



## Legal Q&A: Closure of Gaza

***“The closure of Gaza is neither a siege, nor a blockade, nor an economic sanction – it is an illegal act of collective punishment and stands in violation of both international and Israeli law .”***

**Gisha – Legal Center for Freedom of Movement – December 2008.**

### What does the closure of Gaza refer to?

The closure of Gaza refers to the decision of successive Israeli governments since June 2007 to severely restrict the movement of people and goods into and out of the Gaza Strip through the closure of its border crossings. The stated ambit of the Gaza closure policy is summarised by a press statement released by the Israeli government in September 2007:

"Additional sanctions will be placed on the Hamas regime in order to restrict the passage of various goods to the Gaza Strip and reduce the supply of fuel and electricity. Restrictions will also be placed on the movement of people to and from the Gaza Strip."<sup>1</sup>

The ability of Gaza residents to enter or leave Gaza, and to import or export goods, including foodstuffs, medicines and fuel, has been severely restricted for nearly a decade. While there have been very limited fluctuations to these severe restrictions over this period, the policy of successive Israeli governments to enforce an illegal closure of Gaza has remained resolutely unchanged to this day.

Very disturbingly, the illegal closure imposed on Gaza has gained tacit international approval through the introduction of the Gaza Reconstruction Mechanism agreed in September 2014 between Israel, the Palestinian Authority, and the UN – for more information on this critically important yet under-reported issue, you can read our supporting [Legal Q&A on the GRM here](#).

### Why is the closure of Gaza illegal?

The closure of Gaza severely restricts civilian freedom of movement and in doing so violates other rights which require freedom of movement, including the right to health, education,

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<sup>1</sup> See: *Security Cabinet declares Gaza hostile territory* Israel Ministry of Foreign Affairs, 19 September 2007: <http://www.mfa.gov.il/mfa/pressroom/2007/pages/security%20cabinet%20declares%20gaza%20hostile%20territory%2019-sep-2007.aspx>



family life, and to access economic opportunities.<sup>2</sup> These rights are further restricted by the prohibition of the passage of essential goods for educational, health and economic well-being. As Human Rights Watch stated in October 2014:

"The blockade has had a disastrous impact on the health and wellbeing of Gaza's civilians, curtailing the delivery of food, medicine, fuel, and other necessities. Hundreds of thousands of people have little or no access to clean water. Hospitals, even before the recent fighting, were desperately overstretched."<sup>3</sup>

According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), as a result of the closure, 1.8 million Gaza residents remain 'locked in' to the Gaza Strip. They cannot access the remainder of the occupied Palestinian territory or the outside world.

### *Restriction on food*

The restriction of food imports to Gaza has caused significant criticism from international humanitarian organisations. On 5 October 2012, the Gisha Legal Center for Freedom of Movement won an Israeli Supreme Court case which forced the Israeli Ministry of Defence to disclose a document showing it had calculated the number of calories per person in Gaza, in order to calculate the amount of food that would be allowed into the Gaza strip.<sup>4</sup> The Israeli government had previously stated that "food types not of a humanitarian character or [food] items in quantities exceeding the quantities required for humanitarian needs, is not permitted."<sup>5</sup>

Before 2010, food prohibited in the Gaza Strip included sage, coriander, jam, nutmeg, halva, chocolate, seeds, biscuits, dried fruit, sweets and potato chips.<sup>6</sup>

### *Restriction on fuel*

According to OCHA, at the end of 2015 Gaza's supply of electricity covered roughly 38 per cent of the demand. As a result families in Gaza are facing power outages of around 16 hours per day.<sup>7</sup>

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<sup>2</sup> *Gaza Closure Defined: Position Paper on the International Law Definition of Israeli Restrictions on Movement in and out of the Gaza Strip*. Gisha - Legal Center for Freedom of Movement, December 2008

<sup>3</sup> Gaza: Donors, UN Should Press Israel on Blockade Human Rights Watch, 12 October 2014 at: <https://www.hrw.org/news/2014/10/12/gaza-donors-un-should-press-israel-blockade>

<sup>4</sup> *Food Consumption in Gaza Strip – Red Lines*. Gisha - Legal Center for Freedom of Movement, October 2012

<sup>5</sup> HCJ 4250/08 Afana Brothers Co. Ltd. v. Agriculture Minister, State Response of September 19, 2008, para. 12

<sup>6</sup> *Partial List of Items: Prohibited/Permitted into the Gaza Strip*. Gisha - Legal Center for Freedom of Movement, June 2010



Shortages of fuel have had a severe effect on medical treatment and water and sewerage systems. As a result, only 15% of people in Gaza receive a daily water supply, for four to six hours, and water consumption in Gaza is 60% lower than the recommended daily amount.<sup>8</sup>

### *Restriction on construction supplies*

The severe restriction on construction supplies is particularly devastating in light of the damage done to Gaza's civilian infrastructure by Israel's three large scale military offensives between 2008 and 2014. OCHA reported that by January 2016, of the 11,000 homes destroyed in 2014 hostilities, only 15% had been reconstructed. Reconstruction or repair of homes of 74 per cent of displaced families had yet to start. 90,000 individuals (16,000 families) remained displaced due to their homes being destroyed or severely damaged.<sup>9</sup>

The severe cumulative impact on all of Gaza's residents of the closure of their territory, as outlined above, clearly demonstrates that the closure policy imposed by successive Israeli governments amounts to a collective punishment of the civilian population, which is illegal under international law.

### **How does international law define 'collective punishment'?**

Collective punishment is defined under international law as the use of sanctions or penalties against a civilian population, usually by a military or occupying force, as a result of offences they have not personally committed. This is usually done in the hope of encouraging subjugation or curbing attacks, but is aimed at the civilian population at large rather than individual perpetrators.<sup>10</sup>

In the context of Gaza, it should be reaffirmed that Israel remains an occupying power under international law. As explained by Gisha - Legal Centre for Freedom of Movement:

*"Israel continues to control Gaza through substantial control of Gaza's land crossings, total control of Gaza's airspace and territorial waters, control of the Palestinian population registry (including the question, who is a "resident" of Gaza) and control of tax policy and transfer of tax*

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<sup>7</sup> *Gaza: water and sanitation services severely disrupted due to the energy crisis.* UN Office for the Coordination of Humanitarian Affairs, 24 November 2015

<sup>8</sup> Ibid.

<sup>9</sup> *Humanitarian Bulletin: Occupied Palestinian Territory.* UN Office for the Coordination of Humanitarian Affairs, January 2016

<sup>10</sup> *Prosecuting the War Crime of Collective Punishment: Is it Time to Amend the Rome Statute?* Shane Darcy, *Journal of International Criminal Justice* 8 (2010) p.29: Oxford University Press



*revenues. That control rises to the level of "effective control", the test in international law for the existence of a state of occupation.*"<sup>11</sup>

The use of collective punishment by occupying powers against civilians (or 'protected persons') is prohibited under international humanitarian law by Article 33 of the Fourth Geneva Convention, which states:

*"No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited. Pillage is prohibited. Reprisals against protected persons and their property are prohibited."*

The definition of collective punishment in the Fourth Geneva Convention is deliberately broad, referring to "*collective penalties*" and "*all measures of intimidation.*" This would include imposing severe restrictions on the fundamental rights of a civilian population by an occupying power. It follows, as stated above, that Israel's closure of the Gaza Strip is an act of collective punishment and therefore is illegal under international law.

Collective punishment undermines basic principles of law, such as individual responsibility for criminal acts and that the innocent are not punished for the crimes of the guilty. It is perhaps best summarised by the International Committee of the Red Cross's Commentary on the Geneva Convention, which states that collective punishment is "*opposed to all principles based on humanity and justice.*"<sup>12</sup>

### **Why should it be classified as a 'closure' rather than a 'blockade'?**

The closure of Gaza is often described as a 'blockade'. This term, however, does not appropriately describe the illegal imposition of collective punishment on the civilian population on Gaza.

Under international law, a blockade is the prevention of the passage of supplies or military forces during a time of war, and is an act of war. The purpose is to deny the enemy use of their personnel, weapons or of military aid,<sup>13</sup> with the aim of compelling the enemy force to surrender.<sup>14</sup>

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11 *Gaza Closure Defined: Position Paper on the International Law Definition of Israeli Restrictions on Movement in and out of the Gaza Strip*. Gisha - Legal Center for Freedom of Movement, December 2008

12 Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949

13 *Max Planck Encyclopaedia of Public International Law: Blockade: Definition and Distinction from Other Concepts* Wolff Hentschel von Heinegg, October 2015: Oxford University Press

14 *The Use of Force Against Third Party Neutrals to Enforce Economic Sanctions Against a Belligerent* Lieutenant Todd A. Wynkoop, JAGC, USN, 42 Naval L. Rev. 91, 1995 p.103.



In contrast, the illegal closure of Gaza is imposed upon civilians, specifically targeting civilian movement and civilian goods. The illegal closure prevents or severely restricts the passage of basic humanitarian goods, such as foodstuffs and construction supplies, which are essential to ensuring access to fundamental rights, and prohibits civilians from entering and exiting the Gaza Strip, so they are effectively locked in the territory.

In addition, rather than being imposed during times of war, the illegal closure of Gaza has been in force unceasingly since 2007, including in times of ceasefire. It was not imposed as a reaction to military aggression, but rather as a response to Hamas gaining internal control within the Gaza Strip.

The illegal closure of Gaza implemented by successive Israeli governments over the last decade is not an act against military forces, but against the entire population. It is not restricted to debilitating military supplies during wartime, but serves to debilitate civilian access to basic needs at all times. As such, and as clearly and powerfully articulated by Gisha – Legal Center for Freedom of Movement:

“The closure of Gaza is neither a siege, nor a blockade, nor an economic sanction – it is an illegal act of collective punishment and stands in violation of both international and Israeli law.”

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[If this Q&A was of interest, please do now read our [Legal Q&A on the Gaza Reconstruction Mechanism](#), which refers to a significant confidential legal opinion that articulates its fundamental incompatibility with international law, and how it serves to perpetuate rather than challenge the prolonged illegal closure of Gaza.]