prevents numerous

residents who traveled abroad from returning to their homes. Some residents have been forced to spend long periods on the Egyptian side of the crossing in difficult conditions while waiting for the crossing to be opened. The two main reasons why some travelers are forced to spend several days in the crossing area are the prohibition imposed by the Egyptian authorities on leaving this small area without a special permit, and the inability of many travelers to pay for accommodations in one of the surrounding communities. During the recent protracted closure of Rafah Crossing, over 7,000 Palestinians were "trapped" in Egypt waiting to go home. Hundreds were forced to spend many days in the crossing area.<sup>67</sup> Moreover, seven residents who had left the Gaza Strip to undergo medical treatment were caught in this situation and died while

64. Amos Harel and Arnon Regular, "Israel Will Close the Rafah Crossing for a Long Period," *Ha'aretz*, 15 December 2004.

65. In the midst of the crisis created due to the protracted closure of Rafah Crossing, Israel offered to allow humanitarian cases and pilgrims going to Mecca to travel via Nitzana Crossing in the Negev. This proposal was rejected by the Palestinian Authority, due to concern that this would provide Israel with a precedent for the permanent closure of the Rafah Crossing. See OCHA (UN Organization for Coordination of Humanitarian Affairs), *Situation Report Rafah Terminal*, 19 January 2005.

66. See, for example, H CJ 11714/04, 11715/04, 11762/04, 483/05, 488/05, 533/05, 538/05.

67. OCHA, *Situation Report Rafah Terminal*.

they waited at the crossing. After Israel refused to allow the bodies to be transferred to the Gaza Strip, they were buried in el-Arish in Egypt.<sup>68</sup>

The decision to concentrate all movement of passengers through Rafah Crossing impairs the residents' ability to travel abroad in two additional ways. First, the limitations on the number of people who can be examined and pass through both sides of the crossing means that waiting times at the crossing (when it is open) have lengthened considerably, and can sometimes be as long as several days. Furthermore, the crossing is generally open for approximately seven hours a day, whereas prior to the intifada it was open around the clock. Second, not allowing residents of the Gaza Strip to leave via Allenby Bridge, contrary to the practice that existed prior to the outbreak of the intifada, has substantially increased travel time and costs, particularly for those traveling to Jordan.

In addition to these general restrictions, Israel gravely impairs the ability of certain categories of people from traveling abroad. In April 2004, Israel announced that residents of the Gaza Strip between the ages of sixteen and thirty-five (both men and women) were prohibited from traveling abroad. A month later, this restriction was removed with regard to women. Similar restrictions have been imposed since the beginning of the intifada for various periods, but subsequently removed. On 17 February 2005, following the Sharm el-Sheikh summit, the minister of defense

decided to cease applying this restriction to men.<sup>69</sup>

Prior to February 2005, members of the age groups on whom the restrictions were imposed who needed to travel abroad urgently were obliged to submit a special application through the Palestinian DCO, which forwarded daily a list of names to the Israeli DCO at the Erez Checkpoint. Several days later, the Israeli DCO would inform its Palestinian counterpart who was permitted to leave and who was not. The Palestinian DCO would announce the names of those permitted to leave on a local radio station, and tell them to come to the Rafah Crossing. When they reached the Palestinian side of the crossing, the travelers had to register with the Palestinian DCO, which forwarded the lists to the security personnel on the Israeli side. Travelers who received authorization from the Israeli officials were permitted to continue to the Israeli side of the crossing by the PA personnel.

The Israeli DCO at Erez forwarded to the Israeli security officials at Rafah Crossing the list of Palestinians whose departure had been authorized. Nonetheless, many Palestinians who went to Rafah after hearing on the radio that their departure had been approved were informed that the Israeli officials at Rafah Crossing considered them "prohibited from departing." Physicians for Human Rights-Israel, which assists in coordinating the departure of patients for treatment abroad, encountered such cases almost daily. According to the organization, the double authorization method was implemented in a

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68. World Health Organization, *Medical Treatment Abroad for Gaza Residents*, 31 January 2005.

69. Amos Harel and Arnon Regular, "Easing of Restrictions on Palestinians: 16 Deportees to Gaza Strip to be Returned to their Homes in the West Bank," *Ha'aretz*, 18 February 2005.

situation in which “the right hand didn’t know what the left hand was doing.”<sup>70</sup>

This method also created ideal conditions for corruption among Palestinian Authority officials, who mediated between the residents and the Israeli authorities. The Palestinian Center for Human Rights sharply criticized the behavior of the Palestinian Authority in this respect, noting that:

The response of the Palestinian National Authority (PNA) to this Israeli decision has led to a further deterioration of the situation, which is now strongly characterized by favoritism, since some travelers of this age category are allowed, unfairly, to travel before others. This state of chaos is attributed to the presence of several Palestinian security services at the terminal, which control the travel of this age category in a way that serves their interests.

In addition to this sweeping restriction on the basis of the traveler’s age, information reaching HaMoked on a regular basis shows that tens of thousands (if not more) residents of the Gaza Strip are defined as “prohibited from traveling abroad for security reasons.” Despite this, Israel has never seen fit to implement any mechanism by which it could inform the residents of the grave restriction imposed on them. As a result, a person who intends to travel abroad usually first discovers the restriction imposed on him when he arrives at the passport check-in station in the passenger lounge at Rafah Crossing. The absence of a notification mechanism severely harms the entire population, but particularly those residents who must travel on a specific

date, such as patients who are scheduled to undergo surgery, students who need to arrive for the start of the academic year, residents traveling to family events. Moreover, the lack of knowledge that their travel is restricted often leads residents to incur substantial expenses, for example, the purchase of plane tickets for travel from Egypt to other destinations that must subsequently be cancelled.

As in other areas in which the residents of the Occupied Territories are dependent on Israeli permits, the definition of a person as “prevented from traveling abroad” is also characterized by an extreme lack of transparency and arbitrariness. Notification of the prohibition on traveling abroad is given to residents, as noted, when they arrive at Rafah Crossing, by word of mouth and without any reason given beyond the laconic declaration that it is for “security reasons.” In most cases, however, the “security reason” disappears following intervention by attorneys or human rights organizations. Thus, for example, in sixty-six of the one hundred cases of residents who were prohibited from leaving Gaza handled by HaMoked during the period between 2000 and 2004, and in which the processing has been completed, Israel agreed to enable the individuals to travel abroad. However, when the state continues to refuse to permit the individual to travel abroad, the possibilities for appeal are extremely limited. In most cases, the state conceals all information relating to the reason for the restriction, so the injured party finds it almost impossible to refute the alleged suspicions.

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70. PHR-Israel, *The Disengagement Plan and its Ramifications on the Right to Health in the Gaza Strip*, January 2005, p. 95.

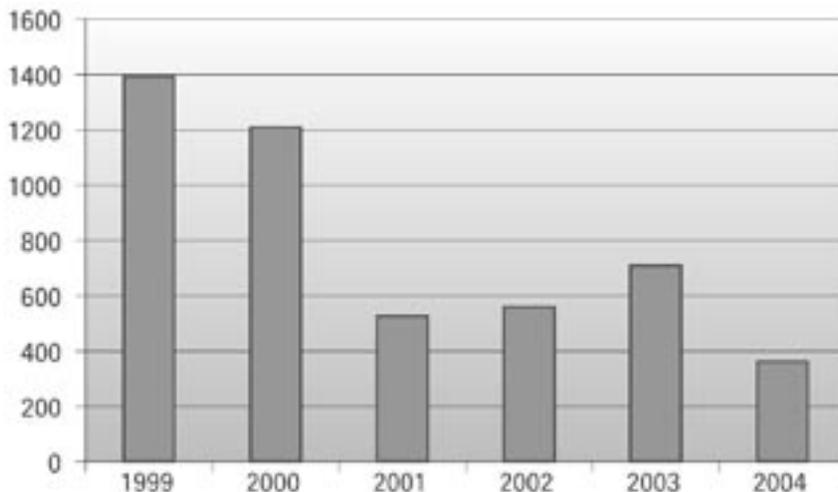
A partial indication of the increasingly strict approach by Israel on travel abroad by Gazans may be seen by comparing the number of people who passed through the Rafah Crossing during the period prior to the intifada and thereafter. According to the figures of the Israel Airports Authority, which is responsible for operating the crossing, in 1999, 508,265 people crossed through Rafah Crossing, or approximately 1,400 people per day.<sup>71</sup>

In contrast, the yearly average during the period between 2001 and 2004 was approximately 197,000 persons, or approximately 540 per day.<sup>72</sup> This indicates a drop of approximately sixty percent in the number of persons passing through Rafah Crossing after the outbreak of the intifada. It may be assumed that this figure

does not fully reflect the scope of the injury caused by the change in Israel's policies: the number of those applying for permission to leave through the crossing rose significantly after the beginning of the intifada, for a variety of reasons, one being the removal of the possibility of traveling via Allenby Bridge, and the lack of access to services that were formerly available in the West Bank. However, since Israel does not keep records of the number of Palestinians whose departure is prohibited, this is no more than a conjecture.

One of the principle ramifications of Israel's policy is the harm to the ability of residents of the Gaza Strip to receive proper medical treatment. Almost every aspect of the Palestinian health system in the Gaza Strip

### Average daily number of travelers through Rafah Crossing in both directions



Source: Israel Airports Authority.<sup>73</sup>

71. The year 1999 was chosen as a base year for comparison due to the absence of monthly figures enabling a calculation of the figures for 2000 relating to the periods before and after the outbreak of the intifada.

72. See the IAA's Website: [www.iaa.gov.il/Rashat/he-IL/Borders/Rafiah/AbouttheTerminal/Statistics](http://www.iaa.gov.il/Rashat/he-IL/Borders/Rafiah/AbouttheTerminal/Statistics).

73. Ibid.

is in a dire state. The responsibility for this situation rests both with the Palestinian Authority, which has been responsible for the direct management of the system since 1994, and with Israel, which neglected the development of the health system from the time of its occupation of the Gaza Strip in 1967 until the transfer of responsibility to the Palestinian Authority.<sup>74</sup> One of the clearest signs of the gravity of the situation is the high level of dependence on external medical services that cannot be obtained in the Gaza Strip, such as heart bypasses and other surgical procedures, treatment of burns, pediatric cardiology, neurosurgery, mouth and jaw surgery, radiology therapy, organ transplants, eye operations, MRI scans and bone scans, and bone marrow tests.<sup>75</sup> These services are purchased by the Palestinian Authority for residents of the Gaza Strip at full cost from Israel, Egypt and Jordan. In 2003, for example, the health system in the Gaza Strip referred 7,800 patients for external medical services, sixty-seven percent of which were to hospitals in Egypt and Jordan, and the remainder to Israel and the West Bank.<sup>76</sup>

Patients referred to Egypt and Jordan must cross Rafah Crossing. The protracted waiting times, added to the uncertainty as to whether they will be able to leave, add to the suffering of patients and their families, who are usually already distraught due to their medical situation. Moreover, the long waits sometimes exacerbate the medical condition of patients requiring urgent treatment. Many patients

whose departure for Egypt was denied for “security reasons” have been obliged to use the services of private lawyers or lawyers working on behalf of various organizations in order to advance their cases with the Israeli authorities. In many instances, even these contacts have been to no avail, and patients awaiting medical treatment abroad have been obliged to petition the High Court of Justice to force Israel to admit that it does not object to their departure.

One such case is that of F.Y., a thirty-four-year-old resident of Gaza who suffers from chronic inflammation of the prostate and kidneys. His physicians recommended that he undergo kidney-stone treatment, including laser-radiation therapy, and referred him to Nasser Hospital, in Cairo. The hospital scheduled the procedure for 15 November 2004. F.Y. attempted three times at the end of September and the beginning of October to reach the Israeli side of the crossing, but was stopped by Palestinian security forces. On the fourth occasion, on 3 October 2004, he managed to reach the Israeli side, only to be sent back for alleged “security reasons.” F.Y. subsequently contacted HaMoked and requested assistance. HaMoked staff contacted the office of the legal adviser at the Erez DCO several times regarding this case and were informed that “the matter is being processed.” Given the urgent nature of the case, HaMoked petitioned the High Court, asking that the state be instructed to enable the patient to leave via Rafah Crossing. Six days later, the State Attorney’s Office announced

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74. For further discussion of this aspect, see PHR-Israel, *The Disengagement Plan and Its Ramifications*; Tamara Barnea and Rafiq Husseini (eds.), *The Virus Doesn’t Stop at the Checkpoint – The Separation of the Palestinian Health System from Israel* (Tel Aviv: Am Oved, 2002).

75. PHR-Israel, *The Disengagement Plan and Its Ramifications*, p. 50.

76. Ibid.

that, “currently there is nothing to prevent the Petitioner from going to Egypt for medical treatment.”<sup>77</sup> After receiving this reply, F.Y. traveled to the crossing, only to be informed by the Israeli side that he was not allowed to leave. Only after additional intervention by HaMoked and the State Attorney’s Office was F.Y. able to leave for Egypt.

Mohammed Nassar, 21, from Beit Lahiya, had less success than F.Y. In his testimony to B’Tselem, Nassar detailed his failed attempts to undergo an operation that could not be performed in the Gaza Strip:

I suffer from a very severe case of hemorrhoids.... I wanted to have an operation at Shifa Hospital, in Gaza. The people at the hospital told me that I had to first undergo a CT scan. I couldn’t do that because I have a blood allergy. At al-‘Odeh Hospital, in Jabalya, the doctors refused to do a CT for the same reason... Dr. Riad Tabil, head of the Department of Surgery at Kamal ‘Adwan Hospital, suggested that I undergo an operation in Israel or Egypt. He wrote a report on my condition for me to submit to the Palestinian Ministry of Health. A few days later, Ahmad Abu ‘Aza, head of the health office, informed me that I was not permitted to enter Israel. So I decided to go to Egypt. In November 2004, I submitted a request to the Ministry for Civil Affairs, in Gaza, to travel through Rafah Crossing, because I am not yet thirty-five years old. On 2 December, after receiving a positive reply, I went to the Palestinian DCO at Rafah Crossing, where

the person in charge registered me so that I could get the approval of the Israeli side. The next day, the same person told me that my request had been rejected for security reasons. I looked at the list and saw a red "X" alongside my name. That same day, I went to the Ministry for Civil Affairs in Gaza and told them that my request had been rejected. They said it might have been a mistake. So, on 11 December, I went back to Rafah Crossing, but this time too, the Israeli side turned me back.<sup>78</sup>

A further group gravely injured by Israeli policy are students, or prospective students, attending universities abroad. Here, too, the most frequent destination is naturally Egypt. The high demand for studies abroad is the result of a combination of the limited availability of academic studies in the Gaza Strip and the elimination of the possibility to attend universities in the West Bank. The proportion of those prohibited from traveling abroad among this population is extremely high, since most students fall into the prohibited age group. According to statistics of the Palestinian Center for Human Rights, as of October 2004, some 1,500 students were “stuck” in the Gaza Strip, waiting to return to their universities or to attend universities at which they had registered.<sup>79</sup> In some cases, Israel conditions its agreement to permit students to travel abroad on a written undertaking on their part not to return to the Gaza Strip for a period of one or two years.

H.R., who was accepted to study biomedical engineering at the University of Science and

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77. HCJ 10156/94, *Yassin et al. v. Commander of IDF Forces in the Gaza Strip*.

78. The testimony was given to Zaki Kahil on 12 December 2004.

79. Press release by the organization, 23 October 2004.

Technology in Cairo in 2002, is one of the students who has suffered as a result of Israel's policy. At the end of her first year of studies, H.R. returned to the Gaza Strip to visit her family. In February 2003, when she attempted to return to Egypt to continue her studies, she discovered that she was "prohibited from traveling abroad." HaMoked contacted the army's legal advisor in the Gaza Strip on her behalf, and asked that she be allowed to leave. According to the laconic reply, "a recent examination showed that, for security reasons, it is not presently possible to enable her to leave for Egypt."<sup>80</sup> Further correspondence with the State Attorney's Office yielded the same response. Given the state's refusal, HaMoked petitioned the High Court, asking that it order that H.R. be permitted to continue her studies.<sup>81</sup> Only after the petition was filed did the state agree to allow her to leave, provided that she promised not to return home for at least one year.

Amar al-Habash, a resident of the Nusseirat refugee camp, registered for studies in engineering at a university in Paris. After returning from France for a vacation with his parents, he was forbidden to leave. In his testimony to B'Tselem, he described what had occurred:

After I finished my French studies in February 2004, I registered at the University of Paris to obtain a masters degree in engineering. There was a seven-month gap before school started, so I decided to go back to the Gaza Strip and be with my family. My plan was to return to France on

9 August 2004. I got to the Palestinian side of Rafah Crossing around 6:00 A.M., and waited about ten hours – there were many travelers in line because the crossing had been closed for twenty days. PA officials gave preference to people over thirty-five years old, to families, and to people who are sick, so I did not get an appointment and had to go home. They distributed a flyer indicating that the Israeli side was not allowing anyone under the age of thirty-five to travel. According to the flyer, the prohibition was absolute, and no special arrangements could be made with the Israeli side... Despite this, I tried to cross for two weeks, going there day after day, but had no success. I kept trying because I saw that some young men managed to cross to the Israeli side. They claimed they had coordinated matters with the Israeli side. The Israelis sent some of them back at the end of the day though... Those of us from the central part of the Gaza Strip had trouble getting to Rafah because of the Abu Huli [Gush Katif] checkpoint, which cuts Gaza into two. So I decided to stay at my sister's house in Khan Yunis. After about twenty failed attempts to cross, I was thoroughly frustrated. I gave up and went back home to Nusseirat.<sup>82</sup>

### 3. Breach of international law

International humanitarian law does not explicitly set forth the right of residents of occupied territory to go abroad or the power of the occupier to limit such a right. Thus,

80. Letter from Munir Alqarinawi, of the office of the army's legal advisor in the Gaza Strip, to HaMoked, dated 12 June 2003.

81. HCJ 9092/03, *Rantisi et al. v. Commander of IDF Forces in the Gaza Strip*.

82. The testimony was given to Mazen al-Majdalawi on 26 September 2004.

we have to determine Israel's obligations in such matters based on the general provisions relating to the daily lives of the residents. The main reference to these issues is Article 43 of the Hague Regulations of 1907. This article requires Israel to ensure "public order and safety [*la vie publica*]" in the territory under its control. Israel's High Court has written extensively on the practical impact of this article. For example, Justice Aharon Barak explained that,

The beginning of Article 43 of the Hague Regulations empowers and obligates the military government to restore order and public life... The article does not limit itself to one particular element of order and public life, but rather it covers order and public life in all their aspects. Therefore, in addition to security and military matters, this authority also applies to a variety of "civil" issues, such as economics, societal matters, education, social welfare, sanitation, health, and movement with which modern society is involved.<sup>83</sup>

Obviously, being able to go abroad is a primary component of life in every modern society, and certainly in the Gaza Strip, where residents are dependent on visits abroad to meet their vital needs, such as obtaining medical treatment and higher education. In light of this obligation, Israel must balance its security needs and the rights of the Palestinian population, in general, and the right to go abroad, in particular. In the wording of Justice Shlomo Levine, "The obligation of the military government,

which is defined in Article 43 of the Hague Regulations, is to ensure order and the public life of the local population, while properly balancing the welfare of the population in the territories and military needs..."<sup>84</sup> In another decision, Justice Ayala Procaccia discussed the meaning of this obligation:

The Hague Convention empowers the regional commander to act in two major fields: one – ensuring the legitimate security interest of the occupier of the territory, and two – ensuring the needs of the local population... In the latter field, the regional commander is allowed not only to maintain order and the safety of the residents, but also to protect their rights, especially their constitutional human rights. The concern for human rights lies at the center of humanitarian concerns that the commander must consider.<sup>85</sup>

The International Covenant on Civil and Political Rights, on the other hand, states explicitly and unambiguously that, "Everyone shall be free to leave any country, including his own" (Article 12(2)). The Covenant also states that, "No one shall be arbitrarily deprived of the right to enter his own country" (Article 12(4)). As discussed in the previous chapter, the Covenant permits restrictions on the rights it protects for reasons of "national security," and "in time of public emergency," however, both according to the Covenant and Israeli administrative law, a state must not arbitrarily or disproportionately deny exercise of this right. As the High Court recently said, the state

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83. HCJ 393/82, *Jam'iyat Iskan al-Mu'aliman al-Mahddudat al-Mus'uliyah, Teachers' Housing Cooperative Society, Duly Registered at Judea and Samaria Headquarters v. Commander of IDF Forces in Judea and Samaria et al.*, *Piskei Din* 37(4) 785, 798.

84. HCJ 2977/91, *Haji v. Minister of Defense*, *Piskei Din* 46 (5), at p. 474.

85. HCJ 10356/02, *Hass v. IDF Commander in the West Bank*, Section 8.

must provide substantial justification for why a particular person should be restricted from going abroad, and the burden of proof does not lie on the shoulders of the person wanting to exercise the right:

The freedom of a citizen to travel abroad is a natural and recognized right, an obvious right, in every democratic country – as is the case in our country – and the citizen does not require any special qualification to be “granted” this right. The only significance of a permit is – if it can be said in this way – not “positive” but “negative”; it proclaims: We, the competent authorities, do not oppose you, Citizen John Doe, leaving the country if you so wish. That is, we have not found any reason to forbid you doing so. Therefore, there must be grounds for prohibiting the citizen from, and not a reason why he should be allowed to leave the country, for it is impossible to explain the absence of a reason.<sup>86</sup>

However, as in other matters discussed in this report, Israel’s policy regarding residents of the Gaza Strip going abroad, and their right to return to the Gaza Strip as they wish (see the discussion above on the requirement that a resident wanting to go abroad has to promise not to return within one year), is arbitrary and disproportionate. The state makes no attempt at all to balance security needs with the needs of the Palestinian population. The arbitrariness and the lack of proportionality of the policy is a result, in part, of the lack of transparency regarding the reasons a person is denied the right to go abroad. Because no information is

provided as to the content of the suspicions against an individual, there is no meaningful opportunity to appeal against the decision.

Infringement of the right to go abroad brings with it the violation of other human rights, such as the right to health and education, which are enshrined in the International Covenant on Economic, Social and Cultural Rights. As mentioned in the previous chapter, higher education is an integral part of the right to education. Regarding health, Article 12(1) of the Covenant states:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Even if Israel is right in its claims that since the transfer of powers to the Palestinian Authority, it is no longer responsible for improving the health and education of residents of the Gaza Strip, the Covenant forbids it to act in a way that impairs health and education, as it has done by limiting travel abroad. In effect, the two aspects of the right to health are interdependent: if Israel does not wish to take responsibility for the dire health situation in the Gaza Strip and to work actively to improve it, it must ensure that the residents can receive elsewhere medical treatment that is not available in the Gaza Strip.

Finally, as discussed in the first section of this chapter, the prohibition on Palestinians going abroad flagrantly breaches the Oslo Agreements, which even in Israel’s opinion, continue to apply.

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86. From the opinion of Justice Turkel in HCJ 4706/02, *Sheikh Raid Balah et al. v. Minister of the Interior*, quoted from HCJ 111/53, *Kaufman v. Minister of the Interior*.

## Chapter Three

### Families torn apart: Control of passage between Gaza and Israel

Ever since the beginning of the occupation, there has been very extensive movement of people between the Gaza Strip and the State of Israel. The main reasons for this are Israel's policy of settlement of Israeli citizens in the Gaza Strip, the integration of a significant part of the Palestinian workforce in the Israeli job market, the dependence of residents of the Gaza Strip on services provided in Israel, particularly medical services, and the emergence of extensive family ties between Arab citizens and residents of Israel and residents of the Gaza Strip. This chapter will focus on this last element.<sup>87</sup>

#### 1. Historical background

Immediately after the end of the 1967 war, the entire area of the Gaza Strip was declared a “closed military area.”<sup>88</sup> However, as early as August 1967 the military issued a “general entry permit” allowing Israeli citizens and residents to enter the Gaza Strip area without the need for special permits.<sup>89</sup> This step also encouraged the development of close relations between Arab citizens of Israel and the residents of the Gaza Strip. Over the years, many Arab citizens of Israel married residents of Gaza, so that the fate of families in both

areas was linked. These connections led tens of thousands of Israelis to enter the Gaza Strip every year to visit their families.

In May 1994, alongside the transfer of authority of large sections of the Gaza Strip and Jericho to the Palestinian Authority in accordance with the Cairo Agreement (Oslo I), Israel changed its policy regarding Israelis entering the Gaza Strip. That same month, the army issued an order abolishing the general entry permit to the Gaza Strip issued in 1967, with the exception of entry to the Jewish settlements established in the area.<sup>90</sup> Since then, Israeli citizens and residents have been required to obtain an individual permit in order to enter and stay in those areas in the Gaza Strip transferred to the control of the Palestinian Authority. It should be noted that for the purpose of the restrictions applying to entry into the Gaza Strip, Palestinian residents of East Jerusalem are considered Israelis for all purposes, although, under international law, the status of East Jerusalem is no different from that of the remainder of the West Bank.

Permits for Israelis married to residents of the Gaza Strip were issued as part of the Divided Families Procedure. According to this

87. The subject of the employment in Israel of workers from the Gaza Strip will be discussed in depth in Chapter 4 of this report, which considers the ramifications of Israeli policy on the economy of Gaza. The settlements will be examined in brief in Chapter 5 of this report in the context of the disengagement plan. For a discussion of the dependence of the health system in the Gaza Strip on medical services provided in Israel, see PHR-Israel, *The Disengagement Plan and its Ramifications*.

88. Closure of Area Order (Gaza Strip and North Sinai) (No. 1), 5727 – 1967. Several months later, this order was replaced with the Closure of Area Order (Gaza Strip Area) (No. 144), 5728 – 1968.

89. General Entry Permit to Settlements in the Area (Gaza Strip and Northern Sinai), 5727 – 1967.

90. Order Regarding the Conditioning of Permits (Temporary Order) (Gaza Strip), 5754 – 1994.

procedure, the Israeli spouse was entitled to an entrance permit to Gaza for the duration of three months, at the end of which the spouse had to go to the Israeli DCO at the Erez checkpoint to renew the permit. In the vast majority of cases, these Israelis are women married to male residents of the Gaza Strip.

Israel also changed its policy regarding the entry of Palestinian residents of the Gaza Strip into the State of Israel several months after declaring the Gaza Strip a closed area. In June 1968, the government adopted a decision whereby Palestinian workers would be permitted to enter Israel, subject to their obtaining special permits, and in accordance with a quota to be determined by the Ministry of Labor in consultation with the Histadrut General Labor Federation.<sup>91</sup> Some five years later, the army issued a “general exit permit,” enabling all residents of the Gaza Strip to enter Israel (including East Jerusalem) without needing a special permit, except between the hours of 1:00 and 5:00 A.M.<sup>92</sup>

This policy changed significantly, as previously noted, in 1991, with Israel’s abolition of the general exit permit of 1972,<sup>93</sup> and requirement that any resident of the Occupied Territories who wished to enter Israel obtain an individual entry permit. This situation was formalized in March 1993, when Israel imposed a “general

closure’ on the West Bank and Gaza Strip, which has remained in force ever since. In addition, Israel occasionally announces a comprehensive closure, during which all entry permits to Israel are nullified. Among other things, this policy has had a dramatic influence on the scope of family visits by residents of Gaza to Israel and East Jerusalem.

## **2. Family visits since the beginning of the intifada**

The issuing of entry permits to Israel for residents of the Gaza Strip for the purpose of family visits has been almost completely discontinued since the beginning of the intifada. In contrast, entry permits for Israelis to Palestinian areas in the Gaza Strip have continued to be issued, albeit far less frequently than during the period before the intifada. In 1999, Israel issued 119,060 entry permits to the Palestinian controlled areas in the Gaza Strip for its Arab citizens and residents, primarily for the purpose of family visits. By comparison, in 2001-2003, on average only 2,391 permits were issued each year – a decrease of some ninety-eight percent.<sup>94</sup> It should be noted that, compared with 2002, there was a sharp rise – from 1,408 to 3,369 – in the number of permits issued in 2003.<sup>95</sup>

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91. Shlomo Gazit, *The Stick and the Carrot, Israeli Policy in Judea and Samaria, 1967-1968* (Tel Aviv: Zemora Beitan, 1985) 350-354.

92. This permit related only to entry per se, and did not affect the obligation to obtain a work permit.

93. Order Regarding the Conditioning of the General Exit Permit (No. 5) (Temporary Order) (Judea and Samaria), 5751 – 1991. A similar order was issued regarding the Gaza Strip.

94. In 2000, 71,572 permits were issued, but it is not possible to ascertain the division between the months before and after the outbreak of the intifada. In addition to the permits issued to Arab citizens, in 1999, Israel issued 5,495 entry permits for Jewish citizens to enter the Gaza Strip, mainly for tourist and commercial purposes. In comparison, in 2001-2003, Israel issued an average of seven permits per year.

95. All the figures on entry permits in this chapter were forwarded to B’Tselem by the IDF Spokesperson in a letter dated 13 December 2004.

The unit responsible for issuing entry permits to the Gaza Strip for Israeli citizens and residents is the Israelis Office at the Israeli DCO at Erez Crossing. Replies to requests for an entry permit are given to the applicant orally by phone, usually at the initiative of the applicant, who calls the DCO to ascertain the state of his application. The number of applications for visits received by the Erez DCO is unknown, since the facility does not keep track of the information. However, the experience of HaMoked shows that most of the routine applications submitted since the beginning of the intifada have been rejected, usually without any grounds being cited. Until recently, Israel refrained from publicly defining the criteria it uses in granting or rejecting applications for these permits. This lack of transparency enabled arbitrary decision-making on an institutionalized basis.

One of the signs of the arbitrary nature of the permit policy is the readiness of the authorities to reverse their decisions following intervention by external bodies. By way of illustration, of the 122 applications for visits to the Gaza Strip submitted by Israelis and processed by HaMoked between 2000 and 2004, only in eleven percent of cases (fourteen applications) did the authorities maintain their initial refusal, while in seventy-one percent of cases (eighty-seven applications) the authorities agreed to HaMoked's request following direct contacts with the Erez DCO after filing a pre-High Court petition with the State Attorney's Office, or after filing a petition with the High Court of Justice.<sup>96</sup>

The case of the S. family illustrates this reality. S.S., 45, was born in the Gaza Strip, and moved

to East Jerusalem in 1981 after marrying a resident of the city. Her sister, A.S., 51, moved to Nazareth in 1977 in similar circumstances and received Israeli citizenship. In January 2004, the two women contacted HaMoked and requested assistance in visiting their father, who lives in the Gaza Strip, during the upcoming 'Eid el-Adha. The father, who had been widowed two months earlier, was eighty years old and in poor health. The festival was scheduled for the beginning of February, so HaMoked contacted the Israelis Office at the Erez DCO and urgently requested that the two women, and several of their relatives be granted entry permits to the Gaza Strip. This request remained unanswered. When it called the Israelis Office, HaMoked was told that the request could not be granted because a total closure had been imposed on the Gaza Strip in response to a terror attack carried out in Jerusalem on 29 January 2004. Hearing this, HaMoked petitioned the High Court. The day after the petition was filed, the State Attorney's Office announced that it had no objection to the two women and the children of one of them entering Gaza to visit their father for the festival.

In August 2004, HaMoked petitioned the High Court in a similar case, requesting the Court to order the army to permit a resident of East Jerusalem to enter the Gaza Strip to visit his sick mother. In its reply to this petition, the State Attorney's Office presented publicly for the first time Israel's policy regarding family visits to the Gaza Strip by Israeli citizens: "Given the armed conflict between the State of Israel and terrorist elements in the Palestinian Authority, and the difficult security situation

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96. The other applications are still being processed.

in Gaza, entry permits for the Palestinian-controlled areas in Gaza are given to Israeli citizens *sparingly and in exceptional cases* in which there is special justification to warrant doing so.”<sup>97</sup> The State Attorney’s Office added that, within the framework of this policy, it permits:

Entry into the Gaza Strip by first-degree relatives who wish to visit the area for special humanitarian reasons (such as a wedding, engagement, serious illness, or funeral)... In addition, the respondent allows, except where a specific security reason exists, the entry into the Gaza Strip of Israelis who want to visit first-degree relatives whom they have not visited over the previous twelve months, provided that the visit is during one of the holidays – ‘Eid el-Adha or ‘Eid el-Fitr (for Muslims) or Christmas (for Christians).<sup>98</sup>

Although this procedure and its publication in the context of the reply to the High Court constitute some measure of progress as compared to the total lack of transparency that existed previously, the content of the procedure reveals an intolerable and dismissive attitude toward the right of tens of thousands of Israelis and Gazans to family life. In correspondence with the State Attorney’s Office, HaMoked noted several unreasonable aspects, and demanded that these be reconsidered.<sup>99</sup> First, HaMoked argued that it is unthinkable that a person be permitted to visit first degree relatives (parents and siblings) living dozens

of kilometers away no more than once a year. Second, the procedure implies that the spouses of visitors are not entitled to join them. Accordingly, an Israeli born in Gaza who wishes to enter the Gaza Strip in order to celebrate a festival with his parents and siblings will be obliged to leave his wife and children for the duration of the visit. Third, the expression “first degree” is not defined in the procedure; however, HaMoked’s experience in its contacts with the Erez DCO indicates that the relationship between grandparents and grandchildren is not included in this definition. Fourth, the interpretation of the term “exceptional humanitarian need” regarding first-degree relatives is restrictive and unreasonable. For example, where a brother’s sister-in-law dies, the brother is not entitled to an entry permit due to “exceptional humanitarian need,” because he was not a first-degree relation of the woman who died, even though his brother was the grieving party.

In reply to this correspondence, the state agreed that visits authorized for “humanitarian need” would not come at the expense of visits for the festivals, but in addition to them. In addition, the state agreed that a Muslim would be able to visit their families during both holidays. The state also agreed to one of HaMoked’s requests, and ruled that “an Israeli who has been permitted to enter the Gaza Strip ... shall be entitled to include his spouse and children aged up to 18, in the absence of security reasons.”<sup>100</sup> The other restrictions remained intact.

97. H CJ 10043/03 *Abajian et al. v. Commander of IDF Forces in the Gaza Strip*. Supplemental Response (No. 2) on behalf of the Respondent, Par. 18 (emphasis in original).

98. *Ibid.*, Section 22.

99. Letter from Attorney Yossi Wolfson, of HaMoked, to the High Court Petitions Department in the State Attorney’s Office, 30 August 2004.

100. Letter from the Petitions Department in the State Attorney’s Office to HaMoked, 25 November 2004.

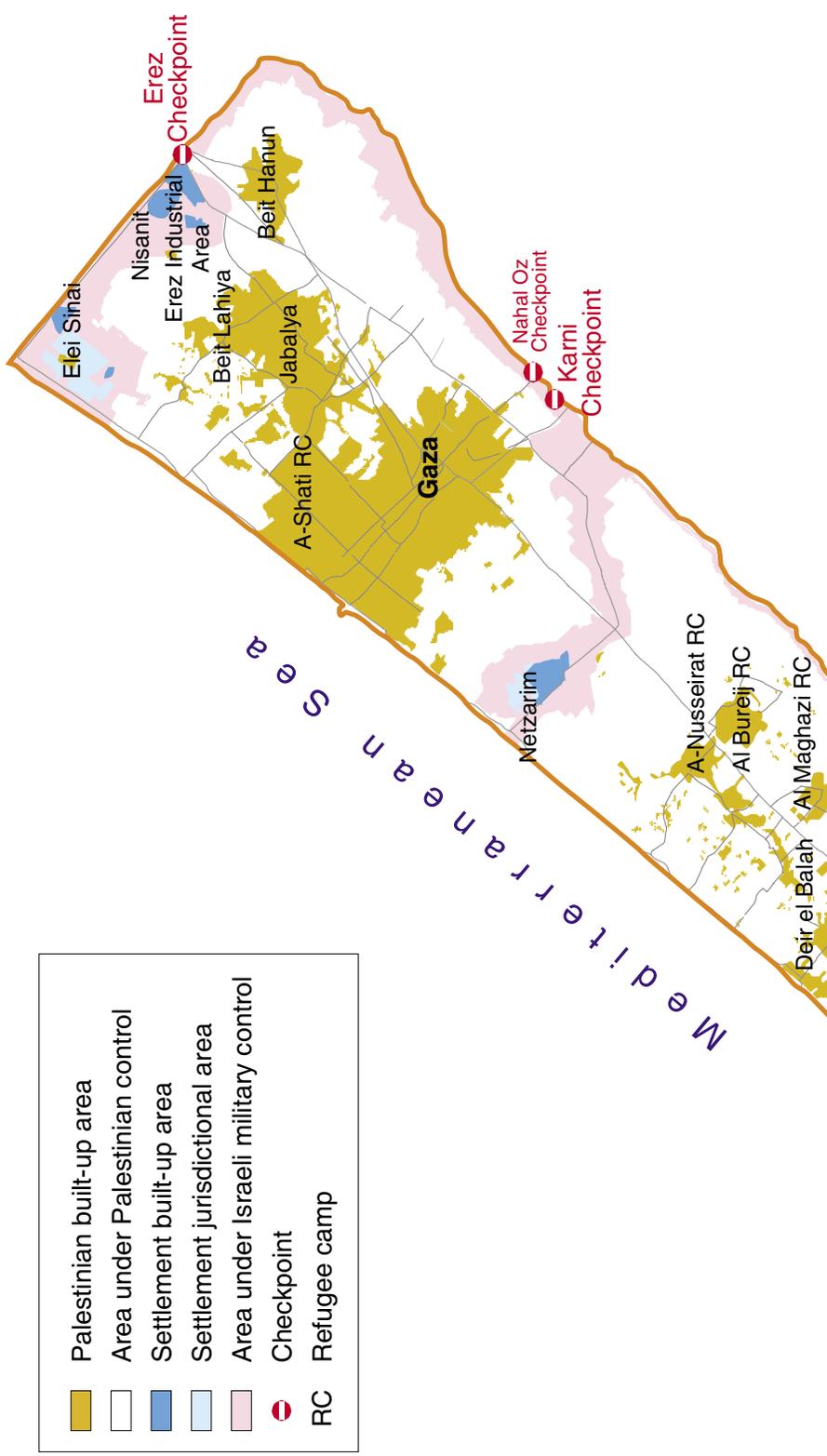


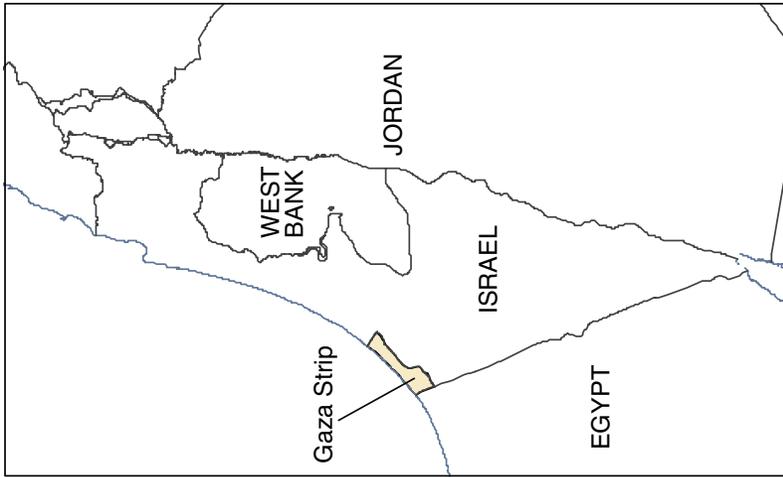
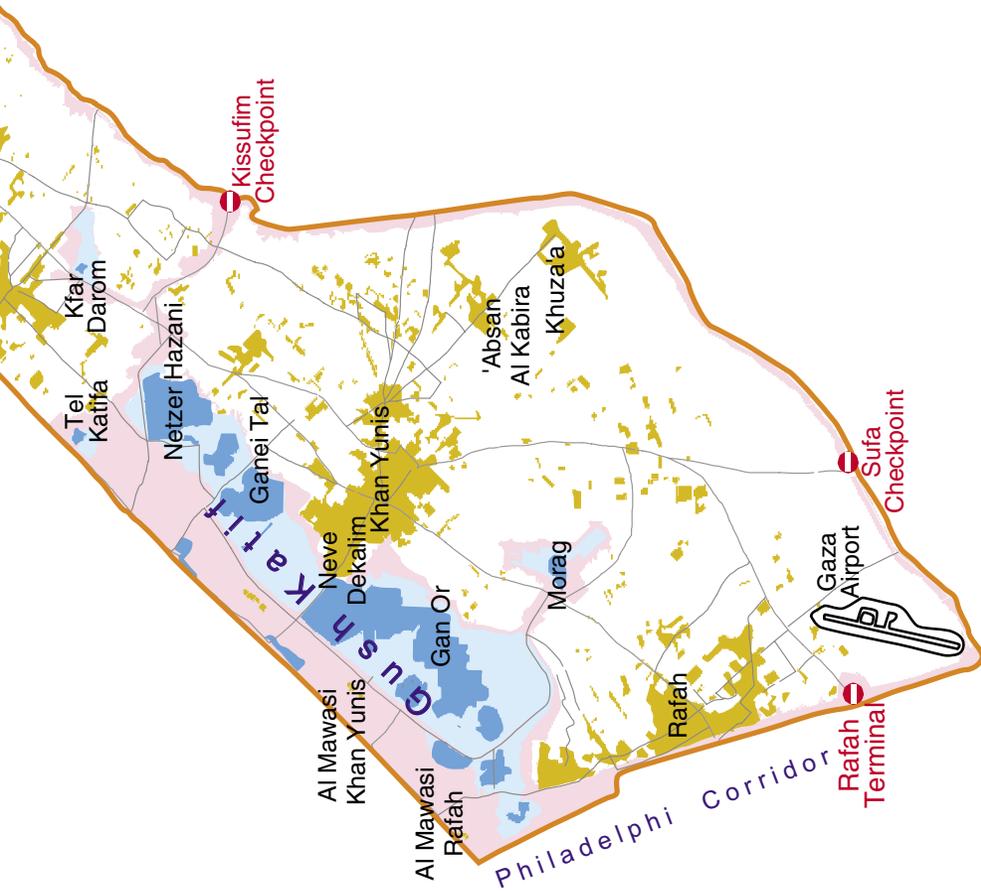
| Randa Samaq with her son ('Abd al-Karim S'adi, B'Tselem)



| Ibrahim Musa, who moved from Gaza to Bir Zeit, in the West Bank. Israel prevented him from visiting his mother on her death bed and refused to let him attend her funeral (Iyad Haddad, B'Tselem)

# The Gaza Strip

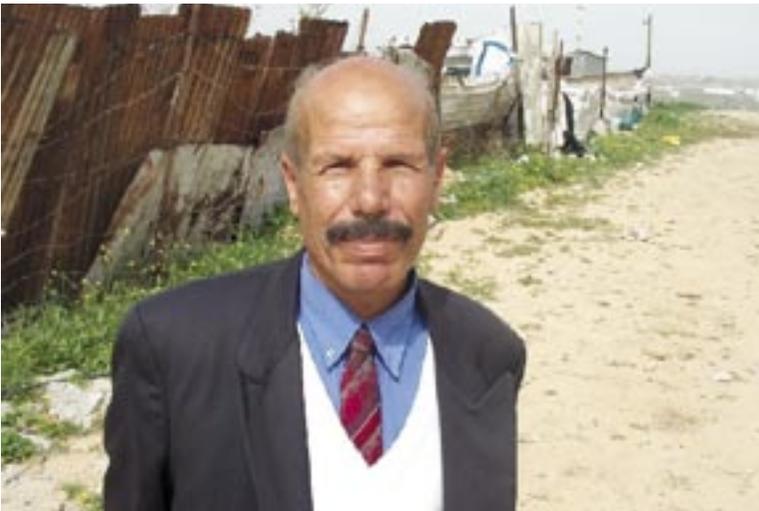




Source: Adapted from map of OCHA (UN Office for Coordination of Humanitarian Affairs)



Palestinian workers at the entrance to the Erez industrial zone, 13 February 2004 (Ahmad Jadala, Reuters)



Kamal Qafa, 55, whose family is in severe financial distress after he has been denied, for more than one year, entry into Israel to work (Mazen al-Majdalawi, B'Tselem)

### 3. Obstacles to family unification

The previous section of this chapter discussed the restrictions on relatives wanting to see each other from time to time. This section involves the restrictions that affect the ability of families in which one member is an Israeli and the other a resident of the Gaza Strip (hereafter: “divided families”) to live under one roof, and the ability of their children to live permanently with both their parents.

Over the years, Israel has deliberately tightened its policy regarding family unification in Israel, and has encouraged divided families to establish their home in the Gaza Strip. For example, in most cases, residents of Gaza married to Israeli citizens or residents have not received entry permits to Israel, although they had applications pending for family unification. In May 2002, the possibility for family unification in Israel was also formally blocked when the government decided to halt acceptance of new applications for family unification in which the partner requesting status in Israel is a Palestinian resident of the Occupied Territories, and to freeze the processing of applications already submitted. In July 2003, the Knesset passed a new law completely abolishing the family unification procedures in such cases.<sup>101</sup> Israelis who marry foreigners who are not residents of the Occupied Territories, on the other hand, may continue to file applications for family unification on their behalf.<sup>102</sup> The law was

passed as a one-year temporary measure, and it was recently extended through May 2005.<sup>103</sup>

Since Israel cut off the possibility of family unification in Israel, the only alternative available to the divided families is to establish their home in the Gaza Strip. As previously noted, Israelis who marry residents of the Gaza Strip have been required since 1994 to obtain an individual permit provided through the Divided Families Procedure in order to enter the Palestinian controlled areas and live with their spouse. In the vast majority of cases, these are women citizens or residents of Israel who marry male residents of Gaza. In 2003, 909 women received permits under this procedure, of whom 414 were from East Jerusalem.<sup>104</sup> On entering the Gaza Strip, the women must leave their identity cards at the Israelis Office at the Erez DCO, and pick up the permit to enter the Palestinian Authority. When leaving for Israel (usually for family visits), the women (though there are also men) are obliged to return the permit, even if it is still valid. When they want to return to their homes in the Gaza Strip, they have to submit a new application.

Whereas Israel has declared a change in Israel’s policy regarding visits to the Gaza Strip by Israelis, the Divided Families Procedure has not been changed at all. However, since the outbreak of the intifada, Israel has used a number of different methods to make it difficult for these women to obtain permits and live legally with their families.

101. Nationality and Entry into Israel (Temporary Order) Law, 5763 – 2003.

102. For further details, see HaMoked and B’Tselem, *Forbidden Families – Family Unification and the Registration of Children in East Jerusalem*, January 2004.

103. Several human rights organizations petitioned the High Court against the law, and these petitions are pending. See HCJ 7052/03, *Adalah et al. v. Minister of Interior et al.*; HCJ 10650/03, *Abu Gwila et al. v. Minister of Interior et al.*

104. Letter from the IDF Spokesperson, 13 December 2004.

## Harm to the work of human rights organizations

The almost total prohibition imposed by Israel on Gazans entering Israel and on Israelis entering the Gaza Strip also impairs the ability of Israeli human rights organizations to monitor and document the human rights situation in Gaza.

B'Tselem, for example, employs Mazen al-Majdalawi, a Palestinian resident of Jabalya refugee camp, as a fieldworker. Since the beginning of his employment in B'Tselem, Israel has thwarted any possibility for him to meet with his fellow staff members to obtain professional training. B'Tselem contacted the army several times and requested that al-Majdalawi be permitted to come to the organization's offices in Jerusalem or, alternatively, that two of the organization's Israeli staff members be permitted to enter the Gaza Strip, but all the requests were rejected. Given this refusal, B'Tselem decided at the beginning of 2003 to hold a training course in Turkey. However, on arriving at Rafah Crossing, it emerged that al-Majdalawi was prohibited from traveling abroad for "security reasons," even though a few weeks earlier he had passed through Rafah Crossing without incident on his way to and from England.

B'Tselem subsequently petitioned the High Court through HaMoked, requesting that al-Majdalawi be allowed to enter Israel.<sup>105</sup> In the petition, the organization declared its willingness to accept an alternative location for the training course: in a Palestinian controlled area, abroad, in the West Bank, or in an Israeli controlled location in the Gaza Strip.

In reply, the state declared that, based on "security information" in its possession, it could not accept any of the compromise proposals raised by B'Tselem. Accordingly, and based on the classified material submitted to the Court, the judges informed B'Tselem that they would not intervene in the case. It should be noted that Mazen al-Majdalawi is not active politically and has never been detained or interrogated by Israel or by the Palestinian Authority.

Among these measures, Israel has occasionally decided to freeze the implementation of the procedure, usually after terrorist attacks or during large-scale military operations. These freezes are applied on a sweeping basis, without any public notification of the decision or its duration. Due to the absence of public notification, there is no precise record of the dates of the freezes. However, women who depend on this procedure have reported to HaMoked that freezes were in effect at the following times: end of January 2001 (5 days);

early June 2001 (14 days); April – May 2002 (30 days); early July 2003 (11 days); early April 2004 (9 days); May 2004 (32 days); late June 2004 (12 days); and November 2004 (30 days).

As a result, women who were in Israel for family visits were "stuck" for various periods far from their homes, spouses, and children. Other women who were in the Gaza Strip went to the Erez checkpoint to renew the permit, only to discover that their efforts and the risks they had taken (exchanges of fire),

105. HCJ 10811/03, *B'Tselem et al. v. Commander of IDF Forces in the Gaza Strip*.

the checkpoints they had crossed, and the humiliation they had suffered were in vain, since no renewals were being issued. The legal advisor in the Gaza Strip justified this policy by noting that “the reason [for the freeze] is concern for the visitors’ lives.”<sup>106</sup>

The children of divided families who are not listed on the Israeli ID card of either of their parents are only entitled to join that parent on visits to Israel until the age of five. Thus, many women who have children older than five refrain from visiting their families in Israel for protracted periods, out of fear that they will be “stuck” in Israel and separated from their children, as in the case of Sana’a Natsha:

I was born in East Jerusalem. In 1983, I married Nabil, a resident of Gaza. We have four children. The eldest is now twenty, and the youngest is eleven... As far as I am concerned, the biggest problem is that the Israeli side absolutely refuses to list my children on my ID card or on my permit. I cannot travel to Jerusalem because the Israelis want me to go alone, and leave my children in Gaza. I fear that if I go, there will suddenly be a closure and I would be stuck far away from my children. My daughter, Samah, who is 15, is diabetic and suffers from a blood disease. On the other hand, I really miss my family and want to visit them. I have not gone to Jerusalem since 1999, more than five years ago... None of my children know my family. My parents are dead, but I have twelve brothers and sisters living in East Jerusalem. This matter of renewing the permit leaves me with a feeling of being uprooted. It is as if I have

no permanent place, not in Gaza and not in Jerusalem.<sup>107</sup>

At the time the Divided Families Procedure was established in 1994, it was decided that the permits issued would be valid for three months. However, in January 2002, this decision was changed, and since then only one-month permits have been issued. As a result, women who wish to obey the law and renew their permit promptly must make the journey from their home to the Erez checkpoint twelve times a year, and sometimes even more frequently, since the DCO does not publicly announce how long the freeze will remain in effect. Since the outbreak of the intifada, reaching the Erez checkpoint to renew the permits has become a long, dangerous, and uncertain journey. After major terror attacks, the army sets up internal checkpoints within the Gaza Strip, dividing Gaza into three separate areas. While this situation lasts only a few days, the checkpoints and the restrictions on movement remain for some time. Exchanges of fire between Israeli forces and armed Palestinians along the roads of the Gaza Strip have become routine since the beginning of the intifada. Faced with these difficulties, many women living in the Gaza Strip under the Divided Families Procedure refrain from coming to the Erez checkpoint to renew their permits.

Despite these constraints preventing the prompt renewal of permits, when these women later attempt to obtain a new permit (usually on returning from a family visit to Israel), the DCO often refuses to grant their request on the grounds that they “were present in the Palestinian Authority area

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106. Letter from the Office of the Legal Advisor, Erez DCO, to HaMoked, 9 November 2004.

107. The testimony was given to Mazen al-Majdalawi on 28 December 2004.

contrary to the conditions of the permit, and thereby contravened an order of the Southern Command.” External intervention and even High Court petitions are often needed in order to enable women caught in this situation to return to their homes in the Gaza Strip.

One such woman is M.A., a resident of East Jerusalem, who in 1993 married a man from Gaza and moved to Rafah, in the southern part of the Gaza Strip, to live with him. Over the years, the couple had four children. Since 1994, M.A. obtained entry permits for the Gaza Strip on a regular basis in accordance with the Divided Families Procedure. On 7 March 2004, the last permit she held became invalid and she set out for Erez Crossing, in the north of the Gaza Strip, in order to renew it. First, she was delayed at the Kfar Darom checkpoint. After she waited for several hours, the soldiers allowed her to pass. When she arrived at the checkpoint at the Netzarim intersection, she discovered that the checkpoint was closed, and she was obliged to return home. The next day, she set out again. This time, she managed to reach the Erez checkpoint, only to be told that a total closure had been imposed so that no permits were being renewed and she must come back in two weeks. Fifteen days later, M.A. returned to the Erez checkpoint, but was not allowed to enter the Israeli DCO on the grounds that such entry must be coordinated in advance through the Palestinian DCO. The efforts of the Palestinian DCO staff to arrange her entry to the Israeli DCO proved unsuccessful. At the beginning of May, Israel decided again to freeze the procedure “due to the security circumstances.”<sup>108</sup> Accordingly,

M.A. was once again prevented from renewing the permit.

At the beginning of August, M.A. decided to enter Israel with her four children in order to visit her family in East Jerusalem. On leaving the Erez checkpoint, she was taken to the police station and interrogated regarding the circumstances behind her failure to renew her permit. At the end of her visit to Jerusalem, M.A. contacted the Israelis Office at the Erez DCO and requested an entry permit for Gaza, in accordance with the procedure. After her request was denied, she contacted HaMoked. The Israelis Office informed HaMoked staff that the application had been refused because M.A. had “infringed the general’s order” by failing to promptly renew her permit to stay in the Gaza Strip. Following this refusal, HaMoked contacted the army’s legal advisor in the Gaza Strip, sending two urgent letters and requesting that she be permitted to return home, but no response was received. HaMoked therefore decided to submit a petition to the High Court, and only then did the DCO agree to enable M.A. and her children to return to their home in Rafah.<sup>109</sup> During this saga of bureaucratic abuse, Israel forced a painful separation of longer than two months on this family.

HaMoked contacted the army’s legal advisor in the Gaza Strip and asked that the authorities desist from the unacceptable practice of severely punishing individuals for failing to renew permits by cutting them off from their homes and family, without any judicial

108. Letter of 5 April 2005 from Lt. Col. Gen. David Benjamin, Legal Advisor for the Gaza Strip, to HaMoked.

109. HCJ 9204/04, *Ashur et al. v. Commander of Military Forces in the Gaza Strip*. For a similar petition, see HCJ 8947/04, *Sharab et al. v. Commander of Military Forces in the Gaza Strip*.

process and without right of hearing. The DCO subsequently agreed to “relax” its policy:

If and when it is not possible to renew the permit because of the inability to physically reach the crossing in light of the security situation at the time (for example, because of checkpoints that prevent passage from one part of the Gaza Strip to another), in general, the failure will not be considered a violation of the permit’s conditions. However, it is emphasized that the inability to reach the crossing shall not be considered permission to remain in the Gaza Strip, and the applicant must again submit a request to the Israeli office according to the above-mentioned procedure immediately upon the removal of the said obstacle. It should further be mentioned that every case will be examined individually, and it will be checked whether the person was unable to reach the crossing to renew the permit. When there is a decision not to approve the request for an extension, the Israeli applicants must leave the Gaza Strip – upon expiration of the permit they hold – immediately, or no later than the expiration date on their permit.

Failure to leave the Gaza Strip after the permit has expired without having been renewed will be considered a violation of the permit’s conditions. Individuals who breach the conditions of the permit as aforesaid will be subject to a graduated series of administrative measures that are based on the circumstances. Any such measures shall be taken after the applicant is given an

opportunity to argue his or her case before the commander of the crossing.<sup>110</sup>

In May 2004, Israel began to impose new conditions for permits in the framework of the Divided Families Procedure. The Israeli entering the Gaza Strip or staying there permanently had to promise not to return to Israel for at least three months. Several women requested a copy of the document they had to sign, but their request was refused. One of the women read the text of the document to her attorney. The document included the following statement:

I am aware and agree that signing this commitment is a condition for being permitted to enter the area to live with my spouse and family.... I am aware that if I leave the area and enter Israel during the three-month period following my entry into the area, it may result in my not being allowed to re-enter the area for the said purpose.<sup>111</sup>

Ibrahim ‘Ashur is an Israeli citizen married to a Gazan. The couple has five children who live with their mother in the Gaza Strip. ‘Ashur is an anesthesiologist, and has worked at Soroka Hospital, in Beersheva, for several years. Seven years ago, he submitted a request to the Interior Ministry for family unification on behalf of his wife. The handling of the application was frozen in 2002 following the government’s decision to freeze all applications. Previously, the couple divided their time between Gaza and Israel, but for several years now, Israel has refused to grant his wife a permit to visit in Israel. ‘Ashur therefore goes to Gaza every

110. Letter of 9 November 2004 to HaMoked from the Office of the Legal Advisor, Erez DCO.

111. The full text of the letter appears in the petition filed with the High Court opposing this policy: HCJ 5076/04, *Husseini et al. v. OC Southern Command*.

two or three weeks to visit his family, stay with them for a few days, and return to Beersheva, when he is able to arrange a few days vacation from work. On 2 May 2004, 'Ashur went to the Israeli DCO at Erez to arrange his entry into the Gaza Strip. The official at the DCO informed him about the new directive. He was faced with a choice between taking off three months from work, which would mean a loss of income and the possibility of being fired, and being separated from his wife and children until the new directive is cancelled.<sup>112</sup>

HaMoked and Adalah petitioned the High Court on behalf of four such families, including the 'Ashur family, where the entry of one of the spouses into the Gaza Strip was conditioned on signing this commitment. The petitioners argued that the condition violated the individual's constitutional right to return to his or her country. In response, the State Attorney's Office argued that the state was not prohibiting the individuals from returning to Israel, but that they had freely undertaken not to do so for a certain period of time.<sup>113</sup> However, a look at the commitment clearly shows that it is a disguised form of compulsion. In other words, Israel does not "prohibit" the signers from entering their country for three months, but only "explains" that if they do, they will not be permitted to return to their home in the Gaza Strip at a later date. In any event, the state agreed to revoke the directive in the petitioners' cases, though it reserved the right to implement it in other cases. In practice, Israel abandoned its reservation after the submission of this petition.

The case of A.Q. is unique, but illustrates the stubborn refusal often encountered by divided families in their contact with the Israeli authorities. A.Q. was born in the Gaza Strip. In 1969, following her marriage to a resident of East Jerusalem, she was given permanent residency status in Israel. Sixteen years later, after giving birth to eight children, A.Q. got divorced. In 1987, she married a resident of the Gaza Strip. In 1994, her husband died. The couple had one child, who was listed as a resident of the Gaza Strip.

Over the years, A.Q. divided her time between her family in Gaza and her sons who remained in Jerusalem. In October 2002, at the end of one of her visits to Jerusalem, officials at the Erez DCO informed her that her request to enter the Gaza Strip had been denied. She went to HaMoked for help. HaMoked contacted the Israelis Office at the DCO to determine the reason for the rejection. The response they received was that the procedure for divided families applies only when both spouses are alive. In cases where one spouse is dead, the DCO is not obligated to continue the arrangement for the children they had together.<sup>114</sup> A month later, the DCO agreed to issue A.Q. a permit to enter Gaza for one week to visit her twelve-year-old son. She feared that if she returned to Jerusalem when her permit expired, she would not be permitted to return to visit her son, so she stayed in Gaza without a permit. HaMoked requested that the DCO issue the permit necessary to make her stay in the Gaza Strip legal. In making the request, HaMoked emphasized that she had

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112. For further details on this case, see Amira Hass, "Three Months, Temporary," *Ha'aretz*, 5 May 2004.

113. HCJ 5076/04, *Husseini*. Response of the Respondent, Section 1.

114. The explanation was given by Michal Sharbany, of the public complaints section of the Israelis Office, in a phone conversation with HaMoked.

legal custody of her son and was responsible for him, and so she was forbidden by law to abandon him. The army's legal advisor in Gaza refused to issue a permit in accordance with the procedure, and demanded that she come to the Erez DCO. He justified his decision on the weak and disturbing argument that, "to the best of our understanding, as is customary and accepted in Muslim society and in accordance with the Shari'a (Islamic law), your client's son is in the custody of his father's family..."<sup>115</sup> A.Q. is her son's guardian pursuant to order of the Shari'a court in the Gaza Strip. The Erez DCO recently informed her that her status as a resident of Israel terminated when she decided to move her center of life to the Gaza Strip, so that she now has no vested right to enter Israel.<sup>116</sup>

#### **4. Breach of international law**

From the legal perspective, Israel raises two principal arguments to justify its policy. The first is that international humanitarian law does not grant residents of occupied territory a vested right to enter the sovereign territory of the occupying power. The second argument is that entry into a closed military area (which is the present status, as noted above, of the Gaza Strip) does not come within the right to freedom of movement given to Israeli citizens pursuant to Israeli constitutional law and international human rights law.

These two arguments address only some of the rules applying to Israel. Even if the arguments

are accurate, they do not "exempt" Israel from respecting other relevant rules of international law, most notably the obligation to respect the human rights of all persons under its jurisdiction. Therefore, establishing the scope of Israel's power to restrict entry of residents of the Gaza Strip to its territory or of its citizens to enter Gaza can only be done by taking into account the rights of the persons involved.

As stated in Chapter One of this report, international law states that every person has the right to maintain family life, and states are forbidden to interfere arbitrarily in family life and have the duty to taken active measures to enable the realization of this right. Israel's visitation policy, which combines absolute prohibition on the entry of Palestinians into Israel and severe restrictions on the entry of Israelis to the Gaza Strip, flagrantly ignores these obligations. Israel's policy has turned the right to maintain family life, a right given to every person, into a privilege given sparingly by Israel in "humanitarian cases."

In most cases, Israel justifies forbidding its citizens and residents to enter the Gaza Strip to visit their loved ones on "the real fear for the safety of the persons entering [the Gaza Strip]."<sup>117</sup> This argument belies the facts. It also constitutes discrimination on the grounds of national origin. The visitors are Arab-Palestinian, some of whom were born in the Gaza Strip. Neither B'Tselem nor HaMoked know of a single case in which an Arab citizen of Israel who visited his or her family in the

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115. Letter of 2 February 2003 to HaMoked from Munir Alqarinawi, on behalf of the DCO's legal advisor.

116. For further details and background on Israel's policy on residency in East Jerusalem, see B'Tselem and HaMoked: Center for the Defence of the Individual, *The Quiet Deportation: Revocation of Residence of East Jerusalem Palestinians*, April 1997.

117. See, for example, H CJ 10043/03, *Abajian v. Commander of IDF Forces in the Gaza Strip*. Response by the State Attorney's Office, Section 11.

Gaza Strip was harmed by a local resident. If such a danger exists, as the state argues, it results from the grave security situation in the Gaza Strip, which is no greater than the danger Israelis face when they visit settlements in the Gaza Strip. Indeed, the latter is likely more dangerous. But Israel has never restricted Jewish citizens from entering the Gaza Strip to visit settlements in the Gaza Strip.

Even worse, Israel's policy infringes the right of thousands of persons, in Israel and in the Gaza Strip, to marry persons who live in a different area, and to live together with their spouse. The right of individuals to have their spouse obtain a legal status in their country of his birth so that they can live together is enshrined in international law, and has been recognized by Israel's High Court. In the decision given on the petition against the expulsion of a spouse of an Israeli citizen who was staying in the country illegally, Justice Heshin held that:

The State of Israel recognizes the right of citizens to chose their spouse and raise a family with them in Israel. Israel is required to protect the family unit... Israel has recognized and recognizes its obligation to protect the family unit also by giving permits for family unification. Thus, Israel joined the enlightened states of the world, which recognize – subject to the exceptions of state security, public safety, and public welfare – the right of family members to live together in the territory that they choose.<sup>118</sup>

Israel takes an opposite approach, making it as difficult as possible for divided families to live together. One aspect of this policy is the prohibition that has been in effect since the Israeli government's decision May 2002, whereby divided families are not permitted family unification inside Israel. This decision was later given sanction in law. Remarks made by Israeli officials, among them ministers and Knesset members, indicate that demographic-racist considerations underlie the prohibition, and not security reasons, as the State Attorney's Office claimed before the High Court. The actual purpose of this law is to prevent an increase in the Arab population in Israel and to preserve the Jewish character of the state.<sup>119</sup> Such a consideration renders the prohibition patently unacceptable and illegal.

Israel's policy also raises illegal hardships and conditions that its citizens and residents must meet if they want to live with their spouses in the Gaza Strip. For example, Israel often forbids Israelis living in the Gaza Strip to return to their homes in the Gaza Strip after they complete their visit in Israel, arguing that they violated the commanding officer's order prohibiting them to stay in the Gaza Strip without a permit. Breach of the right to family life and the right to freedom of movement by administrative means (without a judicial proceeding) must be proportionate and intended to prevent a future threat, and never as punishment. If Israel believed that these women violated a commanding officer's order, it had the right to prosecute them for the violation. The decision to prohibit them from returning to their homes and families on

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118. H CJ 3648/97, *Stemkeh et al. v. Minister of the Interior et al.*, *Piskei Din* (2) 728, 781-782.

119. For further discussion on this point, see B'Tselem and HaMoked: Center for the Defence of the Individual, *Forbidden Families: Family Unification and Child Registration in East Jerusalem*, January 2004.

the grounds that they committed an offense, without conducting a legal proceeding and by denying them the right to be heard, is arbitrary punishment and flagrantly breaches their rights. In other cases, Israel only allowed people to enter Gaza if they “consented” not to leave the Gaza Strip for at least three

months. In addition to the violation of the right to maintain family life (by being separated from the part of the family living in Israel), this condition ignores the right whereby, “No one shall be arbitrarily deprived of the right to enter his own country.”<sup>120</sup>

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120. International Covenant on Civil and Political Rights, Article 12(4).

# Chapter Four

## Economic siege on the Gaza Strip

### 1. Historical background

From the beginning of the occupation until the peace process began with the Oslo Agreements, in 1993, Israel's economic policy in the Occupied Territories was to integrate the economy of the West Bank and the Gaza Strip with that of Israel, while perpetuating the underdevelopment of the Palestinian economy and increasing its dependence on the Israeli economy. The primary components of the policy were the following:

- Lack of encouragement, delay and prevention of investment in the Occupied Territories, by means of the bureaucracy of the Civil Administration and the military legislation;
- Creation of a “captive market” for Israeli merchandise, by blocking the import of certain products from other countries that compete with Israeli products;
- Encouragement of the mass entry of Palestinians into the Israeli labor market, particularly in the construction, farming, and service sectors;

- Failure to invest in physical infrastructure in the Occupied Territories, and allocation of much of the tax revenues received from the Palestinian population to the Israeli budget, rather than to investment in the Occupied Territories;
- Harm to the farming sector, one of the main components of the Palestinian economy, by dispossessing Palestinians of land, setting low water quotas, and restricting exports of agricultural products from the Occupied Territories to Israel.<sup>121</sup>

In 1994, in the framework of the peace process, Israel and the Palestinian Authority signed the Paris Protocol, which arranged the economic relations between the two sides.<sup>122</sup> The Protocol adopted a “customs union” model, which is characterized most notably by the absence of economic borders between the parties to the union. Israel was required to collect import taxes on all goods entering Israel and the Occupied Territories, and to transfer to the Palestinian Authority the tax monies it collected on goods intended for the Occupied Territories.<sup>123</sup> Israel was also obligated to transfer to the Palestinian Authority the VAT

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121. For an extensive discussion of Israel's economic policy in the Occupied Territories since the beginning of the occupation, see A. Arnon, I. Luski, A. Spivak, and J. Weinblatt, *The Palestinian Economy: Between Imposed Integration and Voluntary Separation* (New York: Brill, 1997); Jerusalem Media and Communication Centre, *Israeli Obstacles to Economic Development in the Occupied Territories* (Jerusalem, 1992); G. Abed, *The Palestinian Economy - Studies in Development under Prolonged Occupation* (London: Routledge, 1988); S. Roy, *The Gaza Strip: The Political Economy of De-Development* (Washington: Institute of Palestine Studies, 1995).

122. The Paris Protocol was signed a few weeks after the signing of the Cairo Agreement (Oslo I), and is considered an integral part of that agreement.

123. Cairo Agreement, Annex IV, Protocol on Economic Relations, Article 2.

that it collected on goods or services provided in Israel and intended for consumption in the Occupied Territories.<sup>124</sup> The Protocol also provided that the Palestinian Authority would be given several powers in the area of economic policy, among them the power to impose taxes, maintain an industrial policy, establish a monetary authority and serve as financial advisor and agent, and hire persons to work in the public sector.

Overall, the Protocol perpetuated Palestinian economic dependence on the Israeli economy and preserved Israeli control over the Palestinian economy. This control was particularly evident in light of the continuing violent struggle against the Israeli occupation and Israel's attempts to quell the violence, in part, by placing sweeping restrictions on freedom of movement, as follows:

- Although the Palestinian economy was dependent on Palestinians entering Israel to work, the Protocol did not restrict Israel's power to regulate the flow of Palestinians into Israel as it wished, or even to stop it completely;
- The Protocol provided that the foreign trade of the Palestinian Authority would be handled through Israel's seaports, or through the land crossings in the Occupied Territories, which are under the sole control of Israel, thus enabling Israel to unilaterally stop the movement of Palestinian imports and exports;
- The Protocol gave Israel sole control over collecting taxes for the Palestinian Authority for imported goods, which enabled Israel to

stop or suspend the transfer of payments as a means of pressure or punishment;

- The Protocol enabled Israel to unilaterally establish taxes on imported goods, giving preference to its own economic interests;
- According to the Protocol, the importation of certain goods into the Occupied Territories was subject, in some circumstances, to quantity limitations, and in other cases, Israeli permission was required (such as for oil and gas, telecommunications equipment, farm produce, and motor vehicles).

Israel's control over the Palestinian economy resulting from its control of the borders assumes greater significance because of the Palestinian economy's great dependence on foreign trade, in general, and on trade with Israel, in particular. The dependence of an economy on foreign trade is a function of the scope of imports and exports as a percentage of the entire economy, which is measured by Gross Domestic Product. In 1998, the foreign trade of the Occupied Territories (West Bank and Gaza Strip) was 80.4 percent of GDP. That year, it was 22.4 percent in Egypt, 60 percent in Syria, and 52.4 percent in Israel. Seventy-five percent of all imports and 96 percent of all exports were conducted with Israel or through its ports.<sup>125</sup> It should be mentioned that high dependence on foreign trade is characteristic of small economies, which naturally are unable to manufacture most of the goods and services they require, and are therefore forced to rely on imports. The extent of imports dictates the amount of exports that are needed to finance the imports.

124. *Ibid.*, Article 6.

125. UNSCO (United Nations Special Coordinator Office), Report on the Palestinian Economy, Spring 2000, pp. 35-36.

The second component of Israel's control of the Palestinian economy is derived from Israel's ability to regulate the movement of Palestinian workers employed in Israel. This number steadily increased from the beginning of the occupation until the imposition of the closure policy, in 1993.<sup>126</sup> By 1993, one-third of the Palestinian labor force (73,000 in the West Bank and 43,000 in the Gaza Strip) was employed in Israel, an unprecedented number according to any standard.<sup>127</sup> The main reason Palestinians enter the Israeli labor market has always been the benefit attained by both sides, at least at the personal level. For the Israeli employer, Palestinian workers from the Occupied Territories offered an available, cheap, and reliable labor source, compared with the more expensive Israeli workers, who refused to work in certain jobs, such as building and farming. For the Palestinian workers, work in Israel was especially attractive because of the much higher wages that the Israeli employer paid in comparison to what they would receive in the Occupied Territories.

The benefit to the Palestinian economy is questionable. The great dependence on the flow of money from labor in Israel made the Palestinian economy vulnerable to decisions by Israel to stop the entry of workers into Israel. When the number of Palestinian allowed to enter Israel to work dropped sharply in 1994-1997 (together with the restriction on the movement of goods), the Palestinian economy fell into a deep recession, from which it has not recovered, even following the increased

freedom of movement in 1998-2000 (until the outbreak of the intifada).

## 2. Closing the Israeli labor market

Since the early 1990s, Palestinians have needed a permit from the Israeli authorities to work in Israel. While many West Bank Palestinians entered Israel without a permit (a situation that still exists, but to a lesser extent), since the mid-1990s, every resident of the Gaza Strip employed in Israel, without exception, holds a valid permit.<sup>128</sup> The lack of exceptions results from the Gaza perimeter fence, which prevents the uncontrolled entry of Palestinians into Israeli territory.

To obtain the desired permit, Palestinian employees must meet three basic conditions:

1. They must have a magnetic card issued by the Erez DCO with GSS approval. After submitting a request for a permit, the names of those holding magnetic cards are run through the GSS lists. The request of anyone who has been marked "refused for security reasons" since receiving the magnetic card is rejected.
2. They must meet age and family-status requirements set by Israel: men must be married and have children and be a certain age, usually thirty to forty years old.
3. An Israeli employer must submit a request to allow the applicants to enter Israel, giving their name.

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126. For the background on the formulation of the closure policy, see Chapter Two.

127. Israel's Central Bureau of Statistics, *Statistical Yearbook for Judea, Samaria, and the Gaza Strip* (selected years).

128. The number of employees entering Israel from the West Bank dropped significantly since the construction of the separation barrier in the West Bank.

## **Magnetic card in exchange for information**

**From the testimony of Muhammad Abu Hashish, resident of al-Badwiya (northern Gaza Strip), married with four children**

I wanted to renew my magnetic card so that I could enter Israel to work. I left my house at 3:00 A.M. to go to the Palestinian police station in Jabalya. They sent me and others to Erez... At 2:00 P.M., after being on the Israeli side for five hours, they called out my name on the loudspeaker and told me to go with one of the soldiers. The soldier took me into a room where a GSS agent was sitting, and then he left... After I stood in front of the agent for ten minutes, he ordered me to sit down and then asked me: "Abu Hashish, why were you refused?" I replied that I should ask him that question. He got mad, and said that he is the only one asking questions. Then he asked me where I live. In a Bedouin village in the northern part of the Gaza Strip, I told him. Then he turned the computer terminal around to me and showed me an aerial photo of the area where I live, and asked me to point out my house. I did as he asked. He asked me what I would do if I saw terrorists fire at the Nisanit settlement. I told him that I would inform Palestinian National Security in my village. He told me that National Security doesn't do a thing. Then he tried to get my telephone number, but I told him that I didn't have a telephone. He told me that I was lying, and then he shouted at me: "Who are the terrorists in Badwiya firing the mortars?" I replied that I did not know, and that the shelling hurts me and the villagers more than it does the Israelis. Then he ordered me to stand next to the door for fifteen minutes, after which he called two soldiers, who took me to the waiting room... I waited there until 4:30 P.M., and left without the magnetic card.<sup>129</sup>

The permit is generally valid for three months. In the Gaza Strip, the body authorized to issue permits is the Israeli DCO at Erez, which receives from the Palestinian DCO the requests of Palestinians who meet the criteria, and requests submitted by Israeli employers.

But meeting these three conditions is not enough. Work permits are limited to a quota that is set by the political echelon, the Defense Ministry or the Political-Security Cabinet, based on a broad range of considerations, far exceeding security concerns in the narrow sense. The resident faces more than a quota problem: at times, Israel imposes a

comprehensive closure on the Gaza Strip, generally "as a response" (in the words of the defense establishment) to Palestinian attacks in Israel or the Occupied Territories, and during Israeli holidays. During these closures, Erez Crossing is closed and all permits are cancelled. In 2004, for example, a comprehensive closure was imposed for 149 days, more than half the workdays that year.

These restrictions have led to a sharp drop in the number of workers from the Gaza Strip employed in Israel since the outbreak of the intifada. On the eve of the intifada (the third quarter of 2000), an average of 26,500

129. The testimony was given to Mazen al-Majdalawi on 8 February 2005.

Palestinians from the Gaza Strip entered Israel daily. During the third quarter of 2004, the number was 1,000 per day – a drop of ninety-six percent.

Israel cites warnings of attacks to justify the restrictions on Palestinian workers entering Israel. However, the nature of the restrictions and the way they are implemented suggest that extraneous considerations may also be involved. Media reports indicate that the quotas are generally not based on purely security concerns. For example, Israel sometimes increases the quotas following pressure from states and international organizations, or at the demand of Israeli employers. On the other hand, as noted, Israel often reduces the quotas “as a response” to attacks by Palestinians on Israeli civilians or soldiers, or, in other words, as revenge to appease certain segments of Israeli public opinion.

Responsibility for these actions lies with the political, rather than the defense, echelon.

From a security perspective, it is difficult to see the difference between the degree of danger reflected by workers included in the quota and other workers, who meet the criteria but do not make the quota.

The timing of the comprehensive closures and the reduction in quotas – which generally take place after attacks – together with the defense establishment’s characterization of these actions “as a response” to attacks, are more consistent with a claim that these measures constitute collective punishment than that they are preventive actions. Since the outbreak of the intifada, Erez Crossing has been a target of several attacks that caused many casualties, including suicide attacks. However, Israel justifies its quota and closure policy on the fear of attacks inside Israel. This claim appears baseless. As far as B’Tselem and HaMoked know, except for one case that occurred at the beginning of the intifada, no workers from the Gaza Strip who entered Israel to work have been involved in attacks.<sup>130</sup>

### **Closing of Erez Crossing, by days, and number of Gaza Strip Palestinians working in Israel**

Year	2000		2001	2002	2003	2004			
	Third	Fourth				First	Second	Third	Fourth
<b>Days Erez Crossing was closed</b>	0	47	159	55	96.5	17	45	23	64.5
<b>Number of workers crossing daily</b>	26,565	892	619	3,685	6,221	6,320	73	1,052	24

Source: UNSCO, *Closure in the Gaza Strip*, December 2004, p. 3.

130. On 14 February 2001, Khalil Abu ‘Albeh ran over and killed seven soldiers and civilians at a bus stop at the Azur intersection. ‘Abu Albeh was a resident of the Gaza Strip and held a permit to enter Israel and work as a bus driver for Egged, Israel’s major bus company.

### 3. Paralyzing foreign trade

Production intended for sale abroad is, as mentioned above, one of the bases of every economy, particularly of small economies that are dependent on imports. Exports from the Gaza Strip have sharply declined since the second intifada, causing a significant decrease in production and a substantial increase in unemployment and poverty. To illustrate, according to the Palestinian Central Bureau of Statistics, total exports from the Gaza Strip, including exports to the West Bank, fell from \$59 million in 2000 to \$26.9 million in 2002, a drop of fifty-five percent.<sup>131</sup>

The immediate cause of the reduction in exports was the sharp decline in competitiveness of Gaza products. Palestinian manufacturers have difficulty competing for existing and potential clients, primarily regarding reliability of supply. This is due, in large part, to Israel's policy on the movement of goods to and from the Gaza Strip, and is reflected

in Israel's omissions no less than its actions. Israel's policy almost completely precludes a crucial element of successful foreign trade: predictability. Palestinian manufacturers and merchants are unable to plan the production and marketing of their products, much less undertake to meet a reasonable timetable. This inability results from Israeli policy in key ways: first, all goods have to be moved through a single crossing point (Karni) and no option is available to move goods during closure; second, Israel instituted patently unreasonable methods and procedures, which at times are discriminatory, for queuing at Karni, checking the goods, and moving them from one side of the border to the other.

#### Total dependence on Karni Crossing

There are five land crossing points, with varying degrees of infrastructure and equipment, around the Gaza Strip through which goods could pass: Erez Crossing in the northern

#### **From the testimony of H.S., resident of Beit Lahiya, importer and exporter**

One of the main problems is the delay in getting goods through Karni... Vegetables, which comprise most of the exports, have to get to market in Israel quickly, otherwise they go bad. Often, I have to sell the merchandise in the Gaza Strip because they are no longer suitable for the Israeli market... In Israel, I get an average of forty shekels for a twelve-kilogram crate of vegetables; in Gaza, I only get eighteen shekels... Also, it causes me a lot of problems with Israeli merchants, who blame me for not meeting my commitments, which hurts my reputation. When I manage to get the merchandise through the crossing point, the quality has already deteriorated, and Israeli merchants are unwilling to pay the agreed-upon price. They don't care about the problems at Karni Crossing.<sup>132</sup>

131. PCBS, *Palestinian Territory Imports and Exports by Entry Passage in 1998-2002*, available at [www.pcbs.org](http://www.pcbs.org). If the increase in population during that period (5.4 percent a year) is taken into account, the per capita drop in exports reached sixty percent.

132. The testimony was given to Mazen al-Majdalawi on 12 January 2005.

Gaza Strip; Karni Crossing, southeast of Gaza City; the Nahal Oz checkpoint, situated about two kilometers north of Karni crossing; the Sufa checkpoint, south of the Khan Yunis refugee camp; and Rafah Crossing, about two kilometers south of Rafah. The first four are located on the border with Israel, and the last is situated on the Gaza Strip-Egyptian border.

The Nahal Oz and Sufa checkpoints operate in one direction only (from Israel) and are used for special purposes: movement of fuel (Nahal Oz), and sand and gravel for construction (Sufa). The Gaza Strip does not export to

Egypt, so the Rafah crossing is used almost exclusively for the relatively small importing of goods and humanitarian equipment from Egypt and Arab countries. Most goods entering the Gaza Strip, and almost all exports, crossed through Erez and Karni prior to the outbreak of the intifada, in September 2000. Although the Gaza Strip has a long Mediterranean Sea coastline, it has no seaport that would enable Palestinians from the Gaza Strip to conduct foreign trade by sea without going through Israeli ports.

### **Gaza seaport**

The idea of constructing a seaport for Gaza was discussed in almost all agreements reached by Israel and the Palestinians as part of the peace process, the sides “recognizing the great importance of Gaza Port for Palestinian economic growth and for increased Palestinian trade.”<sup>133</sup> In the Declaration of Principles, signed in September 1993, the parties agreed for the first time to establish a joint committee to “set the guidelines” for implementing the idea.<sup>134</sup> After six years of foot-dragging, Israel agreed, in the Sharm el-Sheikh Memorandum, signed in September 1999, to allow the Palestinian Authority to “begin construction work on the seaport.” According to the memorandum, “the two sides agree that the Gaza seaport would not be used at all before a joint protocol on the port is reached by the parties...”<sup>135</sup> The parties have never signed such a protocol.<sup>136</sup> In the summer of 2000, work began on constructing the infrastructure of the seaport on the coast of Gaza City. The costs were funded by the Donor States. However, in October, the Israeli Air Force bombed the building site in response to an incident in Ramallah where a Palestinian mob killed two Israel soldiers.<sup>137</sup> Following this, the Donor States ceased funding the project. The work on the port stopped and has not recommenced.

133. Wye Memorandum, October 1998, Section 4(4).

134. Declaration of Principles on Self-Government Arrangements, September 1993, Annex III, Article 5.

135. Sharm el-Sheikh Memorandum, Article 6(a) and 6(b).

136. On 20 September 2000, Israel and the Palestinian Authority signed another protocol, in which they reached agreement on a few outstanding disputes in the Sharm el-Sheikh Memorandum. In this protocol, the parties agreed that operation of the port would be subject to an additional, separate protocol that would be signed in the future. See Aluf Benn, “Agreement between Israel and Palestinian Authority on Building Port in Gaza,” *Ha’aretz*, 22 September 2000.

137. Amos Harel, “Air Force Helicopters Attacked in Ramallah and Gaza,” *Ha’aretz*, 13 October 2000; Amos Harel, “American Company Demands Compensation from Israel for its Property Damaged by Air Force Bombing in Gaza,” *Ha’aretz*, 19 January 2001.

Israel's control of movement to and from the Gaza Strip creates an obligation to enable the local economy to function and the residents there to gain a living. The importance of foreign trade in the economy of the Gaza Strip, on the one hand, and the significant security threats to the crossing points, on the other hand, should have led Israel to establish alternate ways to enable trade to continue, even if at a lower degree of activity, when it was necessary to cease operations temporarily at one of the crossings. Not only has Israel failed to do this, with the outbreak of the intifada, Israel did just the opposite: it prohibited the movement of goods through Erez, and directed all exports from the Gaza Strip, and the vast majority of imports to Karni Crossing. Activity at the Sufa and Nahal Oz checkpoints remained limited. The result was almost total paralysis of foreign trade in the Gaza Strip when Israel suspended operations at Karni.

In its response to a compensation claim filed by Israeli merchants, the State Attorney's Office described the background of the frequent closing of the crossing:

Over the past three years, the Karni Terminal has been a target for attacks, for the smuggling of weapons and materiel and assailants, and for the planting of explosives in and around the terminal site. This was the case with the attack that took place on 15 April 2003, in which a terminal worker and another civilian were killed, and three employees were wounded... On 17 March 2004, a container was found at the Ashdod Port which had a double-width wall which enabled the passage of terrorists via Karni

Crossing to carry out the double suicide-attack at Ashdod Port on 14 March 2004. Following discovery of the container and intelligence information indicating an intent to carry out another attack, and in light of military activities in the sector, the Defense Minister decided to close the terminal from 11 May – 3 June 2004... After that, it was partially opened, with restrictions, relating, in part, to the kind of merchandise allowed to cross, the quantity of goods, and the like, all while there were warnings of another attack.<sup>138</sup>

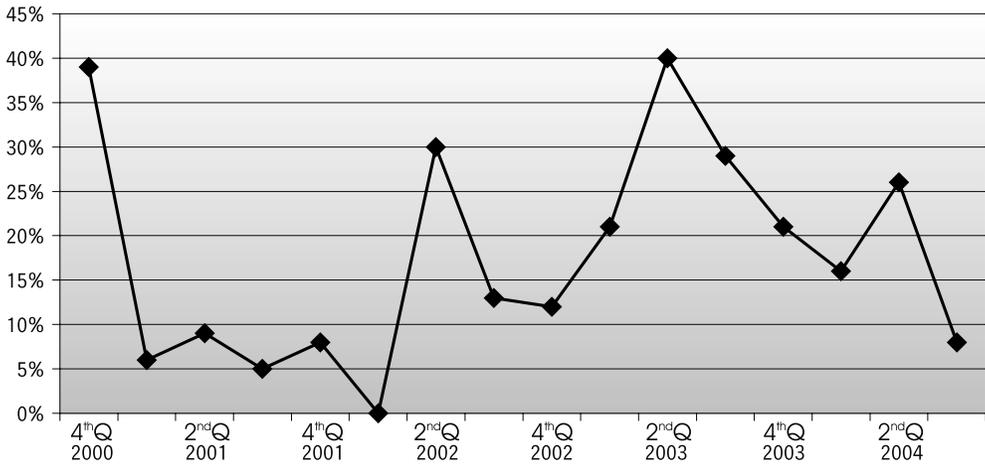
Israel has closed the Karni Crossing partially or totally for various periods of time. In some quarterly periods, the crossing was closed forty percent of the time. The losses resulting from delay in marketing goods is not limited to the harm to the reputation for reliability of the exporter and the danger of losing customers, but also, for example, in the direct losses resulting from storage costs while the crossing is closed, damage to goods or decrease in their value during the waiting period, and penalty payments pursuant to the contracts with the customers.

If Israel had set up a reasonable alternative to Karni Crossing for moving goods when Karni was closed, some of the damage to the Palestinian economy would have been averted. One possibility was for Israel to enable goods to pass through Erez Crossing. Another possibility was increasing the capability of Sufa checkpoint to handle the crossing of goods. Israel also could have established a new land-crossing point, or permitted the construction of a seaport.<sup>139</sup>

138. Civ. Comp. 1135/04, *Pri Metullah et al. v. Airports Authority et al.* Statement of Defense, Sections 13-18.

139. The UN Conference on Trade and Development, for example, recommended that a small seaport be built along the Gaza coast to ship goods from Gaza to Port Sa'id, in Egypt, and from there to other countries. According to the

## Percentage of days Karni Crossing was closed, by quarters\*



\* Includes days that the crossing was open for only a few hours or was closed for the whole day.

Source: UNSCO, *Closure in the Gaza Strip*, October 2004, p. 3.

### Unreasonable methods and procedures

The procedures and methods for checking goods and permitting them to cross to and from the Gaza Strip are another factor that makes it hard for Palestinian exporters to meet reasonable timetables, even when Karni Crossing is not closed. As we shall see, some of these methods and procedures are completely unreasonable and create unnecessary impediments to the movement of goods.

The principal way goods cross through Karni from Israel to the Gaza Strip, and vice versa, is the “back-to-back” method. The method is required because Israel does not permit Israeli trucks to enter the Gaza Strip, or Palestinian trucks to enter Israel. In the back-to-back method, Israeli trucks come to the Israeli side of the crossing, are unloaded, and the

goods are placed in special storage areas (“checking compartments”) for examination. After the goods are checked, they are loaded on Palestinian trucks and taken to their destination. The procedure is the same in the opposite direction. When the goods are inside a shipping container (generally goods coming from abroad), the goods must be unloaded from the container to the checking compartments and then returned to the container after the check is completed. The two main ways of checking are passing the goods through a scanning device such as is common at airports, and by a check made by specially-trained dogs. After the container is taken to its destination and unloaded, it is brought back to Karni, checked, and returned to its owner on the other side of the crossing.

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organization, the port would be able to supply a cheap, expeditious, and feasible alternative to building a complete seaport. See UNCTAD, *Transit Trade and Maritime Transport Facilitation for the Rehabilitation and Development of the Palestinian Economy*, March 2004.

This procedure slows the movement of goods at the crossing to a crawl, resulting in long delays and uncertainty as to when the goods can be delivered. Also, during the unloading and reloading of the containers, the goods are liable to be damaged – as has occurred more than once – causing their value to fall sharply. Israel claims that the back-to-back method is needed because of the repeated attempts by Palestinian to hide arms and assailants inside the cargo to smuggle them into the Gaza Strip, or out of Gaza to other destinations.

Even if we accept Israel's claim that it is necessary to prohibit the movement of trucks from one side to the other, existing technologies make it unreasonable to demand a container be unloaded to check its contents: a scanner could be used to carry out a thorough check of the contents. These devices are in use in many locations around the world, including Ashdod Port.<sup>140</sup> In October 2004, Israel purchased one scanner for Karni Crossing, but it is only used to check empty containers.<sup>141</sup>

Not only has Israel not used existing technology to shorten the time it takes for containers to cross Karni, most of the goods intended for the Gaza Strip or which originate in Gaza are checked more than once before they reach their final destination. For example, goods from Europe intended for Gaza are checked first at Ashdod Port and again at Karni; goods made in Nablus in the West Bank that are intended for Gaza are liable to be checked three times: when leaving Nablus,

at the checkpoint into Israel, and at Karni. Israel claims that the duplication is needed to catch weapons that are placed in the container after the first check. This problem, too, could be solved by modern technology, such as hermetic sealing of the checked containers, and instruments that can readily determine whether the seal has been broken.<sup>142</sup> In most cases, these technologies would eliminate the need for duplicate checks and shorten the time needed to get the goods to the customer.

As a result of the vast amount of goods that have been directed to Karni Crossing since the beginning of the intifada, and the methods Israel uses in moving the goods from one side to the other, the time needed to move the goods through the crossing has increased greatly. The increased time increases storage and transportation costs, and reduces even further the competitiveness of Gaza exports. Despite the heavy traffic at the crossing and the severe harm to the Palestinian economy resulting from the long lines, the crossing is not operated to its full potential.

First, the crossing is open only about eight hours a day, during the daylight hours, and less on Fridays and Saturdays.<sup>143</sup> From time to time, the crossing remains open for a longer time, sometimes until midnight, to facilitate the export of farm produce, clearly indicating that it is feasible to operate the crossing more hours of the day.

Second, even when the crossing is open, it is not operated at full capacity. The more trucks

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140. USAID and World Bank, *Israeli Disengagement and Palestinian Economic Prospects, Technical Paper I*, December 2004, pp. 5-6.

141. Amos Harel, "New Cargo Scanner Machine at Karni Crossing," *Ha'aretz*, 12 October 2004.

142. USAID and World Bank, *Israeli Disengagement and Palestinian Economic Prospects*.

143. From Sundays-Thursdays, from 7:00 A.M. to 5:45 P.M., on Fridays and Saturdays from 8:00 A.M to 2:00 P.M. The information was provided to B'Tselem in a letter of 16 November 2004 from the Airports Authority.

### **From the testimony of N.Z., resident of Beit Hanun, farmer**

I have been farming since I was a child. I own a greenhouse on one dunam of land (a quarter of an acre). I am growing tomatoes now. The greenhouse is next to my house, and my whole family helps out in the greenhouse. If it were possible, I would export tomatoes to Israel, where I could get a higher price than in Gaza. Exports from Gaza to Israel involve lots of problems. I have to sell the produce to a cooperative in Beit Hanun. The cooperative handles the contact between the farmers and Agrexco, the Israeli company that markets the produce. Agrexco had us sign an exclusivity contract with it. The contract contains all kinds of quantity and quality requirements.

All the produce crosses into Israel at the Karni Crossing, where we face more problems. The long wait there results in a lower price for our produce. For example, after a few days, the color of the tomatoes changes, and no longer meets the original requirements set by Agrexco. As a result, the price drops by about fifty percent. In addition, when the crossing is closed for a long time, I suffer greater losses, because I have no way to market the produce in Israel, which means I have to sell it in Gaza before it spoils. In addition to the direct losses because of the difference in price between Israel and Gaza, I lose the money I invested in the special, disposable packaging necessary for exports to Israel. If I had planned to market the goods in Gaza, I would not have spent money on the packaging.

There are lots of problems when importing goods to Gaza. Some products are not manufactured in Gaza, and we have to import them from Israel, such as certain kinds of fertilizer and pesticides, plastic containers for harvesting the produce, seedlings, and a special gas for disinfecting the soil during planting. The delay in obtaining these materials makes things very hard for us, especially because planting the seedlings in the greenhouse has to be done at a fixed time.<sup>144</sup>

being unloaded at a given time, the shorter the wait. The number of trucks being unloaded is reduced when there are insufficient examiners and guards. The State Comptroller's Office conducted random checks a Karni Crossing over several months in 2001 and 2002, and each time, many of the crossing's staff were absent. For example, "in December 2002, thirty-eight of the security staff and twenty-nine of the administrative staff, a total of sixty-seven personnel, were missing."<sup>145</sup>

Regarding goods entering the Gaza Strip, since the middle of 2004, Israel has imposed a new procedure, which further burdens commerce and increases import costs. In the new procedure, a truck driver bringing goods into Gaza must go first to Erez Crossing, where the goods are examined against the manifest, and the details of the truck and the cargo are recorded in the waiting list for Karni Crossing. After a certain period of time, the driver receives a telephone call from Karni

144. The testimony was given to Mazen al-Majdalawi on 21 December 2004.

145. State Comptroller, *Annual Report No. 54 B for 2003 and the 2002 Fiscal Year*, p. 778.

### **From the testimony of F. A., resident of Gaza, importer and exporter**

I import food products through the Abu 'Aker company, which was founded in 1950... I import beans, spices, oils, flour, and birdseed as well. I distribute the products to commercial establishments in the Gaza Strip and West Bank. Like every other importer, I am suffering in the present situation. The politicians in the PA don't know just how much we are suffering... Transporting goods from Ashdod Port to Karni Crossing takes about forty days. It costs \$2,500-\$2,700 to transport a container from Ashdod to Karni. The money goes to the Israeli transport companies. When the merchandise enters Karni, they unload the containers from the Israeli trucks and put them on Palestinian trucks, using the back-to-back method. Sometimes, they use another method: unloading the goods onto flats. In that way, I save the rental costs for the containers. But this method is problematic because there is nowhere to store the flats until they enter Karni Crossing, so the goods can become damaged in the rain, or might be stolen. When I need goods urgently, because they have to be sold quickly, I pay the Israeli merchants who provide fresh produce, which are given preference, so as to enable my goods to cross over together with their merchandise, as if it is fresh produce, to shorten the queue. Lots of merchandise spoils because Karni is closed and because of the delays in transporting the cargo. For example, in December 2003, 107 tons of Spanish rice, worth \$60,000, 18 tons of pistachio nuts from China, worth \$30,000, and 26 tons of black pepper, which cost me \$50,000, became spoiled. I expect to suffer more losses if Karni Crossing remains closed.<sup>146</sup>

indicating that his turn is approaching and that he should come the following day.<sup>147</sup>

How long the driver has to wait is unknown. Testimonies given to B'Tselem by merchants and drivers indicate that the appointments for going to Karni are based on unknown criteria and priorities, raising the likelihood that extraneous considerations are involved, including preferential treatment being given to Israeli producers in comparison to the treatment of producers from the West Bank. According to these testimonies, a driver bringing goods

from an Israeli factory is called to Karni within a week or two, while a driver bringing goods from the West Bank has to wait from three to six weeks.

The various restrictions Israel imposes on movement of goods to and from Gaza, and the overall decline in foreign trade is clearly seen in the drop in the number of trucks transporting goods. According to UNSCO, the number of trucks transporting goods from the Gaza Strip in 2004 was seventy percent less than in 1998.<sup>148</sup>

146. The testimony was given to Zaki Kahil on 24 January 2005.

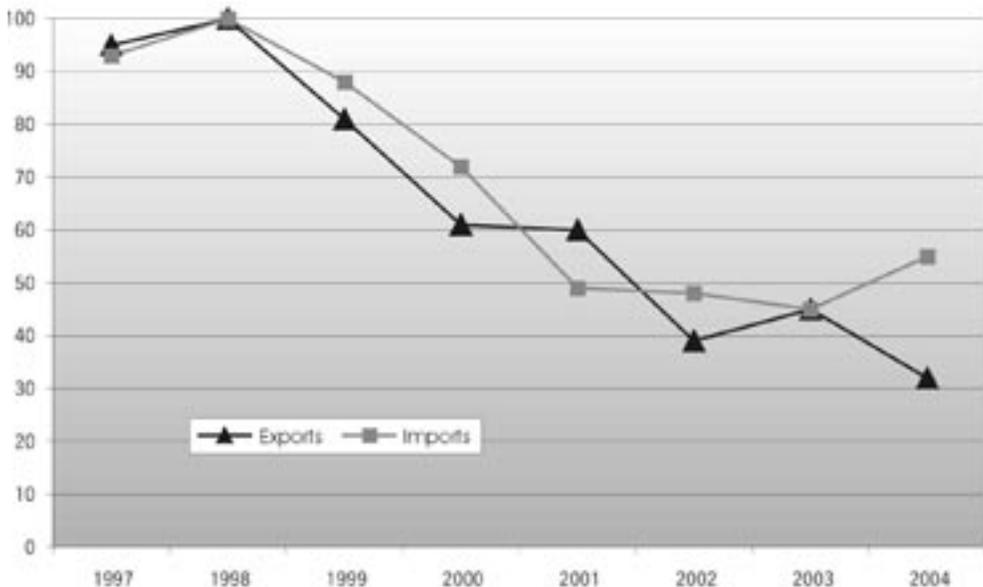
147. On 1 February 2005, B'Tselem sought permission of the Airports Authority to meet with the head of Karni Crossing to obtain information on the methods used to move goods, including the requirement that the driver must take the cargo to Erez and register it there. The Airports Authority agreed in principle to the meeting, but no date has yet been set.

148. UNSCO, *Closure in the Gaza Strip*, January 2005, p. 4.

### From the testimony of I.K., resident of Jerusalem, truck driver

I have been transporting merchandise between Gaza and the West Bank for eight years. I transport a lot from Abu Dis (in East Jerusalem) to the Karni crossing. As a rule, since the beginning of the intifada, my work has become more and more complicated. The biggest problem, though, arose in early 2004, after the new procedure went into effect. According to the procedure, I have to load the goods at the factory in Abu Dis and drive to the Erez checkpoint. When I arrive, I go to the registration office and show my permits and the shipping list. The clerk checks the goods on the truck and counts the number of flats on it. After he records the items, he releases me, and I return with the loaded truck to Abu Dis. After a period of about 15-22 days, the crossing officials inform me that my turn has come. The next day, I go back to the factory, reload the goods and drive to Erez Checkpoint, where I receive a slip allowing me to drive to Karni. At Karni, I give the officials the slip and wait for my turn. Sometimes, I can get the goods into Gaza that same day, but it can also take three days.<sup>149</sup>

**Movement of Trucks Index (1998 = 100)\***



\* This index covers all five crossing points in the Gaza Strip.

Source: *Closure in the Gaza Strip*, October 2004, p. 3

149. The testimony was given to Karim Jubran on 5 February 2005.

#### 4. Unemployment and poverty

The cumulative effect of the restrictions on the movement of goods and the entry of workers into Israel directly led to a sharp increase in unemployment and poverty in the Gaza Strip. This increase resulted from other factors related to the intifada as well, such as the severe harm to the farming sector resulting from the destruction of fields and crops in the army's "clearing" operations, and the sharp decline in private investment (as opposed to investment by the Palestinian Authority and foreign countries) due to the instability in the area.

The workforce in any territorial unit is defined as individuals aged fifteen and above who are either working for a wage or are actively seeking work. According to the World Labor Organization, only persons who are actively seeking work are defined as unemployed. The unemployment rate, then, does not take into account persons who want to work but have given up trying to find a job.

In recent decades, unemployment in the Gaza Strip has remained high, both compared to international rates, in general, and to the West Bank, in particular. In September 2000, on the eve of the intifada, unemployment stood at 15.5 percent of the workforce (35,000 persons). This figure rose dramatically. In the last quarter of 2004, it was 35.2 percent (95,000 persons). In the third quarter of 2002, the rate reached an all-time high of 46.5 percent (136,000 persons). If we add the persons who gave up looking for work, in the third quarter of 2000 the

unemployment rate was 26.9 percent (71,000 persons), while at the end of 2004, it stood at 39.4 percent (115,000 persons). The increase in unemployment affects the dependence rate, i.e., the number of persons dependent on each wage-earner. At the beginning of the intifada, this figure stood at 5.9, whereas at the end of 2004, it had risen to 8.6 persons per for each person employed.

The decline in employment led to a sharp increase in poverty. The scope of poverty changes greatly in accordance with the level set as the "poverty line." A relative or absolute methodology can be used to calculate poverty. According to the former, the poverty line is set in relation to an income index in the particular state. In Israel, for example, the poverty line is set at half of median income. In 2003, this figure was a net income of NIS 4,443 for a family of four, or NIS 1,111 per person per month.<sup>150</sup> According to the second method, the poverty line is based on the cost of a basket of basic goods and services (such as food, housing, clothing, health, education). The absolute method of computation is commonly used to measure poverty in the Occupied Territories.

The Palestinian Central Bureau of Statistics, which has measured poverty in the Occupied Territories regularly since March 2001, uses the absolute method.<sup>151</sup> According to this measure the poverty line for the third quarter of 2004 was an expenditure of NIS 1,850 for a family of two parents and four children, or NIS 308 per person per month. Based on this measure, poverty in the Gaza Strip peaked at

150. National Insurance Institute, *Poverty Indexes and Inequality in Division of Income in the Economy in 2003* (Jerusalem, November 2004).

151. See PCBS, *Impact of the Israeli Measures on the Economic Conditions of Palestinian Households* (selected years).

84.6 percent in January-February 2002. The last survey covered October-December 2004, and found that 77.3 percent of the population lived under the poverty line – a total of 1,033,500 people. In comparison, during that same period, the figure for the West Bank was 52.2 percent, some 1,200,000 people. According to World Bank figures (which are also based on the absolute method), on the eve of the intifada, 42 percent of the population in the Gaza Strip was poor, compared with 18 percent in the West Bank.

The PCBS and the World Bank conducted joint research on “deep poverty.”<sup>152</sup> Deep poverty refers to poor people who live below the

“subsistence poverty line,” which is based on the cost to purchase the minimum quantity of calories a day to survive, plus the cost of a few other essential expenses, such as clothing and housing. In December 2003, the subsistence line was a monthly outlay of NIS 205 per person: NIS 128 for food and NIS 77 for other expenses. These figures include the value of basic foodstuffs distributed by Palestinian and international relief agencies. According to the research findings, some 23 percent of the residents of the Gaza Strip, comprising a total of more than 323,000 persons, were in deep poverty, and did not reach the subsistence line even with the aid they received.

**From the testimony of K.Q., 54, married with  
nine children, resident of the Al-Bureij refugee camp**

Until March 2004, I worked in agriculture inside Israel, not steady, only when I had a work permit and Erez Checkpoint was open. I made an average of NIS 1,800 a month, which was enough to buy basic goods... I have not worked since then because Erez Checkpoint is closed for long periods of time, and also because I don't have an Israeli employer who requested a permit for me. I looked for work inside the Gaza Strip but didn't find anything. It is almost impossible for adults my age to find work... For four years, I have not paid the electric bill, and I owe NIS 12,000 to the Palestinian Electric Company. The company hasn't cut off my electricity, but they recently filed a suit to collect the debt. Twice a month, UNRWA gives me a sack of flour, two bottles of oil, five kilograms of sugar, and five kilograms of rice. In addition, my sons help out nearby farmers from time to time, and get a few crates of vegetables in payment... Fruit is an extra. Once or twice, I bought fruit and my children ate it in place of the regular meal. My top priority is flour, vegetables, and other basic commodities... I buy meat once a month. We don't eat fish at all because of the price... I wander about in the market in the camp for a change of pace, and to reduce the psychological pressure. It doesn't really help: I still feel suffocated by my financial situation, and I have breathing problems.<sup>153</sup>

152. PCBS and World Bank, *Deep Palestinian Poverty in the Midst of Economic Crisis*, October 2004.

153. The testimony was given to Mazen Al-Majdalawi on 8 March 2005.

## 5. Breach of international law.

International humanitarian law does not expressly recognize the right of residents of occupied territory to enter the occupying country to earn a livelihood, or to carry out trade in the occupying state, or to transport goods through its territory. However, this lack of an express right does not permit Israel to ignore the effects of its actions on the population under its control. As mentioned in Chapter Two, Article 43 of the Hague Regulations makes Israel responsible for “public order and safety [public life]” in the territories under its control. As Israel’s High Court has stated, this obligation covers “varied civil situations, such as economics, societal matters, education, social welfare, sanitation, health, and movement, with which modern society is involved.”<sup>154</sup>

Clearly, foreign trade is a necessary element of public life of every modern society, and especially of public life in the Gaza Strip. As noted, the economy of the Gaza Strip greatly depends on foreign trade, which plays a major and direct role on the ability of its residents to work and earn a living. The responsibility derived from Article 43 also applies to a significant extent to the entry of Palestinians from Gaza into Israel to work, not only because workers and their families are dependent on entry into Israel, but also because Israel is responsible for creating this dependence. Dependence on work in Israel is not a product of “market forces” alone, but results primarily from Israel’s policy over many years to integrate the Palestinian and

Israeli economies.<sup>155</sup> Israel’s responsibility to Palestinian workers employed in its territory has been recognized by the High Court, which held:

Concern for the welfare of the population and responsibility for security needs requires the respondent [the commander of IDF forces, Y.L.] to take into account the economic dependence of the area on the Israeli economy, in general, and on sources of employment to gain a livelihood from work in Israel, in particular. The data indicates that the economy in the territories is heavily dependent, such that severance of the economy, as long as Israel controls the territories, is liable to lead to immediate devastating harm to the economy in the territories and to the welfare of the population.<sup>156</sup>

International human rights law also requires Israel to allow and make it possible for residents of the Gaza Strip to work and gain a living. Article 6(1) of the International Covenant on Economic, Social and Cultural Rights states that:

The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

The obligation of Israel to respect the right of Gazans to work is also derived from Article 11(1) of the same Covenant:

154. HCJ 393/82, *Jam'iyat*, at p. 798.

155. See Section 1 of this chapter, and the footnotes there.

156. HCJ 69/81, *Abu 'Aita et al. v. Commander of IDF Forces in Judea and Samaria*, *Piskei Din* 37 (2) 197, 320.

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.<sup>157</sup>

As we have seen in Section 3 of this chapter, infringing the right to work, in the conditions existing in the Gaza Strip, inevitably results in dire poverty.

Of course, Israel's obligations under international law do not void its right to impose restrictions necessitated by security needs and its obligation to protect its citizens, even if the restrictions harm the Palestinian economy. However, both international law and Israeli administrative law state that infringement of human rights is permissible only when it is proportionate.<sup>158</sup>

Most aspects of Israel's policy on the entry of workers into its territory and on movement of goods to and from the Gaza Strip are disproportionate in the extreme. This grave lack of proportionality is evident in Israel's failure

to use less harmful alternatives. For example, Israel's decision to concentrate all movement of goods through Karni Crossing completely paralyzes trade when the crossing is closed, while Israel could operate other crossings to enable goods to cross from one side to the other. Furthermore, as we have shown above, many of the restrictions on the movement of workers and goods result from extraneous considerations, and not from security. For these reasons, Israel's policy constitutes an ongoing breach of its obligations under Article 43 of the Hague Regulations and Articles 6 and 11 of the International Covenant on Economic, Social and Cultural Rights.

In addition, the policy of closing the crossings used for laborers and for goods "as a response" (in the words of the defense establishment) to attacks by Palestinians on Israeli civilians or soldiers, rather than as a specific preventive security measure, strongly suggests that this policy is a form of collective punishment. Article 33 of the Fourth Geneva Convention prohibits punishment of this kind.

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157. For a discussion on the application of the Covenant in the Occupied Territories, see Chapter Five.

158. For details on the elements of the test of proportionality, see Chapter One, Section 4.

## Chapter Five

### The Disengagement Plan: Does it really end Israel's responsibility?

#### 1. The plan

On 6 June 2004, the Israeli government, by majority vote, adopted the Amended Disengagement Plan.<sup>159</sup> The primary element of the plan is the removal of armed forces from the Gaza Strip and the evacuation of all the Jewish settlements there. It also calls for the evacuation of four settlements (Ganim, Kadim, Homesh, and Sa-Nur) and a few army posts in the northern West Bank. On 16 February 2005, the Knesset passed the final reading of the law arranging implementation of the entire disengagement plan, including the payment of compensation to the settlers being evacuated.<sup>160</sup> On 20 February 2005, the government gave its final approval for the evacuation of the settlements, and the prime minister and defense minister signed the evacuation orders.

The government's decision states that the disengagement plan is part of Israel's commitment to the peace process, in general, and to the road map that was drafted by US President George Bush and approved by the UN Security Council, in particular. However, in light of Israel's statement that "there is no Palestinian partner with whom a bilateral peace

process can progress," the government decided to disengage unilaterally, and not in the context of an agreement with the Palestinian Authority and without handing over powers to it.<sup>161</sup>

Despite the broad redeployment of Israel in the Gaza Strip, even following disengagement Israel is expected to retain control of key areas that directly affect Gazans ability to exercise their rights, particularly in the areas discussed in this report.

First, the plan does not change the arrangements for residents of Gaza to enter Israel, including travel to the West Bank, or for Israelis to enter the Gaza Strip. Regarding the entry of workers, the plan states that entry will be allowed "in accordance with existing criteria," and notes that Israel's goal in the long run is to "reduce, to a total cessation, the number of Palestinian workers entering the State of Israel."<sup>162</sup>

Second, the plan provides that Israel will continue to control the Philadelphi route, which runs along the Gaza-Egypt border, and that, "in the future, the government will consider leaving this area."<sup>163</sup> It is clear, therefore, that the plan does not change the situation regarding the movement of Gazans

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159. Government Decision 1996, 6 June 2004, "Amended Disengagement Plan – Continuing Discussion" (hereafter: the disengagement plan), which is available on the Prime Minister's Office's Website at [www.pmo.gov.il/PMO/Hitnakut](http://www.pmo.gov.il/PMO/Hitnakut).

160. Implementation of the Disengagement Plan Law, 5765 – 2005.

161. Disengagement Plan, Appendix 1, Section 1.

162. *Ibid.*, Section 10(e).

163. *Ibid.*, Section 6. This section states, in part, that Israeli presence along the route is "a vital security need," and that, "in certain places, physical expansion of the territory in which the army is active may be necessary."

to Egypt.<sup>164</sup> The media has recently reported that Israel and Egypt are negotiating the handing over of control of the route to the Egyptians shortly after disengagement. It remains unclear how this transfer of control will affect the movement of travelers at the Rafah crossing.<sup>165</sup>

Third, Israel will maintain sole control of the airspace and territorial waters of the Gaza Strip.<sup>166</sup> However, in the future, “the State of Israel will be prepared to consider establishing a seaport and airport,” if and when it leaves the Philadelphi route.<sup>167</sup> In any event, the plan states that, “In general, the economic arrangements currently in operation between Israel and the Palestinians will remain in effect.”<sup>168</sup>

Finally, the government declared that, even after disengagement, the army will continue to operate in the Gaza Strip: “The State of Israel reserves the fundamental right to self-defense, including the taking of preventive measures, and responsive acts using force against threats emanating from the Gaza Strip.”<sup>169</sup>

Despite the broad control that Israel will retain after disengagement, the government’s decision states that, “completion of the plan will invalidate the claims against Israel on its

responsibility for the Palestinians in the Gaza Strip.”<sup>170</sup> The decision further states that, as a result of implementation of the plan, “there will be no basis for the contention that the Gaza Strip is occupied territory.”<sup>171</sup>

## **2. Applicability of international humanitarian law following disengagement**

According to international humanitarian law, occupation is created when, as a result of an armed conflict, one state acquires “effective control” of territory beyond its sovereign borders.<sup>172</sup> According to the Hague Regulations of 1907:

Territory is considered occupied when it is actually placed in the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.

From the moment that a piece of territory is occupied, the “laws of belligerent occupation,” as set forth in the Hague Regulations and the Fourth Geneva Convention, apply.

Over the years, Israel has refused to recognize the *de jure* applicability of the Fourth Geneva Convention in the Occupied Territories, contending that the Convention applies only to

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164. *Ibid.*, Section 11(a). “The State of Israel is interested in moving the crossing to a ‘tri-border’ point south of its present location.”

165. Amos Harel, “Israeli-Egyptian Understanding Forming: IDF will Leave the Philadelphi Corridor after Disengagement,” *Ha’aretz*, 11 March 2005.

166. Disengagement Plan, Section 3(1)(1).

167. *Ibid.*, Section 6.

168. *Ibid.*, Section 10.

169. *Ibid.*, Section 3(a)(3).

170. *Ibid.*, Section 1(f).

171. *Ibid.*, Section 2(a).

172. Georg Schwarzenberger, *Law as Applied by International Courts and Tribunals: Vol. II, The Law of Armed Conflict* (London: Stevens, 1968) 324.

territory previously under the sovereignty of a foreign state. In our case, Egypt never annexed the Gaza Strip, and Jordan's annexation of the West Bank was not recognized by the international community. Nevertheless, Israel agreed to accept *de facto* the "humanitarian provisions" of the Convention in all the Occupied Territories.<sup>173</sup> Organizations and jurists in Israel and abroad, including the International Court of Justice in its opinion on the separation barrier, have rejected Israel's contention.<sup>174</sup>

Since the signing of the Oslo Agreements, Israel has argued that it was no longer obligated to comply *de facto* with some provisions of the Fourth Geneva Convention, at least in those areas that had been transferred to the control of the Palestinian Authority – Area A in the West Bank and their counterparts ("the white areas") in the Gaza Strip. This claim, too, was rejected by many international bodies, among them the International Red Cross, which is charged with interpreting the Convention and monitoring its implementation. Israel's principal argument on this issue was that, following the transfer of powers, Israel was no longer responsible for administration of the affairs of the population, and that the Civil Administration, which Israel had established to handle such matters, had ceased to operate. In the language of the State Attorney's Office, following the Oslo Agreements,

Israel ceased exercising powers of the military government regarding the areas under Palestinian security responsibility in the territories.... The practical legal significance of the said reality was the cessation of applicability of the rules of international law relating to belligerent occupation, in those areas in which the Israeli administration ceased to operate.<sup>175</sup>

The question of the ostensible connection between carrying out civil functions (through a Civil Administration) and the existence of occupation is relevant to the legal status of the Gaza Strip following disengagement. Contrary to Israel's position, according to international law, the creation and continuation of belligerent occupation does not depend on the state's decision to maintain and operate a mechanism for administering the lives of the population, but only on its *military control* of the territory. Israel's High Court discussed this question in connection with Israel's activity in South Lebanon, and held that:

One of the tests [for the existence of occupation, Y.L.] is whether the military forces are capable of entering into the shoes of the previous governing bodies, and not just that they did so in practice... Applicability of the third chapter of the Hague Regulations and applicability of the comparable provisions of the Fourth [Geneva] Convention are not dependent on the existence of a special organized

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173. This position was formulated by the then-attorney general of Israel, Meir Shamgar. Israel has never defined the "humanitarian provisions" that it intends to comply with. See Meir Shamgar, "International Law and the Administered Territories," 1 *Israel Yearbook on Human Rights* (1971).

174. International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004, Paragraph 100.

175. HCJ 769/02, *The Public Committee Against Torture in Israel et al. v. Government of Israel et al.* Supplemental Response by the State Attorney's Office, of 2 February 2003, Sections 8-46.

system that takes the form of a military government. The duties and powers of the military forces, resulting from effective occupation of a particular territory, arise and are created as a result of military control of the territory, that is, even if the military forces maintain control only by means of its regular combat units, without having a special military framework for the [military] government's needs.<sup>176</sup>

Furthermore, a permanent military presence is not even required in all parts of the territory for that territory to be considered occupied. According to the leading experts in international humanitarian law, effective control can exist even when the army controls key points in a certain area in a way that asserts its control over the entire area and prevents a central substitute government to form and enforce its authority. As Von Glahn, one of the most prominent commentators on the laws of war, has said:

Needless to say, it is not necessary that the invading forces occupy every locality in the hostile area in order to establish a state of effective occupation.... It may be theoretically possible to maintain necessary control through the occupant's air force alone.<sup>177</sup>

This question was examined by the Nuremberg military tribunal that was established following World War II to try Nazi war criminals. In one of its decisions, the tribunal dealt with

whether Yugoslavia, Greece, and Norway were occupied territory when the defendants committed the alleged acts (terrifying and murdering masses of civilians), or perhaps the acts were committed during the invasion, before occupation. The tribunal held:

While it is true that the partisans were able to control sections of these countries at various times, it is established that the Germans could at any time they desired assume physical control of any part of the country. The control of the resistance forces was temporary only and not such as would deprive the German Armed Forces of its status of an occupant.<sup>178</sup>

Does the scope of control remaining in Israeli hands after disengagement amount to "effective control" in accordance with the interpretation and decision mentioned above? As noted, even after redeployment of the armed forces and evacuation of the settlements, Israel will maintain total control of the land borders, its air space, its coastline, and territorial waters. Israel's control directly and clearly affects the local population's ability to conduct many significant aspects of their lives, such as entering and leaving the Gaza Strip, conducting foreign trade, and even obtaining food and medicines and other basic commodities. In addition, the government declared its readiness to take military action in the Gaza Strip, not only in response to attack, but as a "preventive measure." *So long as these methods of control remain in Israeli hands,*

176. HCJ 102/82, *Tsemel v. Minister of Defense et al.*, *Piskei Din* 37 (3), at p. 365.

177. Gerhard Von Glahn, *The Occupation of Enemy Territory: A Commentary on the Law and Practice of Belligerent Occupation* (Minneapolis: University of Minnesota Press, 1957). 28-29. See, also, L. Oppenheim, *International Law*, Seventh Edition, (London: Longmans, 1952) 435; *The Handbook of Humanitarian Law in Armed Conflicts*, Dieter Fleck, ed., (Oxford: Oxford University Press, 1995) 243-244.

178. *USA v. Wilhelm List et al.*, Law Reports of Trials of War Criminals, Vol. VIII (London: United Nations War Crimes Commission, 1949) 56.

*Israel's claim of an "end of the occupation" is questionable.*

It appears that the drafters of the Fourth Geneva Convention anticipated, and sought to prevent the situation that will be created following implementation of the disengagement plan, in which a state tries to avoid its obligations on the pretext of one change or another in its control of the territory. Thus, Article 47 states:

Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the Convention by any change introduced as a result of the occupation of territory, into the institutions or government of the said territory, nor by any agreement between the authorities of the occupied territories and the Occupying Power...

The official commentary on this article states:

During the Second World War whole populations were excluded from the application of the laws governing occupation and were thus denied the safeguards provided by those laws and left at the mercy of the Occupying Power.<sup>179</sup>

Furthermore, even if Israel decides to forego the components of control mentioned above, and no longer occupies the Gaza Strip, under international humanitarian law, Israel would still have certain obligations to the local population. These obligations remain because the end of the occupation does not bring the armed conflict to an end. This fact

is particularly relevant because the end of the occupation of the Gaza Strip would follow, according to the disengagement plan, Israel's unilateral action.

Being a party to the conflict, Israel has obligations to the civilian population in those spheres under its control, even if it does not have effective control over the territory. These obligations include the duty to grant special protection to the wounded and sick, children under the age of fifteen, and expectant mothers.<sup>180</sup> Israel must also permit the free passage of all consignments of medicine, essential foodstuffs, and objects needed for religious worship,<sup>181</sup> and must enable medical teams to provide aid and treat the sick and wounded, the infirm, and expectant mothers.<sup>182</sup> Israel is also prohibited from imposing collective punishment.<sup>183</sup>

### **3. Applicability of international human rights law following disengagement**

International human rights law also obligates Israel to protect the human rights of residents of the Gaza Strip following disengagement. It remains responsible for those aspects that remain under its control, even in the hypothetical situation in which Israel no longer has "effective control" of the Gaza Strip and the laws of occupation no longer apply to it.

The State of Israel is party to the six principal human rights treaties: the International Convention on the Elimination of All Forms

179. Pictet, *Commentary*, p. 273.

180. Fourth Geneva Convention, Articles 14, 15, 16.

181. *Ibid.*, Article 23.

182. *Ibid.*, Article 20.

183. *Ibid.*, Article 33.

of Racial Discrimination, of 1965; the International Covenant on Civil and Political Rights, of 1966; the International Covenant on Economic, Social and Cultural Rights, of 1966; the Convention on the Elimination of All Forms of Discrimination against Women, of 1979; the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, of 1984; and the Convention on the Rights of the Child, of 1989. Israel ratified the first of the above instruments in 1979, and the other five in 1991.

Israel has continuously argued that these conventions are not applicable in the Occupied Territories, and it will surely continue to make this claim after the implementation of the disengagement plan. In its reports to the UN committees charged with implementing the treaties, which are, unlike other UN bodies, composed of independent experts and not state representatives, Israel argued that the human rights conventions are intended to apply only in the sovereign territory of the states. Also, Israel contended that, with the transfer of powers to the Palestinian Authority in certain areas, it was no longer obligated to protect the human rights of the residents in those areas.<sup>184</sup> The UN committees have consistently rejected Israel's position.<sup>185</sup>

The International Covenant on Civil and Political Rights, for example, states, in Article 2, that States Parties undertake to respect and ensure to all individuals "within its territory and subject to its jurisdiction" the rights in the Covenant. It is true that, technically speaking, this article can be interpreted to create two concurrent conditions – that it applies to acts relating to persons subject to the state's control while they are located within the state. However, the UN Human Rights Committee, which is charged with interpreting the Covenant, unambiguously stated that these are two separate conditions, each of which renders the Covenant applicable. As the Committee has recently held:

This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party<sup>186</sup>

This understanding was reflected in the Committee's decision on complaints made to the Committee by persons who claimed their rights had been violated.<sup>187</sup> For example, in the case of a political activist from Uruguay who was abducted by Uruguayan secret service agents while he was in Argentina,

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184. In addition, Israel argued that, insofar as international humanitarian law, which deals with war and occupation, applies, another system of laws, the main purpose of which is the protection of human rights in peacetime, cannot be applied. See, for example, State of Israel, *Implementation of the International Covenant on Economic, Social and Cultural Rights, - Second Periodic Report*, 3 August 2001, Paragraphs 5-8, UN Doc. E/1990/6/Add.32 (2001); State of Israel, *International Covenant on Civil and Political Rights - Second Periodic Report*, 20 November 2001, Paragraph 8, UN Doc. CCPR/C/ISR/2001/2 (2001).

185. For an extensive survey of Israel's arguments and criticism of those arguments, see Orna Ben-Naftali and Yuval Shani, "Living in Denial: the Application of Human Rights in the Occupied Territories," *37 Israel Law Review* 1 (2004).

186. Human Rights Committee, *General Comment No. 31, Nature of the General Legal Obligation Imposed on States Parties on States Parties to the Covenant: 26 May 2004*, UN Doc. CCPR/C/21/Rev. 1/Add/13/.

187. The First Protocol Additional to the Geneva Conventions entitles persons residing in states party to the Protocol to file complaints for violation of their rights under the Covenant, subject to certain conditions (such as exhausting the remedies available in the state). Israel has not signed this protocol.

the Committee held that, although the acts for which the complaint was filed took place outside of Uruguay, the state had the responsibility to apply the Covenant in that incident. The Committee also explained that

The reference in article 1 of the Optional Protocol to "individuals subject to its jurisdiction" does not affect the above conclusion because the reference in that article is not to the place where the violation occurred, but rather to the relationship between the individual and the State in relation to a violation of any of the rights set forth in the Covenant, wherever they occurred. Article 2 (1) of the Covenant places an obligation upon a State party to respect and to ensure rights "to all individuals within its territory and subject to its jurisdiction", but it does not imply that the State party concerned cannot be held accountable for violations of rights under the Covenant which its agents commit upon the territory of another State, whether with the acquiescence of the Government of that State or in opposition to it.<sup>188</sup>

Three of the other conventions mentioned above also contain provisions that, in one wording or another, state that they apply to situations in which the state forces its authority on persons, without limitation based on the status of the territory in which the situation

exists: the Convention on the Elimination of All Forms of Racial Discrimination,<sup>189</sup> the Convention against Torture,<sup>190</sup> and the Convention on the Rights of the Child.<sup>191</sup> The other two conventions – the Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women – do not contain explicit provisions defining its applicability. However, the UN committees charged with interpreting them have adopted the interpretation of the Human Rights Committee mentioned above, whereby they apply to every act taken by a party to the convention, regardless of where the act was done.<sup>192</sup> International judicial bodies, such as the European Court on Human Rights and the Inter-American Commission on Human Rights have on several occasions made states liable for actions that were taken outside their borders.<sup>193</sup>

This interpretation is dictated not only by the language of the conventions, but by the universality underlying the human rights movement, as formulated since the end of World War II. According to this principle, the entitlement of persons to certain rights does not depend on their membership in any collective or on recognition of those rights by the state; rather, they are entitled to these rights because they are human beings. This

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188. Human Rights Committee, Communication No 52/1979: *Lopez Burgos v. Uruguay*, Paragraphs 12.2 and 12.3, UN Doc. CCPR/C/13/D/52/1979.

189. Article 3.

190. Article 2(1).

191. Article 2(1).

192. Regarding the Committee's position on the interpretation of the International Covenant on Economic, Social and Cultural Rights, see, for example, Committee on Economic, Social and Cultural Rights, General Comment 1 (Reporting by State Parties), UN Doc. E/1989/22 (1989).

193. See, for example, *Loizidou v. Turkey*, 310 European Court of Human Rights (1995); Inter-American Commission on Human Rights, Report No. 109/99, *Coard v. the United States*, 29 September 1999.

conception is expressed clearly in Article 1 of the Universal Declaration of Human Rights: “All human beings are born free and equal in dignity and rights.”<sup>194</sup> With this in mind, the narrow reading of human rights conventions as suggested by Israel, which holds that states will not be called to judgment for acts carried out beyond their borders, is inappropriate.

For these reasons, Israel will continue to be legally liable for its acts and omissions that violate the human rights of Gaza Strip

residents even after implementation of the disengagement plan. This responsibility exists even if it does not maintain the “effective control” needed to support the determination that a situation of occupation exists pursuant to international humanitarian law. For example, arbitrarily preventing a person from leaving Gaza to go abroad to obtain medical treatment will be considered, even after disengagement, a breach of the person’s right to health as set forth in the International Covenant on Economic, Social and Cultural Rights.

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194. Universal Declaration of Human Rights, Article 1.

## Disengagement and the settlers

The settlements in the Occupied Territories violate Article 49 of the Fourth Geneva Convention, which prohibits the transfer of civilians of the occupying state into occupied territory. In establishing settlements in the Gaza Strip, Israel took Palestinian land and water resources as part of its unlawful discrimination and oppression. Evacuation of the settlements is necessary to rectify these human rights violations and breaches of international law.

Therefore, the evacuation of settlers from the Gaza Strip is a lawful and necessary measure. However, the settlement enterprise was not the individual initiative of civilians who independently decided to move to the Occupied Territories. The settlements arose as a result of massive government involvement in every aspect, from taking control of the land on which the settlements were established, to investing vast sums of money and resources to encourage Israelis to move and remain there. Also, over the years, the State of Israel falsely claimed that the settlements were legal. For these reasons, the settlers are entitled to compensation in an amount that will enable them to transfer their residence to within the borders of the State of Israel. Despite the criticism on the manner in which the compensation is being set, it appears that Israel has generally taken the appropriate administrative and legal measures to meet its obligation to compensate the settlers.

On the other hand, the intense opposition to the disengagement plan by some segments of Israeli society, and by the settlers in particular, has resulted in calls to restrict freedom of speech in an attempt to limit opposition to the plan. The right to freedom of speech is one of the pillars of democracy, and is enshrined in both international law and Israeli law. Clearly, it is not necessary to protect speech regarding matters on which there is consensus; the right is important precisely to protect scathing and offensive speech (from the perspective of the government or the majority) and to allow every person to verbally protest actions they deem wrong. Recently, the Justice Ministry stated it was planning statutory changes to limit freedom of speech, including amendments to the incitement provisions in the Penal Law.<sup>195</sup> Any attempts to exploit the disengagement plan to limit freedom of speech in Israel must be rejected.

There have also been calls to arbitrarily restrict the protesters' liberty. The attorney general recently stated he would approve requests made by the defense establishment to administratively detain individuals from the Right.<sup>196</sup> Although administrative detention is not forbidden absolutely and in all instances, it raises a real danger of violation of the individual's right to due process. For this reason, international law places harsh restrictions on its use.<sup>197</sup>

195. "Justice Ministry to Establish Unit to Deal with Insurrection and Violence," *Ha'aretz*, 28 February 2004. Under present law, a person is guilty of incitement if it is proven that there is a "real likelihood" that his comments will cause violent acts (this definition was adopted three years ago, when the law was expanded). The State Attorney's Office proposes that this definition be amended to read "reasonable likelihood."

196. Yonatan Liss, "Attorney General Will Permit Administrative Detention of Jews," *Ha'aretz*, 4 February 2005.

197. Human Rights Committee, General Comment 8, Article 9 (Sixteenth Session, 1982) HRI/GEN/Rev.1 at 8 (1994).

## Conclusions

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For the past four and a half years, Israel has severely restricted freedom of movement to and from the Gaza Strip. These restrictions strangled Gaza, essentially turning the area into one big prison. It would not be an exaggeration to say that it is easier for a resident of Israel or the West Bank to visit a parent or child who is in prison than it is to visit them in the Gaza Strip. Israel does not view residents of the Occupied Territories as individuals with rights to which they are entitled as human beings; rather, it views them as part of a particular group, such as a national collective, residents of a certain area, or a particular age group. This conception has turned many human rights – among them the right to freedom of movement, family life, health, education, and work – into “humanitarian gestures” that Israel makes sparingly.

Israel chokes all channels of Palestinian movement. The Gaza Strip and the West Bank, which the Oslo Agreements define as “a single territorial unit,” are almost completely severed from each other. Palestinian movement between the two areas is severely limited and crossing permits are issued only in exceptional cases. A person who once lived in the Gaza Strip and is stopped by the army in the West Bank is considered to be “staying illegally” in his country and expelled to the Gaza Strip. Entry of Gazans to Israel to visit relatives or to live with their spouse is completely prohibited by Knesset legislation. Since the outbreak of the intifada, Israel has employed various means to make it difficult for Arab citizens and residents of Israel to visit their spouses, children, and other family members who live in the Gaza Strip, and has done its best to

keep these visits to a minimum. Gazans have difficulty exercising their right to go abroad, and tens of thousands of people have been denied this right completely. Exporting and importing goods is severely restricted, and is often stopped completely. Only a small number of residents of the Gaza Strip are allowed to work in Israel, and most Gazans who worked in Israel prior to the intifada have lost their means of livelihood.

Everyone in the Gaza Strip has paid the price for this isolation. This price is paid in loss of liberty, in pain and suffering. The restrictions on trade and laborers have led to a deep recession, loss of jobs, and a dramatic deterioration in living conditions. Some forty percent of Palestinians in the Gaza Strip have joined the ranks of the poor, and the situation of those who were poor before the intifada has dramatically worsened (almost one quarter of Gazans exist below the subsistence poverty line). Many of the ill who require treatment that is not available in Gaza wait interminably, in uncertainty, to get permission to go to Egypt or elsewhere, their health deteriorating as they wait. Thousands of young men and women who have been accepted to colleges and universities in the West Bank and abroad are “stuck” in Gaza and lose semester after semester of study. Some have to forego their dream of a higher education. Detachment of the Gaza Strip from the West Bank and from Israel has forced many to suffer the pain of separation from their loved ones (spouses, parents, siblings), and has resulted in the separation of children from one of their parents.

The tightening of Israel's siege policy since September 2000 occurred against the background of the escalation of the conflict which has taken thousands of Israeli and Palestinian lives. The State of Israel claims that its policy is a response to the wave of attacks against Israelis within Israel and in the Occupied Territories since the beginning of the intifada. Over 600 Israeli civilians have been killed, including more than one hundred minors, and thousands of others have been severely injured. Attacks against civilians violate the most basic principles of law and morality and are defined under international humanitarian law as "war crimes," which are unjustifiable, whatever the circumstances.

Israel is entitled to take measures to protect its citizens and has the duty to do so. However, the right of Israel to protect its citizens does not allow it (legally or morally) to trample on the rights of an entire population, in a patently arbitrary and indiscriminate manner. These two features – arbitrariness and a failure to distinguish between individuals – are the most glaring elements of Israel's policy to sever the Gaza Strip from the outside world. Almost all restrictions are imposed on entire groups of people, based on sweeping criteria, without examining the threat that any individual poses, or the harm that results from restricting

a particular individual, or whether less harmful alternatives are available. Lacking any justification, the Israeli authorities have chosen, in most cases, to reverse their refusal of a person's request for a movement permit once an attorney or human rights organization intervenes. These reversals result from the state's decision not to engage in an expensive, and at times embarrassing, legal challenge before the High Court of Justice. These same features – arbitrariness and lack of distinction – render illegal most elements of Israel's policy, both under international law and Israeli law.

In approving the disengagement plan, the government of Israel stated its intention to evade its natural and almost self-evident responsibility for the human rights of Palestinian residents of the Gaza Strip. However, all the human rights violations discussed in this report are likely to continue, and even worsen, after disengagement, unless Israel recognizes its responsibility for the human rights to which Gazans are entitled.

B'Tselem and HaMoked: Center for the Defence of the Individual urge the government of Israel to end its siege policy on the Gaza Strip and to respect the right of Palestinians to freedom of movement and those rights dependent on freedom of movement.







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