

AL MEZAN CENTER FOR HUMAN RIGHTS



A SPECIAL REPORT ON ISRAEL'S RESTRICTIONS OF
PALESTINIAN RIGHT OF MOVEMENT AT RAFAH
CROSSING

GAZA, February 2007

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AL MEZAN CENTER FOR HUMAN RIGHTS

Al Mezan Center for Human Rights is a Palestinian non-governmental non-partisan organization with its headquarters based in Gaza City. It is mandated to:

“promote, protect and prevent violations of human rights in general and ESC rights in particular, to provide efficient aid to those victims of such violations, and to enhance, substantially, the quality of life for the marginalized sectors of the Gaza Strip community.”

As conditions in Gaza worsen, the need for constructive and sustained action to prevent the collapse of Palestinian society altogether becomes even more urgent. The Mission of the Mezan Center for Human Rights is to work to provide a secure and long-lasting foundation for the provision of human rights on all levels. While Al-Mezan must confront the daily violations of political rights, especially given the current international situation, its long term aim is to encourage and develop economic, social, and cultural (ESC) rights. It acts not only as a monitoring and documentation center for rights abuses, but also as a vehicle through which legal aid and advocacy, fieldwork, education and consciousness-raising on such fundamental issues as basic human rights, democracy, and international humanitarian law takes place on a daily basis.

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INTRODUCTION

In September 2005, Israel completed its unilateral 'disengagement' plan; it evacuated the Israeli settlements that had been built - in violation of international law - during the almost 40 years of occupation, and withdrew the Israeli Occupation Forces (IOF) from within the Gaza Strip. The Israeli government then claimed that the implementation of this 'disengagement' plan would "invalidate the claims against Israel regarding its responsibility for Palestinians within the Gaza Strip". Since then, the State Attorney's Office has also argued that, with the termination of the military government of the Gaza Strip, Israel has no obligations whatsoever towards the citizens of Gaza, who should now direct their claims to the Palestinian Authority (PA).¹

However, both legal and factual accounts have indicated to the contrary. As Al Mezan and other human rights organizations continue to assert, Israel has retained full control over Gaza, and hence its illegal occupation. The military control of Gaza has simply changed forms; while Gaza was once controlled from within the Strip, it is now controlled from around it, through its borders, airspace, and sea space – as well as by frequent incursions. In its continued occupation of Gaza, the Israeli government and armed forces have repeatedly and routinely violated both international humanitarian law and the non-derogable human rights of the 1.4 million residents of Gaza.² The almost continued closure of Rafah Crossing Point (RCP) is one of the most insidious examples of this, and, as one of the biggest disappointments following the 'disengagement', is the focus of this study.

¹ Government Decision 1996, 6 June 2004, "Amended Disengagement Plan – Continuation of Discussion," Section 1(f).
<http://www.mfa.gov.il/MFA/Peace+Process/Reference+Documents/Revised+Disengagement+Plan+6-June-2004.htm>

² See Al Mezan 'Factual and Legal briefing on IOF Attacks on Civilian Objects during the June 2006 IOF incursion of Gaza', pp. 4-6, report available at
http://www.mezan.org/document/factual_legal_briefing_Gaza.doc. All information presented in this report based on the findings of Al Mezan's fieldwork, documentation and monitoring, unless otherwise indicated.

1: THE GAZA STRIP, BACKGROUND

"The indiscriminate use of military power against civilians and civilian targets has resulted in serious war crimes"³

The Gaza Strip is a narrow, rectangular area located on the Mediterranean occupying an area of 365 km². It is 45 km long and 7.5 km wide in the north / 12 km wide in the south. With a population of 1.4 million people, it has one of the highest population density rates of anywhere in the world.

In 1967 the Gaza Strip was captured by Israel in the Six-Day-War, and has been under Israeli occupation ever since. In September 2000, following the collapse of the Oslo Peace Accords and the subsequent visit of then opposition leader, Ariel Sharon, to the Al Aqsa Mosque in Jerusalem, the second Palestinian uprising (intifada) began. The intifada was met with a dramatic increase in disproportionate force and a tightening of the siege on the territories. Since this date, over 4000 Palestinians have been killed in the OPT,⁴ and the Palestinian residents of the Occupied Territories have been subjected to mass violations of international human rights and humanitarian law. In particular, economic, social and cultural (ESC) rights have been wantonly abrogated, as tens of thousands of Palestinians (including minors) have been arrested,⁵ homes and infrastructure have been demolished, private property and land have been destroyed, freedom of movement has been severely restricted, families have been split apart, and the economy, education and healthcare services have been actively undermined.

In the summer of 2005, to worldwide applaud, Israel 'disengaged' from the Gaza Strip in a unilateral step. However, the IOF simply re-deployed *around* Gaza, and the occupation merely morphed forms. Gaza's entry and exit points remained under *de facto* Israeli control, as did the Palestinian population registry, Palestinian customs revenues and Gaza's airspace and territorial waters. Meanwhile, Israel retained the 'right' to pre-emptive attack in Gaza. Conditions worsened for

³ United Nations Human Rights Council. Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard. Summary, p2. 29th January 2007.

⁴ According to the Israeli Human Rights organization, BTselem, 4016 Palestinians have been killed by Israeli security forces since the outbreak of the Al Aqsa intifada, and another 41 killed by Israeli civilians. During this same time, 464 Israelis have been killed by Palestinian attacks. (Statistic current until December 30th 2006). BTselem 2006. *Fatality Statistics*.

⁵ There are currently some 9,000 Palestinian prisoners in Israeli jails, including some 400 minors.

Palestinians living in the Strip, and human rights violations continued. Despite various political agreements, Gaza has remained largely closed after 'disengagement'. Under closure, the population of Gaza, as well as their goods and produce, has remained largely locked within the Strip – which many now refer to as an open air prison. In such conditions, the ability to import and export has been highly impaired, the economy has stagnated, and pessimism, despair and intense poverty have continued.

The situation in Gaza deteriorated further in January 2006 when, as a result of the democratic elections which brought Palestinian Islamic opposition movement, Hamas, to power in the Palestinian Legislative Council (parliament), the international community began an aid boycott of the PA, and the Israeli government again began withholding the Palestinian tax revenues collected on behalf on the PA.⁶ These boycotts can be seen as the imposition of humanitarian sanctions, as these monies were not used on luxury items or even to 'develop' the Gaza Strip, but were simply vital to the enjoyment of basic human rights, such as health care, food and education. The international community gave the new government very little notice of this boycott, and the government, unprepared, was thoroughly unable to respond.⁷ The US, moreover, extended its boycott to any bank dealing with the new government, effectively making it almost impossible for any donor to assist the government to care for the people. Meanwhile, the tax money withheld by Israel is not charity but has been taken directly from the Palestinian people – stolen at a time when they need it so desperately. As a result of these measures, by the end of 2006, figures indicate that 40 per cent of the population is unemployed, with 79.8 per cent living below the poverty line.⁸

Since the early days following the 'disengagement', the IOF have routinely invaded Gaza, killing hundreds, including a whole family as they pick-nicked on the beach near Beit Lahia in early June 2006.⁹ On the 25th of June 2006, Palestinian militants

⁶ Israel withheld Palestinian tax revenues for a brief period in 2001 also, until it was forced to release them under international pressure. See Amira Hass "Palestinians are Being Robbed by Israel" February 21st, 2006, Los Angeles Times.

⁷ UN. 2006. "UN Health Rights Experts Criticizes Donors for Failing to Fulfill their Humanitarian Responsibilities in the Occupied Palestinian Territories". *Press Release*, June 22nd (<http://www.ohchr.org/english/press/newsFrameset-2.htm>)

⁸ UNOCHA. 2006. *The Humanitarian Monitor*. December issue, p.5 (http://www.ochaopt.org/documents/oPt_Humanitarian_Monitor_November06_final.pdf)

⁹ See Al Mezan Press Release "Al Mezan condemns IOF massacre that killed 7 family members", 11 June 2006.

carried out a cross border raid inside Israel, capturing an Israeli soldier (Corporal Gilad Shalit). Claiming to be responding to the kidnapping and the Qassam rockets emanating from Gaza, Israel launched a full-scale attack on Gaza at the end of June 2006. Code named 'Operation Summer Rain', the incursion killed over 300 Palestinians, and left the Strip totally devastated, as well as destroying Gaza's only power station.¹⁰ Other incursions since, such as that in Beit Hanoun (operation 'Autumn Clouds') that left over 80 dead and 5000 homeless,¹¹ have only compounded the devastation. While Gaza has closure problems since the disengagement, the closure policies have dramatically worsened since June 2006, Rafah Crossing has been almost permanently closed and ESC rights have been further violated.

Al Mezan Center for Human Rights reported the outrageous impacts of the invasions and the goods closure in previous reports.¹² This report aims to draw more attention to the suffering of Palestinian civilians as a result of the procedures employed by Israel at the Rafah Crossing Point (RCP); the only passenger outlet to the outside world in the Gaza Strip, which is subject to frequent Israeli closures. The report was developed in the light of substantial documentation of the Crossing Point by Al Mezan and interviews with victims of the closure.

¹⁰ See Al Mezan 'Factual and Legal briefing on IOF Attacks on Civilian Objects during the June 2006 IOF incursion of Gaza', pp. 4-6, report available at http://www.mezan.org/document/factual_legal_briefing_Gaza.doc.

¹¹ See Al Mezan Press Release "IOF Violations Continue in Gaza", 9 November 2006.

¹² These are currently available in Arabic at www.mezan.org. English versions will be available in March 2007.

2: HISTORY OF RAFAH CROSSING POINT

RCP is located on the border between the Gaza Strip and Egypt, and is the only means that the huge majority of Gaza residents can access the outside world (travel to Israel through Gaza's only other passenger crossing, Erez, has been prohibited to all but an extremely limited number of traders, meanwhile territorial waters are controlled by Israel, and the airport has been destroyed).

Since its establishment in April 1982, three-and-a-half years after the Camp David Agreement between Egypt and Israel, the crossing has been operated by Israel. In late 1993, after the Oslo Agreement was signed by the PLO and the Government of Israel, the crossing point was reorganized to allow common Palestinian-Israeli supervision. However, despite indications to the contrary, at no point did Israel ever cede real control of Rafah to the Palestinian Authority to manage for itself. According to the 1994 Cairo Agreement between the PA and Israel, Israel kept *absolute control* over the security in the RCP. The PA had only partial supervision over it. Article 10.b of the agreement states that (1) *"Israel takes complete responsibility for the entire point, including the security of the point"* (2) *"an Israeli General Director takes the responsibility of the management and security of the point"*.

Under the same agreement, the Israeli administration was able to continue to prohibit the passage of those Palestinians who do not permanently live in the OPT. All of the passengers continued to pass an Israeli monitor before they reached the Palestinian part, and Israeli staff were able to grant or deny permission for their passage. Under Article 10(f) of the Cairo Agreement *"in the Palestinian part of the point each party has the authority to prevent the passage of persons who do not live in the Gaza Strip and the West Bank"*; and the Israeli party was capable of verifying the identification of the Palestinians who live in the Gaza Strip and the West Bank, as well, under paragraph (d)¹³ of the Agreement, which provided that *"the first passage¹³ is used by the Palestinians residing the Gaza Strip and Jericho. These passengers have to pass a Palestinian monitor to verify their identification and an Israeli officer indirectly verifies their identification from behind a window"*.

¹³ Referring to Rafah Crossing Point.

Moreover, Israel was authorized to detain and question the Palestinian travelers who are residing the OPT and must inform the Palestinian party later. Article 10(e) provides that *"in case of suspecting a passenger... each party may question him/her inside the investigation area at his part in the point,"* and by the end of the same Article, Israel kept its right to arrest any suspect. *"Had the suspicion not proved false by the end of the questioning, the suspect may be arrested after informing the other party. In case that the Israeli party makes the arrest, a Palestinian police officer is invited to meet with the suspect."* As indicated in these texts, Israel kept full control over RCP, while the Palestinian party held only administration responsibilities, without decisive authority.

Until 28 September 2000, despite its limitations, the RCP was, however, open 24 hours every day, all year, except for two holidays. During this time between 1,200 and 1,500 people on average passed through the crossing daily. In the summers this number doubled, as Palestinians who live abroad came on holiday to the Strip. However, after 28 September 2000 and the outbreak of the Al Aqsa *intifada*, Israel began to close crossing points and imposed restrictions on Palestinian movement. The RCP was not an exemption. The beginning of the Al Aqsa *intifada* marks the point in time where RCP became a tool that the Israelis could use to collectively punish, apply pressure to, and control the Palestinian population.

For the next 5 years, the opening of RCP was limited and variable. When open, the crossing would only work for seven hours a day, often in a one-way direction. Those that were attempting to come back from Egypt faced especially long waits, sometimes for weeks. For extended periods of time, no Palestinian men between the ages of 16 and 35 were allowed to cross, regardless of the purpose of their travel.¹⁴ According to Al- Mezan's documentation of this time, an average of only 250 travelers succeeded in crossing the RCP per day during these years, compared with an average of the 1,500 travelers who used it before 28 September 2000.

¹⁴ In April 2004, Israel announced that the residents of the Gaza Strip between the ages of 16 and 35 (both men and women) were prohibited from travel. A month later, this restriction was removed with regard to women. The prohibition preventing young men leaving Gaza was not eased until the 17th of February 2005 Sharm el Sheikh Summit. See Amos Harel and Arnon Regular, "Easing of Restrictions on Palestinians" *Ha'aretz*, 18 February 2005.

THE AGREEMENT ON MOVEMENT AND ACCESS (AMA)

For two and a half months, over the summer of 2005, RCP was totally closed during the implementation of the unilateral 'disengagement' plan, locking Palestinians in the Strip. On the 15th of November 2005, an agreement was reached comprising two documents which reflected commitments on behalf of the Government of Israel and the Palestinian Authority with regards to issues of movement and access, as well as principles for the working of Rafah Terminal. The aim of this agreement was to facilitate the movement of people and goods within the Palestinian territories and "to promote peaceful economic development and improve the humanitarian situation on the ground". The agreement stipulated that RCP would be opened for civilian travel to Egypt and the rest of the world, and for Palestinian exports. Palestinians were mandated to run their side of the Crossing Point, with the supervision of EU Border Assistance Mission (EU BAM). The Palestinian and EU BAM observers agreed to transmit live images to a joint Israeli-Palestinian control room several kilometers away. Palestinian and Israeli security officers would view the camera feeds and monitor the crossing point from there.

The agreement also stated that:

- Palestinians would be allowed to export agricultural products from the Gaza Strip through both the RCP and Karni (al-Mentar) crossing: "the number of export trucks per day processed [through Karni] will reach ...400 by the end of 2006".
- The Kerem Shalom crossing point would be opened for Palestinian imports (although custom clearance would be done by Israeli clearance firms).
- Bus convoys for goods and passengers between the Gaza Strip and West Bank would be allowed to commence from 15 December 2005 and 15 January 2006 respectively.
- Gaza seaport construction may begin. The Government of Israel would undertake to assure donors it will not interfere with the operation of the port.
- Discussions would continue regarding the opening of Gaza International Airport
- Travel restriction would be eased within the West Bank

In some ways, this agreement looked like it would be a step forward, as it was hoped that it may bring an end to the strangulation of the closures that had characterized

the previous years. However, the agreement fell far short of recognizing Palestinians their non-derogable and most basic human rights, and, in face of Israeli pressure, has proved impossible to implement.

In the first place, by the nature of this agreement as a *political treaty*, with no grounding in applicable international humanitarian and human rights law, the agreement failed to acknowledge the non-derogable and most basic rights of the Palestinian people. Without recognizing this, Israel retained the ability to simply close RCP at any time citing vague 'security concerns'. In short, Israel retained de facto control.

No outside body was put in place to guarantee Israel's compliance with the rights of the Palestinian people with regard to RCP, to ensure that Israel carried out its responsibilities. Instead, the third party (the EU) was mandated only to ensure that the PA, for its part, complies with all applicable rules and regulations, to provide capacity training, and, to terminate the procedures should they deliver "a negative evaluation of the PA running of Rafah Crossing to fall below recognized standards".

The agreement also undermined the rights of tens of thousands of Palestinians living in the Gaza Strip without ID cards, by restricting the use of Rafah Crossing Point to Palestinian ID holders (with Gaza ID). Others are only allowed by exception, with approval from the Government of Israel. As Israel still controls the Gaza Strip's population registry, and has refused to recognize the right of tens of thousands of Palestinians to live in the Gaza Strip (despite the fact that many have lived here for decades and have developed families),¹⁵ Israel has consolidated the entrapment of a huge number of Palestinians. Likewise, it has prohibited thousands of families who live outside Gaza from visiting their relatives within the Strip.

The following affidavit was taken from Mrs. Ruba Jouda, 34, a Palestinian woman who grew up in Iraq but moved to Gaza in 2000 on a visitor's permit, where she met her husband and started a family. Her naturalization into Gaza residency was never recognized, however, by the Israeli authorities, and she does not have Gaza ID. Due

¹⁵ Indeed, Israel has refused to add new names to the Palestinian population registry since 2000. While formal authority for administering the population registry was transferred to the PA in 1995, outside of cases of children whose two parents are both registered as Gaza residents, the PA must seek Israel's approval to add new names to the registry, which it has not been receiving.

to the restriction on those allowed to cross through RCP, Mrs. Jouda is unable to leave Gaza even when RCP is open, knowing that if she ever leaves for any reason, she will be prohibited from returning through RCP and thus re-entering the Strip.

"My father and I arrived in Gaza on the 21st of September 2000, from Iraq, while my mother and three sisters could not come with us due to the delay in getting their permits. They were forced to remain in Iraq. Permits were canceled following the outbreak of the Intifada, and my father and I lost hope of the family reuniting. My permit expired but I remained in Gaza. Consequently, my family was torn between the Gaza Strip and Iraq. I have been living in Gaza for six years and could not leave to see my mother and sisters, and we also failed to issue them a visit permit. We tried all possible ways to bring them here, especially during the American incursion in Iraq and the deterioration in the state of security; my father and I were in constant fear and worry about my family, knowing that all Palestinians faced particular danger in Iraq. Finally, my family managed to leave from Iraq to Yemen in October 2006.

Although my husband has an ID, I still cannot get one which is making my life complicated. Even after the Israeli withdrawal, I am unable to leave Gaza. I cannot visit my family even if I obtain the correct visa [for a third country] to do so, I still cannot leave even to pursue my studies or follow medical treatment abroad."¹⁶

Mrs. Jouda, like many other Palestinians within Gaza without ID cards, has not seen her family for over six years now, as they are barred entry through Rafah Crossing Point, and as she is barred entry from the right to re-enter and return to Gaza should she leave.

¹⁶ This affidavit was taken by Mezan fieldworkers on 22nd February 2007.

4: RAFAH CROSSING POINT SINCE THE REDEPLOYMENT AND SUBSEQUENT AGREEMENT

That Israel retains full control over RCP and can close it at will is a fact that has been proven over time. Israel has consistently shown that the opening of RCP relies wholly on its own whims. Israel has been able to simply issue security warnings or close the Kerem Shalom crossing that the EU workers need to access RCP in order to prevent them from being able to do their work. While RCP was largely open for the first few months after the agreement, for the last seven months (since June 26th and the commencement of "Operation Summer Rain"), the opening of RCP to Palestinian civilians has remained highly erratic and largely closed.

With the commencement of the Israeli June invasion, the Government of Israel closed RCP, and has since opened it on a highly limited basis. Between June 26th 2006, and the end of the year (December 30th 2006), RCP was only open 14 percent of days. In January 2007, Rafah Crossing did not open for one full day (RCP was closed for 22 days and only partially open on the other 9 days in January). When open, the hours have been limited, and, perhaps worse, the opening of the terminal has only been announced a few hours in advance, preventing people from making plans and leaving Palestinians fearing to use the Crossing should they not find it open again for several weeks. For weeks following the Israeli commencement of Operation Summer Rain, thousands of people found themselves, trapped either with in the Strip, unable to reach the outside world, or in Egypt, living in squalid conditions, unable to return home. This included a significant number of Palestinians returning from medical treatment and surgery abroad. Indeed, during this time, 6 Palestinians, including 3 children, died as they were left at the crossing, unable to return to the Strip for weeks.¹⁷ The continued closure of Rafah, and the unpredictable nature of its opening, has resulted in the majority of Palestinians feeling that they cannot return to or leave the Strip, for fear of losing their residency visas in countries where they work and live while being stuck in Gaza, or of being stuck outside for weeks on end.

¹⁷ PCHR. 2006. "Reprisals Against Civilians; Report on IOF violations against civilians in the Gaza Strip from the period from the Palestinian paramilitary operation 25 June 2006 till 31 July 2006." See also Al Mezan's Press Release "Israeli High Court Gives IOF 48 hours to Implement a 'Humanitarian' Solution to Palestinians Trapped at Egypt Border", 10 July 2006.

On November the 14th, 2006, the EU agreed to keep their Border Assistance Mission (EU BAM) monitors stationed at Rafah crossing for another six months. While EU officials had earlier warned that the European monitors could be withdrawn from Rafah at the end of their mandate out of concern for Israel's restrictions, when this agreement was signed the EU foreign ministers, in a joint statement, simply called on Israel to "respect previous agreements and... to do its utmost to ensure that they [Gaza's border crossings] are open and remain open".¹⁸ They made little demands of Israel, and undertook no action. The high expectations that the EU would be more vocal in its third party role has so far not been met, as the EU has, at this stage, not yet issued any demands calling for an investigation into Israel's continued closure of RCP, nor demanded its consistent and permanent opening.

On top of limiting passenger access, Israel failed to live up to its side of the Agreement in the following ways:

- RCP has been closed to all imports and the exports, except for occasional humanitarian supplies. RCP remains officially closed to the movement of goods. There is thus no border crossing open for goods between Gaza and the outside world except through Israel.
- Karni crossing operations improved during the first two months of the AMA but, since the 15th of January 2006, Karni has also only opened erratically, negatively impacting the import of humanitarian aid and commercial trade. Furthermore, the number of exported trucks has reached, on average, only 12 per day.¹⁹ This falls far short of the target of 400. Indeed, it has been estimated that the loss in value in exports is US\$500,000 each day.²⁰ Moreover, successive closures throughout the year have led to widespread shortages. At one point, for example, bread was in such short supply that the bakeries remaining open were forced to introduce rationing systems.²¹
- No alternative passage allowed for goods when Karni is closed.
- Bus convoys for goods and passengers remain prohibited.

¹⁸ *EU Council Conclusions on Middle East Peace Process*. 13th November 2006.

http://www.europa-eu-un.org/articles/en/article_6462_en.htm

¹⁹ UN OCHA. 2006. "The Agreement of Movement and Access One Year On". November 15th.

²⁰ UN OCHA: 2006. "The Humanitarian Impact of Karni Crossing Closure: Bread Running out in Gaza." *Gaza Strip Situation Report*. March 19th.

²¹ *Ibid.*

- There has been no reduction on the restrictions of movement of Palestinians in the West Bank. Indeed, the number of physical obstacles restricting movement in the West Bank has increased by 44 percent.²²
- Construction of the Sea Port remains prohibited.
- There have been no discussions regarding the opening of the Gaza airport.

²² UN OCHA. 2006. "The Agreement of Movement and Access One Year On". November 15th.

5: IMPACT OF THE CLOSURE OF RCP

Restriction of freedom of movement:

The right to free movement is internationally recognized for all human beings without any kind of discrimination, and it should be protected, unless there are legitimate legal constraints on a certain individual's right to movement under the law. Nevertheless, Palestinian civilians are prohibited from free travel; they are effectively locked in the Strip. They have been prevented from going abroad to visit family members (while family members are prohibited and/or prevented from entering Gaza), to access healthcare, to further their education or to engage in employment, trade or business.

The highly unpredictable nature in which RCP does open (when it opens) further prevents Palestinians from being able to travel by offering them only a few hours to prepare themselves and to reach the Crossing, by engendering mass overcrowding on the days of opening, and by rendering travelers unsure of when they will be able to return.

Restriction of access to healthcare:

The Palestinian health system, already under huge pressure as a result of the international boycott, has suffered from medical supplies being held at RCP (and Karni Crossing) for extended periods of time, and prevented them from reaching Gaza. Vital items have been held up despite the huge shortages of supplies. In March 2006, for example, the Palestinian Minister of Health announced there were 1500 items of medicines and medical supplies that are urgently needed as the Ministry stores and warehouses were running out of them. These supplies were particularly needed for cancer patients, surgical operations, and dialysis requirements, and hospitals remain locked in a constant struggle to meet these needs.²³

In addition, the closure of RCP has had a devastating impact on the ability of Gazans to go to Egypt and abroad for medical treatment, which is especially vital in current circumstances. Certain specialist treatment, especially for cancer, cannot be found

²³ UN OCHA has confirmed that during the months of 2006, between 15 and 20 percent of essential drugs were out of stock at a central level within Gaza. In November 2006, the 20 percent figure was exceeded. See "The Humanitarian Monitor", Occupied Palestinian Territory, Number 8, December 2006. p13.
http://www.ochaopt.org/documents/Humanitarian_monitor_december_2006_english.pdf

in the Gaza Strip, and requires patients to travel in order to access treatment which is frequently not possible. Even on the sporadic days that RCP is open, the massive crowds that have collected over the previous weeks and the stress engendered by the knowledge the Crossing may close at any time, makes crossing an intensely fraught and exhausting process which the elderly, sick and infirm are often unable to manage.

The following affidavit, illustrative of these problems, was taken by Mezan staff from Miss. Feryal Kattab, 32, who lives in Al Moghraqa village in south Gaza:

"I have suffered from a muscular and neural disorder in my bladder since 2003, and doctors in Gaza had advised me to continue treatment in Palestine Hospital in Cairo since my disease was incurable in Gaza. On 12 September 2003, I was hospitalized in Cairo where I stayed 18 days and was advised to return for a checkup in two months. I returned to Cairo, where I underwent a surgery to widen the urinary tract and was advised to return again for a checkup in three months. I went back again and had further surgery. I had to follow treatment and return again in four months.

My last visit was on 23 August 2005. According to medical analysis, I had infections and was advised to visit again in a year. Since then, my medical state has been deteriorating. I ease my pains with only antibiotics and painkillers which cost me around 40 NIS; my family cannot afford to buy me medication due to their poor financial status. On top of this, the trip to Cairo through Rafah crossing is exhausting and irregular.

Lately, my doctor in Gaza told me that I should go to Cairo for another surgery, but unfortunately, I am unable to travel due to the closure of Rafah crossing, especially considering my health is getting worse day by day".²⁴

Not only is leaving Gaza to Egypt often not possible with the closures, but very sick individuals have often found themselves waiting for days at the Egyptian side of the checkpoint on their return home, unable to return and take proper care of themselves. The following affidavit is collected from Mr. Maher Fahmi Rabah Dawood, 38, who works in Palestinian security and lives in the Amal neighbourhood of Khan Younis. His father was stuck, in critical condition, at the Egyptian side of Rafah Crossing Point for several days in June, following the closures engendered by Operation Summer Rain.

²⁴ This affidavit was taken by Mezan fieldworkers on the 31st of January 2007.

"My father, 70 years old, used to suffer from pain in the throat and respiratory disorders. I accompanied him for a checkup in Nasser Hospital in Khan Younis where the hospital diagnosis showed throat cancer. He was transferred to Shifa Hospital in Gaza where the diagnosis was confirmed, and he was provided with a clearance for treatment abroad.

Accordingly, in March 2006, my mother and brother accompanied my father to Egypt where he was hospitalized in Nasser Medical Institute until 27 June 2006. Upon doctors' recommendation to continue the treatment at home, my father decided to return to the Gaza Strip. Unfortunately, the Rafah Crossing was closed and he had to wait for three days on the Egyptian side of the Rafah Crossing. On 29 June 2006, after these three days, his medical status became critical and was transferred again to Nasser Medical Institute where he underwent two medical examinations, which indicated that he suffered from serious pulmonary infection and stop of heart palpitation. He died on 1 July 2006.

I contacted the Red Cross and made several attempts to get his body in through the closed crossing; however, the Israelis turned down all of our requests and, thus, my father was buried in Egyptian town of Al Areesh".²⁵

Restriction of access to employment:

The closure of RCP has also had an enormous impact on the ability of Gazans to find work abroad. Many thousands of Gazans work abroad, especially in the Gulf States. The closures of RCP have prevented many workers from coming back to Gaza to visit their families, and have thus also highly discouraged others from seeking or returning to work abroad for fear that they will not be able to return. Furthermore, many Palestinians have found themselves helpless but to watch their residence permits in foreign countries expire as they are locked within Gaza. In the Gazan context where the economy has been thoroughly undermined (partly as a result of Israel's destruction of land and property, its closure of Gaza to exports and imports, and its decision to abruptly end its employment of Palestinian workers), this impact has severe repercussions, and has contributed to the unemployment rate of 42 percent²⁶ of the population.

The following affidavit was given by a 39 year old Palestinian man with a German passport, Mr. Fawzi Al Emrani, as he waited at RCP, hoping to reach Germany to conduct business:

²⁵ This affidavit was taken by Mezan fieldworkers on the 4th of July 2006.

²⁶ UN OCHA. "The Humanitarian Monitor". No. 8, p.26

"I work as a Plastic Arts lecturer in Al Aqsa University in Gaza, and I am also employed in a Designing and Advertising Company in Germany to which I have to travel regularly. I finished Plastic Arts studies in Germany and I hold German passport. I must travel to Germany to carry out some duties assigned by the company, so I left Gaza on 13 February 2007 at 1am after the opening of Rafah crossing was announced. Upon arrival, the crossing was overcrowded with passengers, cars and buses. I could not travel although I hold a foreign nationality. At 1pm, I managed to reach the gate where buses take patients, students and foreign residence holders to the other side of the crossing. Yet, I am not sure whether I will travel today or not".²⁷

It is also of note that RCP, like other crossings, should be a source of employment, be it through people trading or working in it, or even through the taxes the PA should be able to collect from people and goods passing through it. The prolonged closures undermine these resources during a serious crisis.

Restriction of access to education:

Access to education has also been negatively impacted by the closure of RCP. Again, the effects of the closure of RCP on education are worsened by the effects of the international boycott which has hit the Ministry of Education severely. The closure of the Rafah crossing for two and a half months, following the completion of the implementation of the disengagement plan, prevented thousands of students from attending universities abroad. This delayed the completion of their studies, it forced the postponement of courses, and many students also lost their residence visas in the countries where they're studying as these visas are issued based on registration at university at the beginning of each school year. The closure of RCP continues to prevent Gazan students from attending universities outside the strip. Likewise, many Gazan students have been trapped in Egypt unable to return to Gaza and have in this way lost weeks of study, which has often forced them to repeat a whole term or academic year.

Ms. Nour Issa Saleh Shamoan, aged 18, gave the following affidavit to Al Mezan Center for Human Rights:

"My family and I live in Abu Dhabi, UAE, where my father works as a teacher. We have decided to move to the Gaza Strip where I intended to pursue my university studies which are unaffordable in the UAE. I have indeed graduated from high school and traveled with family to Egypt hoping to move

²⁷ This affidavit was taken by Mezan fieldworkers on the 14th of February at Rafah Crossing Point.

to Gaza and live with my grandparents. Unfortunately, Rafah crossing was announced closed following the abduction of the Israeli soldier.

In 2005, my family had been encouraged to visit Gaza after the Israeli withdrawal from the Gaza Strip which meant to us that the borders would be under the Palestinian control. However, the situation deteriorated ever since in the Gaza Strip and we thus had had to postpone our trip to Gaza until the situation settled.

It was announced that the crossing would be opened on 23 January 2007. However, no sooner had we arrived in Cairo, it was closed again. Yet, my father had to go back to the UAE since his winter break ends on the 5th of February 2007. Eventually, I will not be able to travel to Gaza and join university there if Rafah crossing remains closed because my father should soon return to the UAE and I cannot to stay alone in Cairo".²⁸

²⁸ This affidavit was taken by Mezan fieldworkers on the 30th of January 2007

6: THE STANDING OF ISRAEL'S CLOSURE POLICY UNDER INTERNATIONAL LAW

"The siege of Gaza is a form of collective punishment in violation of the Fourth Geneva Convention of 12 August 1949"²⁹

Israel is a signatory to various human rights covenants, such as the International Covenant of Civil and Political Rights,³⁰ the International Covenant of Economic, Social and Cultural Rights, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment. Relevant articles that have jurisdiction over RCP include: "Everyone shall be free to leave any country, including his own" and "No-one shall be arbitrarily deprived of the right to enter his own country" (Article 12.2 and 12.4 of the International Covenant of Civil and Political Rights); "State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" (Article 12.1 of the International Covenant of Economic, Social and Cultural Rights); "Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means" (Article 13.2(c) of the International Covenant of Economic, Social and Cultural Rights); and "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" (Article 6 of the International Covenant of Economic, Social and Cultural Rights).

Israel has consistently tried to argue that its human rights obligations do not apply to the Occupied Territories, claiming that the relationship between occupiers and occupied is fundamentally different from that between a government and its people during peacetime. However this argument has little merit. Most of these Covenants stipulate that the obligations under these conventions do not apply only to the territorial area of a specific state, but to all persons brought under the effective jurisdiction or control of that state, which would include all those persons within

²⁹ United Nations Human Rights Council. Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard. Summary, p2. 29th January 2007.

³⁰ Upon signature, Israel derogated from Article 9 of the Covenant, which deals with the right to liberty and security of person and lays down the rules applicable in cases of arrest or detention. According to the ICJ's Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, "the other Articles of the Covenant therefore remain applicable not only on Israeli territory, but also on the Occupied Palestinian Territory" Para. 127.

the OPT.³¹ The Committee on Economic, Social and Cultural Rights has deplored Israel's refusal to report on the OPT as well as Israel's claims that the human rights covenants signed by Israel have no jurisdiction in the OPT.³² This position is supported by the International Court of Justice (ICJ) in the *Legal Consequences of the Construction of a Wall in the OPT* case, where it stated that despite the signing of the Oslo Interim Agreements, it remains evident that Palestinians do not exercise sufficient control over any of the Occupied Territories (East Jerusalem, the West Bank or Gaza) to free Israel of its international responsibilities.³³ The ICJ has further emphasized that where competence has been transferred to the Palestinian Authority, Israel remains "under an obligation not to raise any obstacle to the exercise of such rights".³⁴

Israel has also cited security concerns to justify its closure of Rafah Crossing Point and in this manner maintains it is acting in line with international law. However, while it is indeed the case that certain human rights such as free movement, the right to education, healthcare and work, can be suspended or restricted for security reasons, these restrictions must be limited to what is necessary. As defined by the UN Human Rights Committee, the authoritative human rights body interpreting the International Covenant on Civil and Political Rights, these restrictions should not make the enjoyment of these rights the exception rather than the norm.³⁵ Indeed,

³¹ This has been upheld, for example, in the *Loizidou* case that was brought before the European Court of Human Rights.

³² In its concluding observations on Israel's first report on ESC rights (submitted by Israel under article 16 and 17 of the Covenant), the Committee on Economic, Social and Cultural Rights stated "The Committee deplores the State party's refusal to report on the occupied territories and the State party's position that the Covenant does not apply to 'areas that are not subject to its sovereign territory and jurisdiction'. The Committee's views on this issue have already been firmly expressed in its previous concluding observations (E/C.12/1/Add.27). The Committee notes the statement of the State party in paragraph 5 of the additional information it submitted to the Committee, that powers and responsibilities 'continue to be exercised by Israel in the West Bank and Gaza Strip' according to agreements reached with the Palestinians" (Para. 11). The Committee also stated that it "rejects the [Israeli] State party's assertion regarding the distinction between human rights and humanitarian law under international law to support its argument that the Committee's mandate 'cannot relate to events in the Gaza Strip and West Bank'. The Committee reminds the State party that even during armed conflict, fundamental human rights must be respected and that basic economic, social and cultural rights as part of the minimum standards of human rights are guaranteed under customary international law and are also prescribed by international humanitarian law" (Para 12).

21st August 2001. In response to the consideration of additional information submitted by Israel
For more information see <http://www.alhaq.org/etemplate.php?id=140>

³³ Paragraph 112 of the ICJ's advisory Opinion. 9th July 2004.

<http://www.icj->

[cij.org/icjwww/idocket/imwp/imwp_advisory_opinion/imwp_advisory_opinion_20040709.htm](http://www.icj.org/icjwww/idocket/imwp/imwp_advisory_opinion/imwp_advisory_opinion_20040709.htm)

³⁴ *Ibid.*

³⁵ Paragraph 13 of the Human Rights Committee General Comment No. 27 on Freedom of Movement (Article 12) states in regard to legal restrictions up on this right that "In adopting laws providing for restrictions permitted by article 12, paragraph 3, States should always be guided by the principle that the restrictions must not impair the essence of the right (cf. art. 5, Para. 1); the relation between right

they cannot be denied in a blanket policy that targets the entire population for extended periods of time. The ICJ has likewise rejected Israel's position that the territories "are part and parcel of the context of armed conflict as distinct from a relationship of human rights", noting that Israel remains bound by the provisions of the Covenant on Economic, Social and Cultural Rights.³⁶

Moreover, Israel's continued closure of RCP violates international humanitarian law (IHL). In light of Israel's occupation of the West Bank, which includes East Jerusalem, and the Gaza Strip, Israel, as an Occupying Power, is obliged to observe the provisions of two instruments of IHL: the 1907 Hague Regulations and the 1949 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Times of War. Israel has accepted that it is bound by the former (despite not being a signatory) as it forms part of customary international law.³⁷ However, despite the fact that Israel has ratified the Fourth Geneva Convention, Israel has again advanced arguments claiming that the Fourth Geneva Convention is inapplicable to Israel's actions in the OPT, asserting that Israel is merely an administrator of the territories. Such arguments have been discussed at length elsewhere;³⁸ however it is reasonable to contend that the entire international community, the UN Security Council, and the International Committee of the Red Cross, puts forth the view that the Fourth Geneva Convention is applicable to Israel's occupation. A conference of the High Contracting Parties to the Convention, which took place in Geneva in July 1999 (boycotted by Israel), also reaffirmed the applicability of the Convention to Israel.³⁹ The statement of common understanding which was adopted by the High Contracting Parties "reaffirmed the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including East Jerusalem," and "the need for full respect for the provisions of the said Convention in that Territory." Common Article 1 of the Geneva Conventions requires High Contracting Parties, "to respect

and restriction, between norm and exception, must not be reversed. The laws authorizing the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution."

<http://www.unhchr.ch/tbs/doc.nsf/0/6c76e1b8ee1710e380256824005a10a9?Opendocument>

³⁶ Paragraph 112 of the ICJ's advisory Opinion. 9th July 2004.

<http://www.icj->

[cij.org/icjwww/idocket/imwp/imwp_advisory_opinion/imwp_advisory_opinion_20040709.htm](http://www.icj-cij.org/icjwww/idocket/imwp/imwp_advisory_opinion/imwp_advisory_opinion_20040709.htm)

³⁷ This has been affirmed by Israeli High Court Jurisprudence. See Suleiman Tawfiq Ayyub et al. v Minister of Defense et al, Israeli High Court Judgment 606/78 at 6.

³⁸ See Roberts, "Prolonged Military Occupation," in Playfair (ed.) *Administration of Occupied Territories* (Oxford, Clarendon Press, 1999).

³⁹ The UN General Assembly resolution calling for the meeting of the High Contracting Parties was adopted by a vote of 115 in favour with two (Israel and the USA) against and five abstentions.

and to ensure respect for the present Convention in all circumstances," a requirement that includes the duty to endeavor to bring another High Contracting party to respect the Geneva Conventions when it is responsible for breaches. The applicability of IHL to the Occupied Territories was also re-affirmed by the ICJ in its rulings on the wall.

On the basis that the Fourth Geneva Convention is without doubt applicable to the Occupied Palestinian Territories, civilians have the status of "protected persons", and collective punishment is explicitly rejected. Article 33 of the Convention states "No protected person may be punished for an offence he or she has not personally committed. Collective penalties ... are prohibited". Article 3(1) of the Convention provides that each contracting Party undertakes to treat civilians and non-combatants humanely and without any adverse distinction in all circumstances. International humanitarian law, as the law of war, does not permit derogations, "even in time of public emergency which threatens the life of the nation." In Israel's blanket closures of RCP, Israel has violated two of the most basic tenets of international humanitarian law – the principle of proportionality and the principle of distinction.

The hugely devastating impact of these closures on the 1.4 million residents of Gaza, as well as the effect that closure has had on the economic, social and cultural life of the whole population, cannot be justified as a proportional response to Israel's need and right to security. This is even more so considering that Israel, the Palestinian National Authority and the European Monitors have kept full security control over the crossing, and have employed tight security precautions including the use of extremely high-technology equipment to search people and luggage. Smuggling prohibited materials has proved impossible through the Crossing. Indeed, when the RCP has been open and functioning, there has been no evidence that this has had negative repercussions on Israel's security. Israel has expressed more concerns about tunnels built underground between Gaza and Egypt than actions in the actual Crossing Point, suggesting that the RCP is not a real area of concern with regards to Israel's security.

Al Mezan understands that the closure of Rafah Crossing Point is not aimed primarily to ensure the prevention of smuggling or movement of 'wanted people', but is instead used as a tool to collectively punish the whole population of Gaza. In

this way, Israel attempts to use the basic rights of the Palestinian people as a bargaining chip and as a way to apply pressure to the whole civilian population, ensuring that they pay the price for actions that they had had no part in, nor have control over. Indeed, in the minutes of a meeting held in the Israeli Ministry of Defense relating to the Gaza crossing (published in the Israeli newspaper Ha'aretz), the IOF's planning division argued the crossing "should be opened on occasion only after the kidnapped soldier [Shalit] is released and the shooting from the Gaza Strip stops. To use the crossing as a means of applying pressure". The Israeli General Security Service opposed the opening of the crossing even for a few hours, "so long as the matter of the abducted soldier remains unchanged. Pressure on this matter must remain in place at this stage."⁴⁰

Israel has systematically violated its obligations under the principles of international human rights and humanitarian law, especially the Fourth Geneva Convention. The international community holds the responsibility to fulfill its obligations and ensure respect for the Convention in the OPT. The reality of Israel's violations of human rights in the OPT necessitates all United Nations human rights bodies, particularly the Human Rights Council and the Economic and Social Council, the States Parties to the ICCPR and ICESCR, The High Contracting Parties to the 4th Geneva Convention, and all human rights organizations, to hold Israel accountable for serious breaches of its obligations. These bodies are obliged, by Human Rights Law, to ensure respect and protection for Palestinian human rights. Al Mezan believes the international community's intervention to end Israel's violations is most urgent now in order to enable Palestinians to practice their rights, which are internationally recognized as legitimate.

⁴⁰ Ha'aretz. "Israel using Rafah crossing to pressure PA on Shalit release". 30th August 2006 <http://www.haaretz.com/hasen/objects/pages/PrintArticleEn.jhtml?itemNo=756402>

CONCLUSION

Al Mezan Center for Human Rights considers Israel's practices in the RCP as a source of suffering to the civilian population of the OPT. The prohibition and restriction of Palestinian movement and travel constitute a violation of international and human rights law, particularly of economic, social and cultural (ESC) rights, as the closure of RCP impacts severely on the ability of Gazans to unite with their families, access healthcare, education and work.

Al Mezan reiterates that Israel's procedures in the RCP constitute only part of its massive violations of human rights, in contravention to its obligations under Human Rights Law and Humanitarian Law, especially those pursuant to its ratification of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Israel's constant and continuing violations constitute disregard of the Human Rights Law and standards.

Moreover, the Centre sees Israeli's continuing control over Rafah Crossing Point as a form of retaining effective control of the population of Gaza, and thus as one tool in which Israel continues to occupy the Gaza Strip.

The Center emphasizes that Israel's acts in the RCP are alarming and are in part allowed by the international community's tendency to address the Israeli occupation and Palestinian rights from a political perspective, which contravenes their obligations under international human rights and humanitarian law, particularly the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Times of War.

As such, and in light of the facts this report puts forth, Al Mezan undertakes an urgent appeal to the international community to intervene immediately in order to protect the civilian population and ensure Israel's respect for its obligations under human rights law and the Fourth Geneva Convention. This intervention should be undertaken through conducting effective investigations of the violations by Israel of its obligations under IHL and IHRL, and, in light of findings, the application of pressure to prevent these crimes from continuing, and the bringing to justice of those who ordered or perpetrated war crimes and/or crimes against humanity.