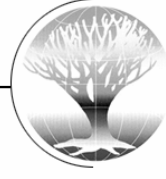


الشبكة الأوروبية المتوسطية لحقوق الإنسان
Réseau euro-méditerranéen des droits de l'Homme
Euro-Mediterranean Human Rights Network



“Disengagement” With Effective Control

Report from a Mission to Occupied Territories

EMHRN October 2005

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EXECUTIVE SUMMARY

The EMHRN mission to the Gaza Strip, Jerusalem, the West Bank and Israel was commissioned to evaluate the situation in the Gaza Strip post the Israeli “disengagement”. The mission team had extensive discussions with representatives from political parties, the Palestinian Authority, the civil society (both Palestinian and Israeli NGOs) and the business community. The mission period was between 3 and 10 October 2005.

The Israeli military and civil pullout from the Gaza Strip after 38 years has improved the ability of Gazans to move freely inside the Gaza Strip which was impossible to a large extent over the past years. The pullout, the regained ability to access all parts of the Gaza Strip, as well as the regained housing and farming areas have been perceived as positive elements in the Israeli-Palestinian relations.

Nevertheless, the situation in the Gaza Strip is labelled by a continued extensive Israeli control over the population and their daily life. Israel is able to control access to and passage to and from the Gaza Strip, Israel exercises complete military control over the Strip and is able to stage attacks at any time and on all locations inside the strip, and Israel can assume physical control of any part of the Strip at any time.

Israel exercises complete control over all traffic between the Gaza Strip and the occupied and annexed territories in the West Bank and Jerusalem. So far any passage between the strip and the West bank and Jerusalem has been blocked by Israel.

Furthermore, Israel exercises complete control over the import and export of all kinds of goods and services to and from the strip. Israel exercises control over and blocks all air traffic to and from the Gaza Strip and exercises control over the access to the sea including fishery. While the access from the sea is blocked by Israel permanently, Palestinian fishery is blocked by Israel from time to time or limited to a tiny area close to the shore.

In conclusion from the observed situation in the Gaza Strip and the Israeli policy this mission emphasises the unilateral character of the “disengagement”. Although the accomplishment of the “disengagement” seems to be aimed at meeting the long standing Palestinian and international demand to end the occupation of the Gaza Strip, it should not be regarded as a part of a just and peaceful solution to the Israeli/Palestinian conflict. In fact it should be regarded as a tactical redeployment of power to facilitate the Israeli occupation of the West Bank and East Jerusalem¹.

The mission team still regards Israel as the occupying power of the Gaza Strip. As shown in the report, the elements activating the application of the law of occupation remain and therefore occupation remains. As such Israel has to apply policies in coherence with international law including international human rights law and international humanitarian law, especially the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949.

¹ ¹ For the extension of settlements in West Bank including East Jerusalem see: B'Tselem, Bimkom: *Under the Guise of Security. Outing the Separation Barrier to Enable the Expansion of Israeli Settlements in the West Bank*. December 2005.

I. THE MISSION

The mission was commissioned by the Euro-Mediterranean Human Rights Network (EMHRN), and co-sponsored by Interchurch Organisation for Development Co-operation (ICCO) in the Netherlands.

The main objective of the mission was to document the human rights situation on the eve of the Israeli “disengagement” from the Gaza Strip.

The mission team consisted of Stefan August Lütgenau, Kreisky Foundation for Human Rights, Austria; Marita Roos, coordinator, EMHRN, Denmark; and Per Stadig, lawyer, Sweden.

During the mission (3-10 October 2005) the team visited the Gaza Strip, Jerusalem and the West Bank.

The mission team toured the entire Gaza Strip, visiting the Rafah Crossing facilities, Philadephi route², the “Swedish village”, Khan Yunis, Tall as Sultān, Rafah, Rafah Yam, Umm Jarrah, Gaza International Airport, the border triangle near Kerem Shalom, Gaza City, Dugit, Nisanit, Beit Hānūn, Jabālāyā as well as the demolished settlements of Qatif, Ganne Tal, Qatif, Newe Deqalim, Bedolah, Nezer Hazzani and New Nisanit.

In Gaza the team had talks with human rights organisations, representatives of civil society, the business society, the judiciary, Palestinian Authority officials and opposition party representatives. Among others the team met with EMHRN members Palestinian Centre for Human Rights (PCHR) in Gaza and Al-Mezan Center for Human Rights. The team also met with the Gaza Community Mental Health Programme. The team is most thankful to PCHR and Raji Sourani for the organisational support in Gaza.

In Jerusalem and the West Bank the team had meetings and discussions with leading human rights organisations: B'Tselem, Public Committee against Torture in Israel, Al-Haq and HaMoked.

² The strip of land along the border between Egypt and the Gaza Strip.

II. LEGAL FRAMEWORK OF THE OCCUPIED GAZA STRIP, EAST JERUSALEM AND THE WEST BANK

This report regards the international legal framework, formed by international law, including international human rights law, international humanitarian law, UN resolutions and partly Israeli-Palestinian agreements as the applicable legal basis for the Israeli occupation of the Gaza Strip, East Jerusalem and the West Bank.³

Any action of either side of the conflict, as well as of the international community must not be in conflict with this legal framework.

Foreign military occupations are governed mostly by the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949, and the 1907 Hague Convention with its annexed Regulations, internationally regarded as international customary law and therefore binding on all states.

In terms of defining what constitutes occupation and end of occupation, this report refers to the provisions of the Hague Regulations of 1907, as well as well as the Fourth Geneva Convention. Article 42 of the Hague Regulations states: "Territory is considered occupied when it is actually placed under the authority of a hostile army." In other words, a territory is occupied when foreign troops control it without the consent of the local authorities.

The test under international law for whether a land is occupied is "effective control". "The test is not *per se* the military presence of the occupying forces in all areas of the territory, but the extent to which the Occupying Power, through its military presence, is exerting effective control over the territory and limiting the right of self-determination of the occupied population."⁴ The conclusion of this mission is that Israel exerts such effective control over the Gaza Strip, and as the elements that activate the application of the law of occupation remain the occupation remains⁵.

III. THE ISRAELI "DISENGAGEMENT" FROM THE GAZA STRIP

In fall 2003 Israeli Prime Minister Ariel Sharon announced his intention to unilaterally withdraw Israeli military forces and to evacuate all Israeli settlements from the Gaza Strip and four minor settlements in the northern section of the West Bank (Samaria). The plan was adopted by the Israeli government and enacted in August 2005.

The unilateral design of the plan is *a key feature*, excluding the Palestinian Authority (PA) completely from decision making. Deputy Prime Minister and likewise Minister of Information, Nabeel Shaath, confirmed that there was no agreement what so ever regarding the "disengagement". However, the PA accepted the destruction of the settlement houses as they did not fit the PA's housing planning (being too large and too expensive in their construction)⁶. The strict unilateral character of the plan undermined mutual understanding and was not designed as a confidence building means. Certain unilateral Israeli decisions, such as leaving behind synagogues more or less intact caused further frictions with the Palestinian side.

³ This legal framework is also applicable for the Israeli occupation of the Syrian Golan Heights.

⁴ International Humanitarian Law Research Institute: Legal Aspects of Israel's Disengagement Plan under International Humanitarian Law (IHL), <http://www.ihlresearch.org/opt/feature.php?a=55>.

⁵ For further legal discussions, please see the 2005 assessment report on the Israeli "Disengagement" Plan (IDP), prepared by ICCO and Kerkinactie (The Netherlands). The assessment is available upon request (please e-mail Ms. Mieke Zagt at: mieke.zagt@icco.nl).

⁶ Meetings with General Coordinator of the technical team related to the "disengagement", Mohammed al-Samhuri, 5 October 2005 and Deputy Prime Minister and likewise Minister of Information, Nabeel Shaath, 6 October 2005.

While the plan was welcomed by the international community (EU, UN, USA)⁷ as a restart of the Road Map⁸, the Palestinian Authority welcomed in general any military withdrawal from the territories, but demanded close cooperation and negotiations with the Israeli side to prepare for the necessary accompanying measures. At the same time the PA demanded the withdrawal from the Gaza Strip to be only the first step of a complete withdrawal of all Israeli forces and settlers from the occupied Palestinian territories (OPT).

A large portion of politicians, civil society representatives in the OPT and Israel and the public in the OPT was suspicious and partly objected to the plan, stating that the plan aimed at "bypassing" past international agreements.⁹ They instead called for a complete withdrawal from all of the OPT. This fear was steamed up by the public statement of a senior Israeli decision maker:

"The significance of the "disengagement" plan is the freezing of the peace process... Effectively, this whole package called the Palestinian state has been removed indefinitely from our agenda. And when you freeze that process, you prevent the establishment of a Palestinian state, and you prevent a discussion on the refugees, the borders and Jerusalem. Effectively, this whole package called the Palestinian state, with all that it entails, has been removed indefinitely from our agenda. And all this with authority and permission. All with a presidential blessing and the ratification of both houses of Congress."¹⁰

The settlements were evacuated and the residential buildings demolished after 15 August. The pullout was completed from the Gaza Strip on 12 September 2005 when the last Israeli soldier left the Strip.

a. Immediate results of the "disengagement"

In the course of the "Disengagement Plan" Israel ended all permanent military presence inside the Gaza Strip, evacuated all Israeli settlers from the Gaza Strip, and demolished most of the settlement infrastructure including buildings, water pipes, and many of the greenhouses. Those greenhouses that were left had been paid for by private international sources. The watering system of those greenhouses was to a large extent destroyed before the evacuation. Synagogues and roads were left behind. Jewish religious sites were destroyed by Palestinian civilians during the first days following the Israeli retreat.

Nevertheless, the Israeli military forces demand a zone where Palestinians are banned from staying or entering, alongside the northern Gaza-Israeli border. That allows almost no movement of civilians into this border strip. This results in a further loss of land for both housing and agriculture in the extremely densely populated Gaza Strip.

The end of the Settlement regime in the Gaza Strip brought back about 55–75 square kilometres of land at the disposition of the Palestinians and the PA. This amount of land available for housing and farming will bring relief to the extremely difficult housing situation in the Gaza Strip. The land has to be

⁷ For the EU: "I welcome the Israeli Prime Minister's proposals for disengagement from Gaza. This represents an opportunity to restart the implementation of the Road Map, as endorsed by the UN Security Council." Javier Solana, High Representative for Common Foreign and Security Policy (CFSP), 10 June 2004. For the UN: "The Secretary-General believes that a successful disengagement should be the first step towards a resumption of the peace process, in accordance with the Road Map," Annan commends Israeli withdrawal from Gaza, <http://www.un.org/apps/news/story.asp?NewsID=15474&Cr=Middle&Cr1=East>, 18 August 2005.

⁸ The "Road Map for Peace" is a plan to resolve the Israeli-Palestinian conflict proposed by a "quartet" of international entities: the United States, the European Union, Russia, and the United Nations. The principles of the plan were first outlined by U.S. President Bush in a speech on 24 June 2002 in which he called for an independent Palestinian state living side by side with the Israeli state in peace. For the full text see: <http://www.state.gov/r/pa/prs/ps/2003/20062.htm>

⁹ For a Palestinian fundamental critique to the plan from a human rights perspective see: *Sharon's Gaza Redeployment plan: A Denial of Human Rights, not an end to occupation*. Palestinian Centre for Human Rights, October 2004. For a fundamental Israeli critique see: B'Tselem and HaMoked, joint report, *One Big Prison. Freedom of Movement to and from the Gaza Strip on the Eve of the "disengagement" Plan*, March 2005. http://www.B'Tselem.org/Download/200503_Gaza_Prison_English.PDF.

¹⁰ Dov Weisglass, senior adviser to Israeli Prime Minister Ariel Sharon. "Top PM aide: Gaza plan aims to freeze the peace process", Interview with Dov Weisglass by Ari Shavit. Haaretz, 6 October 2004.

cleaned from the leftovers of the destroyed structures before it could be used for farming or house construction.

Ending the permanent Israeli military and settler presence in the Gaza Strip has eased the life of Palestinians inside the Gaza Strip with regard to the ability to move internally. The strict Israeli regime of checkpoints, curfews and restriction of movement inside the Gaza Strip ended. Travelling inside the Gaza Strip became possible for the first time in years. Furthermore, the extreme tense situation living side by side hostile Palestinian and Israeli communities and military installations has ended.

Taking this into consideration, as well as the boost given to Palestinians now able to feel more like "lords in their own houses" in the Gaza Strip, the "Disengagement Plan" has had some positive impact on the daily life of the average Gazan.

IV. ELEMENTS OF THE ONGOING ISRAELI “ENGAGEMENT” IN THE GAZA STRIP

a. Military Elements

The Gaza Strip stretches along the shores of the Mediterranean. It is app. 40 km long and between 6 and 12 km wide. Due to the geographical situation the Israeli military forces are able to exercise control over the entire Gaza Strip without having any permanent military presence inside the Gaza Strip. The main reason for the permanent military presence of the occupying Israeli army inside the Gaza Strip was the protection of the Israeli settlements, illegal under international law.

Under the “Disengagement Plan” Israel has claimed the right to use military force against all kinds of targets at any time. “The State of Israel reserves its fundamental right of self-defense, both preventive and reactive, including where necessary the use of force, in respect of threats emanating from the Gaza Strip”.¹¹

Air

This policy was exercised several times so far. Israel has attacked civilian targets with artillery, shelling from tanks, Apache helicopters, air force (F-16 fighters), and unmanned aerial vehicles, so called drones.

Israeli air force attacked civil targets on 24-25 September 2005 causing 27 casualties (4 killed, 23 injured). These attacks were part of the newly resumed policy “targeted” extra-judicial killings.¹²

Since the evacuation of the Israeli settlements the Israeli air force started to break the sonic barrier systematically with jet fighters. This was done several times at both day and night time. According to Eyad El Sarraj of the Gaza Community Mental Health Programme (GCMHP), the Israeli military forces distributed leaflets saying their attacks were retaliations of Hamas’ attacks.

Following reports from experts from the GCMHP, the sudden and unpredictable extreme noise caused widespread and massive damage to the mental health of the population, especially children.¹³ Eyad El Sarraj of GCMHP mentioned panic, stress, deprivation of sleep, and rumours of precipitated birth of a pregnant woman as results of the sonic booms. Israeli human rights organisations called this practice “*an extreme violation of human rights*”, and a means of collective punishment.¹⁴

Sea

Next to the complete control over land and air in the Gaza Strip, the Israeli navy exercises complete control over the shores of the Gaza Strip. Israeli gunboats patrol only a few hundreds meters off-shore. “From Saturday the 24th of September until, Saturday the 8th of October Israeli military Forces did not allow Gaza’s fishermen access to the sea. Consequently the civilian population were completely denied access to Gaza’s most wealthy natural resource. Over the course of the two week period the Israeli navy actively demonstrated their military presence by locating gunboats very close to the shore of the Gaza Strip.”¹⁵

During the mission, Israeli authorities denied Palestinians fishing with sea crafts, resulting in an acute shortage of any kind of fresh seafood, the main protein nutrition to the local population in the entire

¹¹ Addendum A - Revised Disengagement Plan - Main Principles, <http://www.mfa.gov.il/MFA/Peace+Process/Reference+Documents/Revised+“disengagement”+Plan+6-June-2004.htm#C>

¹² See Report by PCHR, *3 Palestinians, including 2 children, killed by IOF*, 10 October 2005. <http://www.pchrgaza.org/files/PressR/English/2005/115-2005.htm>

¹³ Widespread bed-wetting was reported to be one of the immediate results of these sonic attacks. See Gaza Mental Health Programme, *Report to explain and characterize the mental health effects of the Israeli mock air raids on Gaza Strip*, 30 October 2005.

¹⁴ Physicians for Human Rights – Israel, *Petition: Stop the Sonic Booms*, 2 November 2005. <http://www.phr.org.il/phr/article.asp?articleid=270&catid=41&pcat=41&lang=ENG>

¹⁵ See report by PCHR, *Some Relief for Gaza’s Fishermen. After two weeks, of being completely prevented from accessing the sea, Gaza’s fishermen have been allowed back out to the sea, under the watchful eye of Israeli military air and sea crafts.* <http://www.pchrgaza.org/files/PressR/English/2005/116-2005.htm>.

Gaza Strip. It also resulted in a paralysation of the fishing industry, the main source of income for a large number of Gazans in the area. This closure regime was lifted by the Israeli navy on 9 October 2005.

Ground

On 28 December 2005, Israel military forces began the open-ended “Operation Blue Skies”, in an effort to prevent the launching of rockets from within the Gaza Strip at Israeli civilian population centres. With it a 16 square kilometre zone (mostly farmland) inside the northern Gaza Strip was declared off limits to Palestinians. The military declared that any Palestinian in that area is putting his/her life at “severe risk”. Israeli aerial surveillance will ensure that no Palestinians enter the area, and any Palestinian may be fired upon and killed by Israeli aircraft.



Leaflet distributed by Israeli military forces to Gazans, depicting the off-limit zone (Photo: AP)

It is also worth mentioning that the Erez checkpoint, an Israeli checkpoint, is situated on Palestinian land, inside the Gaza Strip.

By these means (air, sea and ground) the Israeli military has the ability to continuously – and at any time – exercise complete military control over the Gaza Strip.

b. Non-military Elements

Even after the “disengagement” Israel, according to several sources, keeps control over the civil registration of all Palestinians living in Gaza. Palestinians in Gaza have to be registered with the civil administration to be able to leave or enter Gaza. Israel remains in control of all Palestinians living in Gaza in this aspect even after the “disengagement”.

c. Israeli Regime over the Borders of the Gaza Strip

The Gaza Strip is connected to the outside world via:

- the Gaza International Airport
- the Beit Hānūn - Erez Crossing to Israel for passage of passengers
- the Al Mentar-Karni commercial crossing to Israel
- the Rafah crossing for passengers and goods to Egypt

Borders to Israel

The **Gaza International Airport**'s runways were destroyed by Israeli military forces in the course of the second Intifada. The airport remains closed by Israeli order.

There are two international border crossings with Israel for Palestinian passengers and goods. The **Beit Hānūn – Erez crossing** (for passengers) in the north and the Al Mentar-Karni commercial

crossing between Al Qubbah and Nahal Oz. Both crossings were completely closed during and immediately after the Israeli pullout. As the Beit Hānūn - Erez was reopened for UN personnel, diplomatic personnel and internationals the crossing remained closed for Palestinians. No entry into Israel, no access to the next international airport in Tel Aviv, no passage to Jerusalem or the West Bank was allowed by the Israeli border regime.

The **Al Mentar-Karni commercial crossing** is the most important gate for import and export. All goods to and from the Gaza Strip via Israeli ports have to pass the Israeli border regime at Karni. All goods transported between the Gaza Strip and the West Bank have to pass this crossing as well.

Israel has since its “disengagement” repeatedly closed the commercial crossing to the Gaza Strip. This has caused a complete standstill of import and export of all kinds of goods including food, medical and pharmaceutical goods, which has resulted in a shortage of medicine.

Furthermore, as reported by the Israeli organisation Physicians for Human Rights “hundreds of patients who cannot receive treatment in the Gaza Strip are trapped in the area, waiting for the gates to open. The closure imposed on the Gaza Strip by Israel since the beginning of the disengagement plan prevents entry into Israel or passage through Israel in order to reach the West Bank and East Jerusalem. The border with Egypt is also closed until further notice. It was open for about a day and then closed again and it is unclear when the crossing will reopen. Complaints received by Physicians for Human Rights – Israel indicate that, given these circumstances, hundreds of patients have been left without treatment.”¹⁶

By closing all crossings and having destroyed the international airport’s runway, the Gaza Strip was completely sealed off by Israel. As closure and opening of the crossing with Israel is an Israeli unilateral measure, a complete closure of the Gaza Strip, including a complete cut off of all kinds of import and export lets Israel exert effective control over the Gazans and the Gaza Strip.

Border to Egypt

The **Rafah crossing** is the only gateway for Gazans to the outside world not connected to Israel.¹⁷ In the course of the Israeli pullout and for weeks following the pullout, the Rafah crossing, the only gateway to and from the Gaza Strip not connected with Israeli territory was completely closed.¹⁸

Following media information, Israel and Egypt reached a bilateral understanding with regard to the Israeli “disengagement” from Gaza. The contents of this understanding or agreement were never published.¹⁹ One element of this agreement, or bilateral understanding, was that the Rafah crossing will not be opened and/or operated without Israeli consensus. Following this understanding the Rafah crossing remained closed and Israel was able to exercise effective control over the Rafah crossing without any physical military presence on the spot at all.

The ongoing closure of the crossing to Egypt caused manifold hardships to the Palestinian population.²⁰

¹⁶ Physicians for Human Rights – Israel. Report, *Gaza after Disengagement - Patients pay the Price*, 26 September 2005. <http://www.phr.org.il/phr/article.asp?articleid=269&catid=41&pcat=41&lang=ENG>

¹⁷ For a general analysis of the importance of the Rafah crossing and the consequences of its closure see: Al-Mezan, *A Special Report on: Rafah Crossing – Gaza’s only link to the outside world*. http://www.mezan.org/site_en/resource_center/mezan_publications/detail.php?id=125

¹⁸ Israel closed the Rafah crossing on 7 September, and reopened it partially for one day on 23 September and on 3, 11-12, 23-24 and 30 October (see

http://www.humanitarianinfo.org/opt/docs/UN/OCHA/ochaSR_GazaAccess_Oct05.pdf and

http://www.humanitarianinfo.org/opt/docs/UN/OCHA/ochaSR_GazaAccess_Sep05.pdf

¹⁹ Physicians for Human Rights – Israel demanded that Israel publish the text of the agreement with Egypt regarding passage from the Gaza Strip to Egypt and from Egypt to the Gaza Strip, and should disclose the extent to which it will influence free passage via this border. Ibid.

²⁰ See: B’Tselem and HaMoked, joint report, *One Big Prison. Chapter “Rafah Crossing and the prevention of travel abroad”*. op. cit.

V. EFFECTS OF RESTRICTIONS OF FREEDOM OF MOVEMENT

a. Movement Within the Gaza Strip

Freedom of movement inside the Gaza Strip has increased significantly. For the first time since 1967, Palestinians inside the Gaza Strip can move without direct physical control by the occupation power. However, airborne military action by Israel on civilians inside the Gaza Strip, known as “targeted killings” have proven that Israel even from outside the Gaza Strip is able to control the movement of single suspected individuals.²¹

Movement close to the Israeli border has been rapidly restricted by the Israeli military through direct assaults on Palestinian civilians including children.²²

b. Movement between the Gaza Strip, Jerusalem and the West Bank

Freedom of movement has for a long time been a key issue in the Occupied Territories. With the Israeli “disengagement” from the Gaza Strip, freedom of movement is more than ever at stake. Issam Younis, General Director of Al Mezan Centre for Human Rights, has described the main manifestation of the “disengagement” to be the restriction of movement.²³ Whereas restricted movement was sporadic before the “disengagement”, during the second Intifada, movement is now completely restricted outside the Gaza Strip.²⁴

With both passenger crossings closed (Rafah and Beit Hānūn-Erez crossing), Palestinians found themselves trapped inside the Gaza Strip. As a result, they were cut off from all kinds of political, social, economic and cultural activities and services outside the Gaza Strip. Judge Zuhair Sourani said that he in the post “disengagement” is depending on telephone and fax to pursue his work as a judge, as he no longer is allowed to leave Gaza.²⁵

Many Palestinians suffering from diseases (such as catheterisation and heart operations, burns, paediatric cardiology and neurosurgery) were trapped inside Gaza and prevented from proper, often life saving treatment.²⁶

Palestinians who had been able to travel and leave the Gaza Strip prior to the closure of the Rafah crossing were prevented from re-entering the Gaza Strip and stuck outside Rafah under inhumane conditions for weeks. Occasional opening of the Rafah crossing for some hours only allowed few serious cases to pass the border.

As opening and closure of the Rafah crossing was depending on Israeli agreement, the possibility of passing Rafah was unpredictable for Palestinians. This uncertainty prevented most of the Palestinians obliged or willing to travel from leaving through Rafah, in order to avoid the risk of being refrained from returning to their families, work and homes.

The complete restriction of movement also affected the Palestinian business community, a sector which to a certain extent is dependent on international donors. The restrictions of movement have made it extremely hard to have any direct, sufficient contact with donors, as international donors are either not allowed to enter the Strip, or hesitant to enter due to the security situation.²⁷

²¹ See for example press releases by PCHR, *2 Palestinians Killed, 24 Injured and a Number of Civilian Facilities Destroyed in 9 Israeli Aerial Attacks on the Gaza Strip*, 25 September 2005, <http://www.pchrgaza.org/files/PressR/English/2005/108-2005.htm>; and *Aerial Attacks against Palestinian Activists and Civilian Property and a Total Siege Imposed on the Gaza Strip*, 26 September 2005, <http://www.pchrgaza.org/files/PressR/English/2005/109-2005.htm>; by Al Mezan, *IOF Kill Eight Palestinians, and Injure Nineteen Others*, 30 October 2005, http://www.mezan.org/site_en/press_room/press_detail.php?id=378.

²² See Report by PCHR, *3 Palestinians, including 2 children, Killed by IOF*, 10 October 2005, <http://www.pchrgaza.org/files/PressR/English/2005/115-2005.htm>

²³ Meeting with Issam Younis, General Director of Al Mezan Centre for Human Rights, 5 October 2005.

²⁴ Meeting with Eyad El Sarray, Chairman of Gaza Community Mental Health Programme, 5 October 2005.

²⁵ Meeting with Zuhair Sourani, Chief Justice of the Palestinian Supreme Court, 6 October 2005.

²⁶ See: *Patients pay the Price*. op. cit.

²⁷ Meeting with Ahed Bseiso, Director General of Home Engineering Unltd., 6 October 2005.

Goods produced in the Gaza Strip have with this situation of highly restricted movement, become more expensive than goods made in Israel. This is due to the costs in relation to transporting merchandise and material over the borders. Palestinians are obliged to pay the Israeli authorities for conducting security checks of their products as they pass the border to Israel.²⁸

Also civil society has been struck by the complete restrictions of movement. The restrictions do not only affect Gazan civil society, but also Palestinian organisations in the West Bank, Palestinian Arab organisations in Israel as well as Jewish Israeli organisations. Being a network, the EMHRN has member organisations in the Gaza Strip, the West Bank and Israel, but they cannot meet all together neither in Israel, nor in the Occupied Palestinian Territories due to the restrictions. Meetings therefore most often take place in Europe. However, attendance to meetings in Europe can be risky as Gazans rarely know in advance if they will be able to attend, as they rely on Israeli authorities to get entry permit to Israel or Egypt to conduct their travel to the meeting venue. Israeli citizens are on the other hand not allowed entry into the OPT.

As the possibilities for physical meetings between civil society organisations (Palestinian-Palestinian and Palestinian-Israeli) is very limited, cooperation relies heavily on the use of Internet, telephone and fax machine. Human rights organisations report that sometimes they are not even able to meet with their local field workers but have to rely solely on other means of communication than the physical meetings.

As with the Gazan business community, Gazan civil society's contact with international donors is very difficult and dependent on the ability and willingness of the donors to reach the Strip.

The situation has become more complicated also for the Palestinians with Israeli ID-cards who live in Gaza and have to renew their ID-cards regularly. After the "disengagement" they are no longer allowed to exit Gaza and enter into Israel in order to renew their ID-cards.

The continued closure and the unpredictable Israeli border regime prevented all kind of family unification as families living close to the Egyptian border are often divided on both sides of the Gaza-Egypt border.

On 15 November Israel and the PA reached an understanding under the mediation of the USA and the EU (for the "Quartet") to open the Gaza Strip crossing for the passage of passengers and goods.²⁹ So far there is no experience whether this agreement will reduce the violations of human rights of the Gazans. Nevertheless the agreement has been criticised for compromising on human rights of the Palestinians.³⁰

"The Gaza Strip and the West Bank are one integral territorial entity. This is recognized in international agreements between the Palestinians and Israel formed under international supervision, including paragraph 31(8) in the [interim Israeli-Palestinian Interim Agreement](#) from 28 September 1995. Israel's High Court of Justice unambiguously proclaimed that Gaza and West Bank form one integral unit ([HCJ 7015/02 Ajouri v. IDF Commander in the West Bank Court Decisions PD 54\(6\) 352](#))."³¹

The freedom of movement between the Gaza Strip and the West Bank is, next to the inalienable rights of the Palestinian people, essential for the political, economic, social and cultural development of the

²⁸ Meeting with Jawdat Khoudary, Chairman of Saqqa / Khoudary Co. Ltd. General Contracting, 6 October 2005.

²⁹ See: Joint Press Availability with European Union High Representative Javier Solana and Quartet Special Envoy Jim Wolfensohn, Secretary Condoleezza Rice, David Citadel Hotel, Jerusalem, 15 November 2005, <http://www.state.gov/secretary/rm/2005/56890.htm>.

For an unauthorized text of the agreement see: *Rafah Crossing Agreement. Text of Rafah agreement and related links*, <http://www.geneva-accord.org/Articles.aspx?docID=990&FolderID=43&lang=en>.

³⁰ PCHR, *Gaza Strip Border Crossings Agreement Reinforces IOF's Control over the Strip's Economy and the Movement of Civilians. Under the new agreement, Israeli Occupation Forces (IOF) will continue their de facto control over the Gaza Strip economy and the movement of its 1.4-million population to the West Bank and the outside world*, <http://www.pchrgaza.org/files/PressR/English/2005/134-2005.htm>

³¹ HaMoked, *HaMoked calls for the immediate renewal of free movement between the West Bank and Gaza Strip*, http://www.HaMoked.org/news_main_en.asp?id=185

Palestinian people. Over the past years, freedom of movement between the Gaza Strip and the West bank has been granted by the occupying power to only a few handpicked individuals carrying a special Israeli permission. Even to this very limited group of people, mostly high ranking politicians and a few members of the business community, passage has been far from “free”. Furthermore, passage was at constant risk of being delayed or denied without given reason.

Israel’s right to protect itself against armed attacks from Palestinians has been misused to ban almost any movement between the Gaza Strip and the West Bank. This regime has contributed to what was called a “policy of strangulation”.³²

This strangulation resulted in a more or less complete standstill of any economic activity directly or indirectly related to the outside world including the Palestinian West Bank and Jerusalem. The pauperising effect of the Israeli closure of the Gaza Strip (and the West Bank) has time and again been emphasised by the World Bank.³³

At the same time the World Bank joined the fundamental critique of the “Disengagement Plan” from the concerned Israeli and Palestinian society from an economic perspective.³⁴

“However, the Disengagement Plan will have limited impact on the Palestinian economy because it proposes only a limited easing of closures. What is critically lacking is that the Plan does not envisage any change in external closures.”³⁵

The World Bank demanded a “Disengagement Plus” focusing on the Achilles heel of the Palestinian economy movement and trade facilitation.³⁶

The above mentioned interim agreement of 1995 between Israel and the PA aimed at easing the passage between Gaza and the West Bank but remains un-respected.

“Israel and the Palestinians will upgrade and expand other crossings for people and cargo between Israel, Gaza and the West Bank. This is especially important now because Israel has committed itself to allow the urgent export of this season’s agricultural produce from Gaza. (...) Third, Palestinians will be able to move between Gaza and the West Bank; specifically, bus convoys are to begin about a month from now and truck convoys are to start a month after that.”³⁷

A durable, long term and permanent solution to the problem can only be obtained, when the illegal Israeli occupation of the Palestinian territories ends.

³² B’Tselem and HaMoked, joint report, *One Big Prison*. Op. cit.

³³ See World Bank reports, *Poverty in the West Bank and Gaza. After Three Years of Economic Crisis* Washington, D.C. November 2004; and *Four Years – Intifada, Closures and Palestinian Economic Crisis. An Assessment*. Washington, D.C. October 2004.

³⁴ World Bank, *Disengagement, The Palestinian Economy and the Settlements*, Washington, D.C. June 2004.

³⁵ *Four Years – Intifada, Closures and Palestinian Economic Crisis. An Assessment*. p. 85, op. cit.

³⁶ *Disengagement, The Palestinian Economy and the Settlements*. pp.8, op. cit.

³⁷ See footnote 26.

VI. INTERNAL SECURITY

Following the Israeli pullout, the Gaza Strip has witnessed an extreme increase of violent clashes between political fractions of the Fatah party as well as between several political parties and groups.

This internal security situation is not a direct effect of the Israeli “disengagement” from the Gaza Strip. This was in line with the general opinion of people met during the mission. However, the violent situation is so crucial that one can not avoid mentioning it in a report on the situation in the Gaza Strip.

The spread of weapons due to the Israeli military and settler presence coupled with the Palestinian Authority’s mismanagement and Israeli unilateralism caused the growth of insecurity after the “disengagement”. This problem should have been prepared for in advance of the “disengagement”.

The mission team heard several persons blaming the current hazardous situation on the PA for being without control, and for being a weak and corrupt authority.

Nabeel Shaath, PA representative, blamed the lack of control on the fact that the PA has not been allowed the necessary power control resources, and yet has been burdened with the task of taking care of the destroyed infrastructure in the post “disengagement”.³⁸

Next to this, a dangerous amalgamate of political violence, abuse of political power and criminal actions have been labelling daily life in the Gaza Strip: attacks on the Palestinian Central Election Commission in Rafah,³⁹ a board meeting of Al-Azhar University in Gaza City⁴⁰, a number of kidnappings of foreigners⁴¹, violent clashes between Hamas and the police, killing 43 people⁴², to list only a few alarming signs of deteriorating internal security in the Gaza Strip.

Al-Mezan regards this development as a “degeneration of the state of insecurity and spate of violence against properties and institutions”⁴³ and PCHR expresses its deep concern over a continued deterioration of the internal security.⁴⁴

This continued lack of internal security and undermining of accountability will have a paralysing effect on the political culture, rule of law, respect for democracy and for the economic, social and cultural life of the Gaza population.

The above mentioned deteriorated conditions of internal security have limited the freedom of movement to a certain degree, at least for some people who fear to be targeted by one or the other armed fractions.⁴⁵

One issue that, among others, the human rights organisations have strongly condemned is the numerous kidnappings of internationals in the Gaza Strip. The organisations have in particular criticised the PA’s inability, or unwillingness, to take appropriate actions against such criminal acts.

³⁸ Meeting with Nabeel Shaath, 6 October 2005.

³⁹ PCHR: *PCHR Condemns Attack on CEC Office in Rafah*, <http://www.pchrgaza.org/files/PressR/English/2005/132-2005.htm>.

⁴⁰ PCHR: *PCHR Condemns the Attack on Al’Azhar University in Gaza*, <http://www.pchrgaza.org/files/PressR/English/2005/119-2005.htm>.

⁴¹ PCHR: *Kidnappers Must Face Punishment Not Reward*, <http://www.pchrgaza.org/files/PressR/English/2005/96-2005.htm>; *Another Kidnapping as UN Evacuates*, <http://www.pchrgaza.org/files/PressR/English/2005/93-2005.htm>.

⁴² PCHR: *PCHR Condemns Violent Clashes in Gaza*, <http://www.pchrgaza.org/files/PressR/English/2005/112-2005.htm>.

⁴³ Al-Mezan: *Al Mezan Center condemns the violent actions inflicted upon the Mayor and employees of Jabalia Nazla Municipality, and calls upon the PNA to put an immediate end to the state of insecurity*, http://www.mezan.org/site_en/press_room/press_detail.php?id=380.

⁴⁴ PCHR: *Internal Security Situation Continues to Deteriorate*, <http://www.pchrgaza.org/files/PressR/English/2005/89-2005.htm>.

⁴⁵ Meeting with Zuhair Sourani, Chief Justice of the Palestinian Supreme Court, 6 October 2005.

Gaza Community Mental Health Programme has noticed that these internal security problems have caused Gazans mental health consequences, such as increased fear and stress.⁴⁶

⁴⁶ Meeting with Eyad El Sarray, Chairman of Gaza Community Mental Health Programme, 5 October 2005.

VII. CONCLUSIONS

The Israeli pullout from the Gaza Strip, known as the “Disengagement Plan” has brought substantial change to the internal structure of the Gaza Strip. Palestinians in the Gaza Strip have, for the first time since 1967 gained the possibility to move freely inside the Gaza Strip. The extreme tension inside the Gaza Strip between Israeli military forces, Israeli settlers (illegal under international law) and the local population has ended. 55–75 square kilometres of land have been returned to the Palestinian people, a fact of great importance in the most populated area of the world. The illegal regime of Israeli settlements in the Gaza Strip seems to have ended for the foreseeable future.

At the same time, the Gaza Strip and Gazans are subject to frequent airborne Israeli attacks. These actions, the ability to attack, in combination with the active Israeli policy of strangulation, is designed to maintain complete control over the daily life of the Palestinian political, economic, cultural and social life inside the Gaza Strip. In fact Israel has control over what and how much Palestinians inside the Gaza Strip eat, drink and wear. Gazans today more than ever rely heavily on international support (political, economic and humanitarian). European and other donors have an important role here.

The fact that Israel remains in control of Palestinians’ movement between Palestinian territories, might lead to further alienation between Palestinians in the Gaza Strip, the West Bank and East Jerusalem. This corresponds with the opinion voiced several times during this mission, that Israel attempts to create two Palestinian lands, one in the West Bank and one in the Gaza Strip, separated from each other.

The freedom of movement of Palestinians in the Gaza Strip, as well as their physical and psychological health is being further threatened by the internal security situation in the Gaza Strip. The extreme increase of violence by different Palestinian political fractions, taking place since the Israeli pullout from Gaza, threatens the life and stability of all Gazans.

Israel has under its right to self-defence claimed its right to take both preventive and reactive actions, including the use of force, in respect of threats coming from the Gaza Strip. Israel has already proven that its armed forces are willing and capable of exerting effective control over the entire Gaza Strip, of any movement to and from the Gaza Strip as well as over the movement of single individuals. Israel has proven its capability to strike at any time, anywhere in the Gaza Strip. Therefore Israel retains its complete and effective military control over the Gaza Strip and its population even without any permanent military presence inside the Strip. The geographical character of the Gaza Strip and its very small size limit the Israeli efforts needed to maintain Israeli military control over territory and population.

Based on the presentations above, this report emphasises the fact that despite the “Disengagement Plan”, Israel can – and still does – exert control in the political, economic, cultural and social life inside the Gaza Strip. That includes the use of military force. The conclusion drawn is that Israel remains an occupying power over the OPT, including the Gaza Strip. The conclusion that Israel remains the occupier of Gaza also corresponds with the perception of the people met during this mission.

Israeli engagement in the Gaza Strip as an occupying power will persist until Israel relinquishes its illegal policy of occupation of the Palestinian territories completely. For the time being, Israel cannot be regarded as anything else than an occupying power in the Gaza Strip, under the Fourth Geneva Convention and international humanitarian law. In addition to the rules found in international humanitarian law, the occupying power must respect human rights law and national law.

VIII. RECOMMENDATIONS

Based on the discussions and results presented in this mission report, the EMHRN makes the following recommendations, in immediate, short-term and long-term aspects.

Immediate

- Israel must immediately end its military attacks on occupied Palestinian territories, which includes the Gaza Strip, the West Bank and East Jerusalem.
- Israel must immediately provide freedom of movement to Palestinians living under its occupation.
- The Palestinian Authority must immediately seek to retain control over the deteriorated security situation in the Gaza Strip, and to ensure that proper investigations are undertaken in criminal cases.
- Attacks on civilians, Palestinians and Israelis, cannot be justified by any means, wherever and for whatever reason they take place. They are contrary to the right to life – the most basic human rights value. The targeting of civilians can never be ignored.

Short-term

- Israel should end its occupation of all Palestinian territories.
- All parties must at all time pay respect for international law, including international human rights law and international humanitarian law. Any action of either side of the conflict, as well as of the international community must not be in conflict with this legal framework.
- the EU (and other donors to the PA) should demand reimbursement from Israel for all additional costs incurred on the provision of humanitarian relief deliveries as a consequence of access and mobility restrictions imposed unlawfully by Israel's military authorities.
- High contracting parties of the Fourth Geneva Convention to take on their responsibilities.

Long-term

- Both Israel and the Palestinian Authority should promote, protect and respect all human rights; consolidate democracy; and strengthen the rule of law.
- Both Israeli and Palestinian civil society organisations should be consulted on steps taken in any peace initiative.

ANNEX

List of people met

Raji Sourani, Director General, Palestinian Centre for Human Rights, Gaza Strip.

Eyad El Sarraj, Chairman, Gaza Community Mental health Programme, Gaza Strip.

Mohammed al-Samhuri, General Coordinator of the technical team related to the “disengagement”, Palestinian Authority.

Issam Younis, General Director, Al Mezan Centre for Human Rights, Gaza Strip.

Zuheir Sourani, Chief Justice, High Court Chief, Gaza Strip.

Nabeel Shaath, former Deputy Prime Minister, and Minister of Information, Palestinian Authority.

Ahed Bseiso, Director General, Home Engineering Unltd., Gaza Strip.

Jawdat Khoudary, Chairman, Saqqa & Khoudary Co. Ltd., Gaza Strip.

Khalid al-Battish, spokesperson, Islamic Jihad, Gaza Strip.

Mushir al-Masri, Hamas, Gaza Strip.

Dalia Kerstin, Executive Director, and Curt Arnson, development responsible, HaMoked – Centre for the defense of the individual, Jerusalem.

Rachel Greenspahn, B'Tselem, Jerusalem.

Orah Maggen, Public Committee Against Torture in Israel, Jerusalem.

Nils Eliasson, Consul General, Consulate General of Sweden, Jerusalem.

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Maps

Map from PCHR showing the Gaza Strip and its governorates:

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Map from PCHR showing the Gaza Strip and checkpoints and crossings in 2003:

<http://www.pchrgaza.org/images/2003/gaza%20checkpoint%20after%20road%20map.jpg>