

**Al Mezan Center for Human Rights**



**A Special Report on:**

**Rafah Crossing – Gaza’s only link to the outside world**

**Gaza- September 2005**

**Developed by:** Sara Hussein

**Reviewed and edited by:** Al Mezan Center for Human Rights staff

## *Introduction*

The Gaza Strip has long been referred to as akin to a large, open-air prison. This characterization is not hyperbolic. The crossings from Gaza out to Israel, and beyond, have remained closed to most Palestinians since the beginning of this intifada<sup>1</sup> at least, and, for many, were closed even before that time. Gaza's residents thus have only one point of exit to the outside world – the Rafah, or Al Awda crossing.

In the wake of Israel's disengagement from Gaza, much controversy has centered on the fate of the crossing. For Gaza's 1.4 million residents, there is little more important than the final status of the crossing. In order to understand their concerns and the non-negotiable Palestinian demand that the crossing be under full and exclusive Palestinian control, it is necessary to examine the history of the crossing and the way it has been managed since its establishment. Only by considering its effect on the rights to freedom of movement, freedom of worship, education and healthcare, can the gravity of the crossing's fate be understood.

### *Rafah Crossing – from 1967 to 1994 (the Oslo Accords)*

The current crossing, located on the border between the Strip and Egypt, was first established in the wake of the Camp David Accords between Israel and Egypt, in 1982. However, Palestinians had been dealing with the vagaries of Israeli-controlled exit for years.

In August 1967, the Gaza Strip was declared a “closed military zone” by Israeli forces that had just occupied the area. Under the terms of the declaration, exit from the area was prohibited without prior permission from the military commander of the area.

---

<sup>1</sup> Palestinian popular uprising. The intifada here refers to the uprising that broke out on 28 September 2000.

Permission was rarely given, and exit was usually only available in humanitarian situations, with the coordination of the International Committee of the Red Cross.

In the late 1980's, Israel instituted the "Open Bridges" policy, which ostensibly loosened the previous restrictions on travel, but in practice still required Palestinians to apply for permits to leave and return to their own land. While more Palestinians were able to travel during this period than in the time prior to it, applying for a permit remained an arduous and uncertain process.

Permits were issued by the Internal Affairs Headquarters Officers at the Civil Administration office in the resident's district. Any Palestinian wishing to travel was required to complete a form obtained from the office, and stamps from a variety of other offices, including the police, the military governor, the local elder and various tax offices.<sup>2</sup> The form was then submitted and a reply would be received within two to three weeks.

Once permission was granted, the applicant could usually travel without additional permits. Permission was generally given for a three-year period, which could be extended for another three years. However, many Palestinians were refused permission, on either an individual or collective basis. Former prisoners, or those from areas that were home to known activists were regularly refused permission.

Other restrictions and conditions often applied. Students were sometimes told that they would only receive permission to complete their studies abroad if they agreed to stay away for more than three years. This was effectively blackmail as, at the time, Palestinians abroad for more than three years would lose their Palestinian residency.

---

<sup>2</sup> "One Big Prison: Freedom of Movement To and From the Gaza Strip, On the Eve of the Disengagement Plan." B'Tselem and HaMoked, March 2005, 26-27. Report available at: [http://www.btselem.org/English/Publications/Summaries/200503\\_Gaza\\_Prison.asp](http://www.btselem.org/English/Publications/Summaries/200503_Gaza_Prison.asp)

Up until 1991, Palestinians in Gaza were still, theoretically at least, able to travel abroad via the Rafah crossing, across the West Bank-Jordan Allenby Bridge, or from Israel's Ben Gurion Airport in Tel Aviv. However, in 1991, harsh restrictions on travel between Gaza and the West Bank and Israel were imposed. These effectively rendered the crossing at Rafah the sole exit point to the outside world for Gazan Palestinians. Even with the 1997 opening of a small airport in the Gaza Strip, Palestinians wishing to leave were first bussed to the Rafah crossing, where their papers were processed by Israel, and then back to the airport for departure.

*The Rafah Crossing from 1994 – 2000 (Under the Oslo Accords)*

The current management regime at the Rafah crossing was established in the Gaza-Jericho Agreement, signed by Israel and the Palestinian Liberation Organization (PLO) in 1994. Annex X of the agreement stipulates the principles of management for both the Allenby Bridge crossing from the West Bank to Jordan, and the Rafah crossing from Gaza to Egypt.

The agreement, on its face, gave Israel and the Palestinians shared control of the crossing. In reality, however, Israel retained primary control.

According to the agreement, Israel was given sole “responsibility for security throughout the passage, including for the terminal.”<sup>3</sup> Additionally, an Israeli director general was charged with sole “responsibility for the management and security of the terminal.”<sup>4</sup>

While Israel was given exclusive discretion in the selection of Israeli staff, it was given a role in both the selection of certain Palestinian deputies and the deployment of

---

<sup>3</sup> Gaza-Jericho Agreement, Annex I – Protocol Concerning Withdrawal of Israeli Military Forces and Security Arrangements. Article X, 2.b.1.

<sup>4</sup> *Ibid* 2.b.2.

Palestinian police.<sup>5</sup> Similarly, while the agreement mandated that “Israel will have *exclusive* responsibility for the management of the Israeli Wing”<sup>6</sup> of the terminal, an active Israeli presence was permitted in the Palestinian Wing. Israeli police were stationed inside the Palestinian wing, and any inspection of passengers by Palestinian police had to be carried out “in the presence of an Israeli policeman.”<sup>7</sup>

As is made clear by the text of the agreement itself, even prior to the change of circumstances brought about by the intifada, Israel had the lion’s share of control at the terminal, and thus over the freedom of movement of Gaza’s some 1.4 million residents.

*The Rafah Crossing from 2000 – to date) (during the Intifada) – Closures and Violation of Palestinian Human Rights*

That control became total in 2001, when Israel banned all Palestinian staff from working in the terminal. Prior to this, around 45 Palestinians, both security and civilian staffs, were employed in the terminal in various capacities. A few cleaners and bus drivers have been permitted inside on certain occasions, but, on the whole, the terminal has been empty of all Palestinian staff since January 2001.

The Israeli response to the intifada has severely affected the functioning of the crossing. The terminal, which was once open 24 hours a day, used to close only for the Muslim holiday of Eid Al Adha, and the Jewish holiday of Yom Kippur. Since the beginning of the intifada, on September 28, 2000, the crossing has been fully closed for a

---

<sup>5</sup> *Ibid* 2.b.4. and 2.b.7 respectively.

<sup>6</sup> *Ibid* 2.b.3.a (emphasis added)

<sup>7</sup> *Ibid* 3.c.

total of 279 days, according to Al Mezan documentation.<sup>8</sup> Additionally, the terminal has been partially closed for 651 days.<sup>9</sup>

On an ideal day, the terminal is currently open from 9am-2pm for those crossing into Egypt, and from 11am-5pm for those crossing into Gaza, according to the Palestinian Public Relations Officer at the terminal. However, he notes, the crossing regularly opens late and/or closes early. It is often unclear in advance if and when the crossing will open and close.

The frequent closures of the terminal, in combination with arbitrary opening and closing hours and the increased restrictions imposed by Israel on those entering and exiting, have taken a heavy toll on traffic through the crossing. The Israeli Airport Authority, which is in charge of the Israeli side of the terminal, records a drop from 508,265 people crossing through in 1999, to 209,016 in 2004 – a 41% drop in traffic.

The table below shows the IAA's official figures for transit from 1999-2004.<sup>10</sup>

Year	1999	2000	2001	2002	2003	2004
Total passengers	508,265	441,555	192,338	204,402	259,386	209,016

These figures clearly show the impact of the Israeli policy. While it is impossible to know how the figures break down, it is certain that various factors – all grounded in Israeli practices – have kept people away from the crossing. Of those Palestinians that have actually attempted to cross, many will have been refused permission, others will

---

<sup>8</sup> Figure correct up to 30/08/05

<sup>9</sup> 'Partial closure' refers to times at which additional restrictions are placed on travelers – this includes the restriction on travel for those between 16-35 years old, and times at which the terminal is open only to those coming from Egypt. Figure correct up to 30/08/05

<sup>10</sup> Figures available at: <http://www.iaa.gov.il/Rashat/en-US/Borders/Rafiah/AbouttheTerminal/Statistics>. The site also gives figures indicating the sharp drop in the number of trucks and vehicles crossing the border at Rafah.

have made it to the terminal, only to wait hours or days without being able to cross and will have simply turned back. Still others will have been kept away by the uncertainty created by arbitrary opening hours and the fear that they will be refused permission to cross.

The process of crossing in or out has also become prohibitively expensive for many Palestinians. Those coming from other Arab countries may have to pay for airplane tickets to Egypt, without knowing whether or not they will get into Gaza; those trying to travel from Gaza, through Egypt, onto other countries, may have to buy tickets in advance, losing the money paid for them if they are unable to leave. For others, the risk that once in, or out, the crossing will close, leaving them trapped, is simply too great.

Palestinian fears of being trapped on one side or the other of the crossing are well founded. On numerous occasions, the crossing has been closed for periods of up to six weeks. In 2004, the crossing closed from July 18 to August 6. Thousands of Palestinians were stranded on the Egyptian side of the border. Earlier that year, the border closed on December 13<sup>th</sup>, and did not reopen until the beginning of February 2005. During the closure, around 877 patients who had been abroad for medical care were trapped on the Egyptian side, trying to get back to Gaza. According to the World Health Organization, “7 of these patients died and were buried in Alarish, at the Egyptian border, as the Israeli authority did not allow the transfer of the bodies”<sup>11</sup> to the Gaza Strip.

Naturally, the arbitrary Israeli closures of the crossing disproportionately affect ill Palestinians, who are unable to get the treatment they need in the Gaza Strip. However, another group also severely affected by the closures are students. In the first instance, the

---

<sup>11</sup> “Medical Treatment abroad for Gaza residents: closures and access” 31<sup>st</sup>, January, 2005. World Health Organization report. Available at: [www.ifamericansknew.org/cur\\_sit/closure-med.html](http://www.ifamericansknew.org/cur_sit/closure-med.html)

uncertainty surrounding the opening/closing of the crossing makes life extremely hard for students who must return to programs of study at specific times, or risk losing education, and the money paid for that education.

However, students have also been severely affected by frequent Israeli decisions to prohibit the travel of Palestinians between 16 and 35 years old. The figures below indicate dates during which Palestinian men and women between these ages have been banned from travel through Rafah.

**Men** – January 1, 2003-March 3 2003  
March 15, 2003-July 1 2003  
April 15, 2004-February 24, 2005  
July 16, 2005-present

**Women** – January 1, 2003-January 9, 2003  
April 15, 2004-May 16, 2004

During the latter age ban, Palestinians in that age range have been able to apply for special permission to travel, but their requests are frequently refused – most often with no particular explanation.

At 2pm on September, 2005, Israel closed the crossing until further notice. This closure, according to Israel, comes in the context of the withdrawal from Gaza and might extend for a period of six months. Israel offered Palestinians exit through a temporary crossing in Kerem Shalom, east to Rafah town, which is under full Israeli control until the original Rafah crossing is renewed and functions according to new negotiated regulations, which may include international presence inside it. The Rafah crossing has been one of the main areas of difference between the PNA and Israel in the course of the arrangement of Israel's withdrawal and transfer of land and crossings in the Gaza Strip as Israel demands ensuring ability to be present in the crossing without jeopardizing its claim of full withdrawal from Gaza.



### *The Crossing Process*

At present, the procedure for crossing from Rafah is usually as follows: Palestinians proceed to the Palestinian National Authority (PNA) offices, located just outside of the actual terminal. Here they submit their papers for inspection by PNA officials. All those with the correct papers are then allowed to proceed to an area with waiting taxis. Each taxi holds eight people and will not move forward until full. When full, the taxi moves less than 100 meters to a waiting area. The taxis must wait here, with the trunks open, for as long as it takes for permission for them to move to come from the Israeli watchtower some 300 meters away.



*Palestinians wait to have their papers inspected by PNA officials*

Once the waiting cars receive permission to move forward, they proceed slowly, with their trunks still open and all the car doors closed, to a point just past the watchtower. Here, the Palestinians' luggage is unloaded and taken away for Israeli

inspection. The travelers are physically searched and go through metal detectors before boarding a coach. They are not permitted to carry any bags or luggage on the coach. They are taken some 50 meters to a passenger lounge, where they are searched again. They then wait while their passports are checked, to discover if they will receive permission to cross or not. Those receiving permission are bussed another 50 meters to the Egyptian side, the others are bussed back to Gaza.



*The Israeli military watchtower at the Rafah crossing*

*Israeli Violations of International Law at the Rafah Crossing*

That Israel's actions at the Rafah crossing are in breach of international law is clear. The restrictions on Palestinian freedom of movement that result from Israel's frequent closure of the crossing, its refusal to let individual Palestinians cross and its collective punishment of all Palestinian men aged 16-35, breach both international humanitarian law and international human rights law.

While international humanitarian law does not explicitly impose upon an occupier the obligation to uphold freedom of movement, it does oblige an occupying power to show respect for various freedoms that are impeded by a lack of freedom of movement.

The Hague Regulations of 1907 state that "family honour (sic) and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected."

Further the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War states of 1949, in numerous places, that the occupying power has a duty to protect and facilitate the treatment of wounded or sick persons. The frequent closures of the crossing, even for those seeking medical treatment abroad, are thus a clear breach of the Convention. The Convention also protects the rights of occupied people to practice their religion, a right that is violated every year when the crossing is closed to many wishing to make pilgrimage to Mecca.<sup>12</sup>

The Convention further stipulates, in Article 33, "no protected person may be punished for an offence he or she has not personally committed. Collective penalties...are prohibited." Clearly, Israel's blanket travel bans on Palestinians between the ages 16-35 constitutes collective punishment, as prevented by the Convention.

---

<sup>12</sup> According to Al Mezan fieldworkers, over 700 would-be pilgrims were turned back at the border crossing in 2003. Over 100 of these were refused exit because of their age, the others were told they could not leave "for security reasons."

International human rights law is significantly more explicit than international humanitarian law on the right to freedom of movement. The International Covenant on Civil and Political Rights protects both the right of an individual “to leave any country, including his own”<sup>13</sup> and prevents any individual from being “arbitrarily deprived of the right to enter his own country.”<sup>14</sup>

It ought to be noted that, as Israel and the Occupied Palestinian Territory – which includes Gaza – are under an officially declared state of emergency, Israel has the right to derogate from some of its obligations under the ICCPR. However, any derogation on the basis of security must be grounded in specific security concerns and must be proportional to the perceived threat. Importantly, as has been recognized by the Israeli High Court<sup>15</sup> and reiterated by Israeli human rights group Btselem, “the state 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”<sup>16</sup> wanting to travel. Israel’s perennial “security reasons” justification is thus insufficient to validate its restrictions on freedom of movement.

Further, there are several protected rights – as with international humanitarian law – that are indirectly violated by Israel’s restriction of Palestinian freedom of movement. In particular, rights to health and education, as protected by the International Covenant on Economic, Social and Cultural Rights, are seriously affected by closures and travel bans.

The Covenant states in Article 12 that “the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of

---

<sup>13</sup> ICCPR Article 12 (2)

<sup>14</sup> *Ibid* Article 12 (4)

<sup>15</sup> See the opinion of Justice Turkel quoted in HCJ 111/53, *Kaufman v. Minister of the Interior*

<sup>16</sup> *One Big Prison*, 39

physical and mental health,” and in Article 13 that the States Parties “recognize the right of everyone to education.”

Clearly then, Israel’s current and past practices at the Rafah crossing constitute serious breaches of both international humanitarian law and international human rights law. Given Israel’s track record of restricting Palestinian movement, and in order for Gazan Palestinians to enjoy their fundamental rights to freedom of movement, education and healthcare, it is imperative that Israel return control of the entire crossing to the Palestinians.

### *Conclusion*

Current Israeli proposals on the future of the crossing suggest a serious unwillingness to countenance Palestinians controlling their ability to leave and reenter their own territory. Israel’s current proposal centers around a Palestinian-controlled exit point at Rafah, coupled with an Israeli controlled entry point in Kerem Shalom, on the eastern border between the Gaza Strip and Israel.

This is not the first time Israel has proposed creating an Israeli controlled entry/exit point for Gazan Palestinians, on Israeli land. During the July-August 2004 closure of the Rafah crossing, Israel proposed temporarily allowing crossing through Nitzana, which is located inside Israel. The Palestinian National Authority refused the proposal, in order to avoid setting a precedent whereby Palestinians would have to cross through Israel to enter Gaza.

It is vital that the Rafah crossing, which is the only link to the outside world for some 1.4 million Gazan Palestinians, not be left in the hands of Israel. It is also imperative that the international community rejects any Israeli proposal to maintain

control of Palestinian freedom of movement. This, necessarily, includes rejection of any Israeli proposal to move the crossing to Israel itself.

The experience of the failure of the Oslo Accords and the descent into the violence and insecurity of the Al Aqsa Intifada ought to make clear that any progress towards a peaceful resolution of the conflict must be based on respect for international law and the human rights of the Palestinians. As such, the Rafah crossing, and thus Palestinians' freedom of movement, must be controlled by Palestinians themselves. Anything less would merely set the stage for repetition of the mistakes of the past and, thus, allow for continued violations of Palestinians collective and individual human rights.