



30 August 2006

Dear distinguished representatives of the governments of the European Union,

As a specialized human rights organization located in the Gaza Strip, we write to express our deep concern over the situation of Rafah Terminal on the Gaza Strip-Egypt border. On 15 November 2005, an agreement was reached comprising two documents which reflected commitments on behalf of the Government of Israel (Gol) and the Palestinian National Authority (PNA), with regards to issues of movement and access, as well as principles for the working of Rafah Terminal (hereinafter: "the agreement"). 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 Gol has ignored its duties in this regard, however, which has led to serious humanitarian and economic consequences. We assert that Israel's authority over Rafah and Karni borders is just one example of the ways in which Israel continues to exercise effective control over Gaza. The use of this control as a tool for inflicting collective punishment against the Palestinians living in Gaza is contrary to international law and should not be endorsed by the European Union. Under no circumstances must the fundamental rights of the Palestinian people, such as freedom of movement, be used as a bargaining chip to negotiate a process that comes at the cost of these rights. Such a process should be based firmly on dignity and the principles of human rights and international law.

In the absence of an alternative functioning passenger crossing, Rafah crossing now constitutes the only link for Palestinians in the Gaza Strip with the outside world. Many facets of Palestinian life depend on the functioning of this crossing. It is the only operational point for access to healthcare, education and employment opportunities, all of which are vital for the development of Gaza's economy and the well-being of its population. According to the agreement, both Rafah and Karni economic crossing would "operate continuously". In reality however, Karni was fully or partially closed for 199 days, or 77% of the period between 15 November 2005 and 31 July 2006, while Rafah was fully or partially closed for 98% of the time during the same period.

Under the 1995 Interim Agreement, the West Bank and Gaza Strip legally constitute one territorial unit, and thus Israel should not restrict the flow of passengers or goods between the two areas. Effectively, the agreement states that bus and truck convoys should have been in effect from December 2005 and January 2006. Thus far, no buses have left Gaza, and the truck convoys leaving the Gaza Strip reached an average of only 19 trucks daily during the first three months of 2006, well below the required 150. The agreement committed the Gol to permitting the export of agricultural goods from Gaza and facilitating their speedy exit from Gaza in the

interests of freshness. No exports have as yet been allowed through Rafah, and Karni has been closed for long periods at a time. Gazan farmers have suffered deeply and have had to destroy their own sources of livelihood due to the lack of possibilities to export fresh produce. Whereas Gaza's seaport represents another important potential source of economic development, the port also remains inactive despite a guarantee under the Agreement that construction of the port would begin immediately without Israeli interference.

The closures of Rafah and Karni have severely affected economic activity, contributing to rising unemployment and poverty rates in Gaza, which now stand at 40% and 78% respectively according to OCHA. The closures also severely curtail enjoyment of the Palestinians' right to freedom of movement as well as fundamental economic, social and cultural rights and rights of the child enshrined in the ICESCR and CRC. The right to life is a non-derogable right under the UDHR, however the prevention of patients from accessing adequate healthcare through Israel's prolonged closure of crossings constitutes a serious threat to their lives. During the months of July and August 2006, five people died at Rafah crossing whilst waiting in extreme circumstances for the border to open. Israel's ongoing abuse of its control of Gaza's borders and coastline under the pretext of security constitutes collective punishment against the population of Gaza, which is forbidden under article 33 of the Fourth Geneva Convention. Further, article 35 states that protected persons in an occupied territory must be allowed to leave the territory should they need or desire to.

Whereas the November 2005 Rafah agreement aimed to improve the humanitarian situation in Gaza, the humanitarian and economic conditions have in fact worsened and movement restrictions for Palestinians in the territories have tightened. In light of the upcoming review process of the agreement, we stress that the immediate and permanent reopening of Rafah and Karni terminals must constitute a first step towards ending ongoing human rights violations and such methods of collective punishment. Furthermore, the agreement should be seriously reconsidered and ways sought to bring Israel's illegal control over Gaza's borders, airspace and coastline to a full and permanent end. As distinguished representatives of the European Union, effectively the third party in this agreement, and as representatives of High Contracting Parties to the Fourth Geneva Convention, we call upon you in your consideration of the reviewing process for the Rafah agreement to:

- Launch an investigation into violations of basic standards of human rights caused by Israel's ongoing control of Gaza's borders;
- Demand the immediate and permanent opening of Rafah and Karni Crossings;
- Take actions to ensure that control of the Rafah crossing remains solely under the responsibility of the PNA;
- Ensure that you fulfill your obligations under common article 1 of the Fourth Geneva Convention to respect, and ensure Israel's respect for the Convention and end measures of collective punishment as well as violations of international human rights treaties.

Sincerely,

Issam Younis
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Gaza Strip