

Al Mezan Centre for Human Rights



Children in the Gaza Strip's Access to Medical Care

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Executive Summary

Children in the Gaza Strip are often unable to obtain adequate medical care because of the four-year Israeli-imposed closure of the border and Israel's complete control over the movement of people and goods. The severe lack of medicines and equipment coupled with the prevention of medical personal to travel to develop their skills and knowledge has created a situation where injured and ill patients often have to seek specialized treatment outside of the Gaza Strip. Israel has an obligation to fulfil and make available the highest standard of health to those in the occupied Palestinian territories (oPt). This duty is clearly outlined in international human rights law (IHRL). Israel is also obliged under international humanitarian law (IHL) to allow access of medical staff and equipment, as well as patients' access to adequate healthcare where it has control over their movement, such as the Gaza Strip.

Children seeking treatment in Israel, the West Bank (including East Jerusalem), or Jordan need a special permit to leave Gaza via Erez Crossing. This permit is issued by the Israeli security authorities and people are never allowed to cross Erez crossing without it. To obtain this permit, patients, including those with life-threatening illnesses, must go through a complex and lengthy bureaucratic process, which often leads to missed hospital appointments putting children's lives at risk.

Many children have been denied permits to access medical treatment because their condition is not considered life-threatening; it only affects their 'quality of life.' Children's relatives who accompany them to hospitals outside the Gaza Strip have also been forced to collaborate and inform on family, friends and neighbours in exchange for a permit. The permit policy and the policies which lead to their denials are not only a violation of IHL and IHRL; they are also a serious breach of medical ethics.

Israel also breaches children's right to access medical care by denying ambulances access to certain areas of the Gaza Strip to treat those in need. Children in or near the Buffer Zone¹ close to the border fence face the constant risk of being hurt by shrapnel from rockets or

¹The Buffer Zone is the Israeli-imposed no-go area of land which extends from the border fence into Gazan territory. The area is formally 300m (leaflets have been dropped by IOF plans telling Palestinians to stay out of this area else they be shot) but Palestinians have been shot at by the IOF up to 1,500 from the border fence in an effort to keep this area off limits from Palestinians.

artillery fire, or being shot at by Israeli military. However, Palestinian ambulances need prior coordination and approval from Israeli military authorities to enter. These delays have resulted in the deaths of many children.

Main Findings of Monitoring

- Al Mezan records show that from January 2008 until the time of writing, four children died due to delays in permit responses which have prevented them from crossing Erez to reach urgent medical treatment.
- From January 2010 to October 2011, a total of 7,542 children applied for a permit to seek medical treatment outside of the Gaza Strip. 14 children's permits applications were denied and 479 permits were delayed, leading to missed appointments.
- From January 2000 until the time of writing 173 children have died as a result of ambulances being unable to reach them in time.

Recommendations

Israel should start taking steps to uphold its obligations under international law and guarantee access to medical care to all children in the oPt. Al Mezan makes the following recommendations to the state of Israel:

- Grant all children ease of access to medical care outside the Gaza Strip without delay or obstacles.
- Allow full and safe access to ambulances which need to reach children in the Buffer Zone.
- Lift the siege on Gaza and allow all necessary medical equipment and drugs in and allow health professionals to leave in order to attend advanced training courses.
- Investigate cases where violations of Israel's obligations under international law have led to loss of life or a deteriorating health condition.

Introduction

The state of medical facilities in the Gaza Strip has deteriorated due to a lack of medicines, medical equipment, and trained medical personnel caused by the more than four year Israeli-imposed siege, preceded by over four decades of Israeli influence on the health sector. This has forced many patients of all ages to seek medical care outside of the Gaza Strip. In order to do this, however, patients, including children, must obtain permits from the Israeli authorities to leave Gaza via Erez Crossing. This process, which is completely controlled by the Israeli security authorities, is lengthy and complex, and children have died because of denials or delays in the procedure. Israel has also prevented Palestinian ambulances from reaching the sick and injured in the Buffer Zone, which has also resulted in the deaths of children. Both of these are complete violations of the right to health, a right which is upheld in both international human rights law (IHRL) and international humanitarian law (IHL).

This factsheet outlines how children's right to access proper medical care is violated due to both the Israeli-imposed siege, bureaucratic procedures, and restriction of ambulance access to children within the Gaza Strip.

International Law on the Right to Health

The right to health is a basic human right as declared in the Universal Declaration of Human Rights, article 25, and upheld by states in article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and article 24 of the UN Convention on the Rights of the Children (UNCRC). Denial of medical treatment also constitutes a form of cruel, inhuman and degrading treatment, a violation of article 16 of the Convention Against Torture (CAT). The right to access medical treatment is also stated in the 4th Geneva Convention, under articles 17, 27, 38, 55 and article 43 of the 4th Hague Convention which is also applicable in the oPt. These international treaties emphasize the right of everyone to enjoy the highest attainable standards of physical and mental health.

Israel ratified the ICESCR in 1991 and is responsible and to be held accountable for guaranteeing the right to health in four areas.¹

- Availability – functioning public healthcare facilities, goods and services have to be available in adequate quantity.

- Accessibility – healthcare facilities, goods, and services have to be accessible to everyone without discrimination. There must be physical accessibility, and economic accessibility (affordability) and access to information too for patients.
- Acceptability – all health facilities, goods, and services must be sensitive to gender and respectful of medical ethics as well as individuals’ and communities’ cultures.
- Quality – health facilities, goods and services must be of a good quality, e.g. skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water and adequate sanitation.

Since Israel has maintained effective control over the Gaza Strip, it remains the responsible party for protecting the rights of the population.² In its advisory opinion on the legal consequences of a wall in the occupied Palestinian territory (oPt), the International Court of Justice (ICJ) said that the ICESCR is applicable in respect of acts done by a state in the exercise of its jurisdiction outside its own territory.³ In the case of the ICESCR, Israel is also “under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities.”⁴

Israel has the obligation to protect the right to health and to take steps towards its full realisation for the population in the oPt. These steps include facilitating, providing and respecting the right to health. Furthermore, equal access to nutrition, safe food and water, adequate sanitation and housing, training for doctors and medical staff are also part of the state's obligations set out in article 12 of the ICESCR. Violations of these obligations arise when the state's actions, policies or laws contravene the standards of article 12 of the ICESCR.⁵

The right to the highest attainable standard of health care and facilities is further cemented in article 24 of the UN CRC as the responsibility of the State.⁶ The ICJ has also stated that the UN CRC is applicable within the oPt.⁷ In addition, UN Security Council Resolution 1612 in 2005 established the Monitoring and Reporting Mechanism (MRM) on Children and Armed Conflict to monitor, document and report on the six gravest violations of the right of children in armed conflicts. The denial of access to healthcare in times of armed conflict has been recognized by the MRM as a grave violation of children’s rights.

Finally, the UN Committee against Torture and the UN Human Rights Committee have both raised concerns of the Israel policy of denying permits for patients to cross Erez to access medical care.⁸

As will be shown below, Israel's policy of denying and delaying access to medical care is in violation of its obligations under international law.

The Bureaucratic Road towards a Permit

The Israeli-imposed closure of the Gaza Strip since 2007 has created a shortage of drugs and medical equipment in its hospitals and clinics. These items cannot enter because they are forbidden or their import is made difficult by Israel. Sporadic electricity cuts and restrictions on fuel and electricity supplies have also put hospitals under huge pressure to maintain the functioning of medical equipment and ability to carry out procedures. Medical professionals cannot leave Gaza for advanced training and therefore lack the skills to do many operations. All of this has created a situation where patients who require specialised treatment have to be transferred to medical facilities outside the Gaza Strip where their treatment is available.⁹

In order to obtain a referral to a hospital outside the Gaza Strip, patients have to be put in contact by their doctor with the Palestinian Referral Abroad Department (RAD), which is responsible for arranging an appointment with a hospital outside the Gaza Strip (usually in Israel, the West Bank, East Jerusalem, or Jordan). After securing an appointment, the RAD can issue a referral abroad request. Once the request has been issued the patient, on the case of the child their parent, then contacts the Palestinian Health District Coordination Office (DCO), which forwards the request for permission to cross into Israel through Erez to the Israeli Health DCO. The Israeli Health DCO passes the request along to the office of the Coordinator of Government Activities in the Territories (COGAT), where the Israeli Security Agency (ISA) evaluates the security risk posed by the patient. This long process is problematic as patients can only apply up to ten days before the hospital appointment and a decision can easily be delayed. If an approval comes back after the hospital date then the process has to restart. Responses are typically communicated 24 hours in advance of the set hospital appointment.

Case Study: Sajeda Fouad Abu l'ttiwi, died on 28 February 2011 awaiting a response from the Israeli authorities on permit to access medical treatment

Sajeda Fouad Abu l'ttiwi was born 4 July 2007. In January 2008 she was diagnosed with meningitis and related health problems and was admitted for treatment to the Shohada Al Aqsa hospital in Deir Al Balah. She was then transferred to Al Nasser Hospital in Gaza City where the doctors advised her parents to seek treatment outside the Gaza Strip.

Her parents contacted the Peres Center for Peace in Israel, who helped make an appointment with the HaShomer Hospital in Israel on 14 February 2011. The Center applied on behalf Sajeda and her mother for a permit to enter Israel through Erez Crossing. Sajeda's father stated that a week before the hospital appointment he received a phone call from the Israeli Security Agency, asking him about Sajeda's medical condition.

The Palestinian official asserted that they sent a request on the 25th of January 2011 with the required documents. However a decision on her permit was delayed making Sajeda miss her first scheduled appointment. Four days later, the Health Coordination Office received a reply from Israeli officials asking for a new hospital appointment to be made. The Palestinian Health Coordination Office said that this typically means an approval is expected.

The Peres Centre for Peace booked a second appointment on the 14 March 2011. However, Sajeda's health deteriorated and on 28 February she was transferred to Kamal Odwan Hospital in Deir Al Balah where she passed away before a response on the permit was received.

Reasons for Permit Delays and Denials

Research by Physicians for Human Rights – Israel (PHR-I) shows that following the imposition of a full siege on the Gaza Strip by Israel, after Hamas came to power in 2007, stricter criteria for permits to cross Erez for medical treatment were enacted on political grounds by Israel. PHR-I's success rate at reversing denied permits for patients crossing at Erez before 2007 was above 75%, but dropped to only 35% in 2009¹⁰ and in 2011 until time of writing, the success rate is only 50%.¹¹ PHR-I also noticed that during this period distinction was being made between life threatening cases and cases affecting quality of life, with higher rejection rates for the latter. Cases affecting quality of life, that is, cases which are not life threatening include patients who stand to lose vision or limbs.¹² The Israeli policy of distinguishing between life-threatening and non-life-threatening cases since the Hamas takeover in 2007 is, in addition to violating Israeli's obligations under international law (as outlined above), a

breach of medical ethics principles. The distinction is politically motivated and part of the policy to pressure the authorities in Gaza through collective punishment of the population.

The ISA can also deny permits on security grounds. In the case of child patients, if their accompanying relative is denied a permit on security grounds (because the individual is deemed a threat to Israel's security, although this decision lacks transparency and can be an entirely arbitrary) another relative must be found. The accompanying relative must be a direct relative; a parent or a grandparent. This can delay or prevent child patients from travelling if their relatives are denied permits because they are believed to be a threat to security by the ISA.

Israel may also interrogate and pressure patients and/or their accompanying relatives at Erez crossing to force them to inform on relatives and neighbours in order to receive a permit. In some cases detentions of patients or their companions at Erez have occurred after the patient has been either granted a permit to cross Erez or has called for an interrogation while their request is pending.¹³

Denial or prioritisation of medical cases on grounds of political reasons has been approved by the Israeli Supreme Court. It has ruled on restrictions on the right of patients seeking medical care outside of the Gaza Strip, even though this is a complete violation of international law.¹⁴

Israel's Record on Permit Approval

The tables below show World Health Organisation data on the number of approved, denied and delayed permit requests given to children in 2010 and 2011.

Table 1: District Liaison Office decision on permit requests to cross Erez (age 0-17) 2011.¹⁵

Patients aged 0-17	Month										Total
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	
Approved	287	297	412	274	392	341	362	235	301	327	3228
Delayed	35	15	12	8	11	28	16	7	7	19	158
Denied	1	0	0	0	1	0	0	0	1	0	3
Total	323	312	424	282	404	369	378	242	309	346	3389

Table 2: District Liaison Office decision on permit requests to cross Erez (age 0-17) 2010.¹⁶

Patients aged 0-17	Month												Total
	January	February	March	April	May	June	July	August	September	October	November	December	
Approved	326	287	307	325	384	390	344	360	213	325	285	275	3821
Delayed	38	37	55	37	26	13	7	9	19	32	21	27	321
Denied	0	0	0	0	1	4	1	4	1	0	0	0	11
Total	364	324	362	362	411	407	352	373	233	357	306	302	4153

Since January 2008 until the time of publication, four children seeking a permit to access medical care outside of the Gaza Strip have died as their requests were delayed.¹⁷

The DCL is responsible for processing applications to enter Israel to access medical facilities in the West Bank, Israel and Jordan. 4% of patients who seek treatment are referred to Egypt, and are often self-funded. The MOH cover and finance 81% of the patients, and NGO's funds 16% of the patients seeking treatment outside of the Gaza Strip.¹⁸

Table 2. Referrals according to hospital date appointment 2011¹⁹

Referral destination		Month										TOTAL
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	
Gaza	Non-MoH	621	447	463	325	389	385	474	357	285	373	4,119
West Bank	MoH and NGOs	70	86	77	111	126	132	135	109	93	142	1,081
East Jerusalem		294	280	345	268	318	302	337	331	332	300	3,107
Egypt		531	185	356	314	448	481	382	328	270	315	3,610
Jordan		22	27	17	16	20	16	21	25	38	50	252
Israel		246	260	312	243	383	276	241	241	241	205	2,527
TOTAL		1,784	1,285	1,570	1,277	1,584	1,592	1,590	1,391	1,223	1,400	14,696

Other Access to Medical Care Violations

Gazan children are also unable to access medical care in Gaza's Buffer Zone (the area of land within Gazan territory from the border fence up to 1,500m where Palestinians risk being shot at by the IOF). The situation here is dangerous and risky because anyone present in the Buffer Zone is at risk of being shot at by the Israeli military. In 2010 the UNICEF-led working group on Children Affected by Armed Conflict (CAAC), to which Al Mezan contributes with documentation, documented 5 cases of children killed in the Buffer Zone.²⁰ Forty boys and four girls were injured in the Buffer Zone area in 2010, with 26 boys stating they had not crossed the 300 metre line.²¹ Children are often sent to collect rubble and scrap metal from

destroyed buildings to recycle into building materials to provide extra income for their families (because of the siege, building materials are prevented from being imported into Gaza).²² However, Palestinian ambulances which need to enter the Buffer Zone to treat anyone, including children injured by Israeli gun fire, are denied access unless they have obtained prior coordination with the Israeli military.² This coordination process can take anything from 30 minutes (sometimes less) to three to four hours. Ambulances requesting coordination during the night will usually not be given clearance to enter until the following morning.²³ The delay in medical treatment and care that ambulance personnel can administer has resulted in the deaths of many children. Since 2000 until the time of writing, Al Mezan has documented the deaths of 173 children because ambulances were restricted by the Israeli military from reaching them.³

² Ambulances must contact the International Committee of the Red Cross (ICRC) or the civil affairs official at the MoH who then coordinates with Israeli military.

³ These incidents have occurred throughout the Gaza Strip, not just in the Buffer Zone.

Affidavit: Mohammed Salman Mubarak As-Swerki

I am 17-years-old and I live in Juhr Ad-Deek (Wadi Gaza) village. Many young guys from the village collect iron and aluminium from the rubbish dump to sell. The rubbish dump is located in the east of the village near the eastern separation fence between Gaza Strip and Israel, to sell it. On Saturday 1 October 2011, I started to collect iron and aluminium too. I used to see many young guys working there. I sometimes saw Israeli soldiers moving between trees behind the separation fence.

On the third day of my work, Monday 3 October 2011, my friends Sa'ed Ali As-Sawarka, 17, Ahmed Fawzi As-Sawarka, 15, and I went to the vicinity of rubbish dump at 6:00. My friends and I started to collect iron and aluminium. We were about 500 metres away from the separation fence. I saw about 20 guys collecting iron. They were working at a place to the west of where we were. My friends and I were closer than the others to the separation fence. We were working as normal. I did not hear any gunfire or any warning to make us leave.

Later that morning, at around 9:00, I heard sound of a bullet. I started to run west to escape. When I ran for about 15 metres, I heard a sound of another bullet. I fell on the ground. My friend Sa'ed stood beside me while my friend Ahmed continued to run. I saw blood on my left thigh. Sa'ed told me that he would go and call an ambulance. I stayed on the ground alone.

Five minutes later, I saw two guys who were working near us, approaching. They picked me up and carried me westwards. I felt sharp pain in my thigh. When we arrived at the paved road, about 1,000m from the separation fence, I saw an ambulance. They put me into the ambulance. The ambulance carried me to the Shifa Hospital. I underwent surgery and the doctors told me that there is a fracture in the thigh bone. I am currently staying in the hospital to receive further medical treatment and to recover.

Conclusion

The right of children in the Gaza Strip to obtain the highest level of health care is routinely violated as matter of official policy by Israel. The inability of Gaza's hospitals to carry out many procedures has forced child patients to seek treatment outside the Gaza Strip. However the long and complex process for obtaining a permit to cross into Israel for medical treatment has, in many cases, worsened many children's conditions and on some occasions led to death. In addition, because of the unilaterally imposed Buffer Zone within Gaza at the border with Israel, children have died because ambulances have not been able to reach them in time. All these deaths could be entirely avoidable if Israel guaranteed proper access to medical care.

Through its policies towards the population of the Gaza Strip, Israel is in complete violation of the ICESCR, the UNCRC, the CAT and the 4th Geneva Convention. The right to health is for everyone and should not be denied in times of conflict to punish a population or in order to apply political pressure to an opposing side.

Recommendations

Israel should start taking steps to uphold its obligations under international law and guarantee access to medical care to all children in the oPt. Al Mezan makes the following recommendations to the state of Israel:

- Grant all children ease of access to medical care outside the Gaza Strip without delay or obstacles.
- Allow full and safe access to ambulances which need to reach children in the Buffer Zone.
- Lift the siege on Gaza and allow all necessary medical equipment and drugs in and allow health professionals to leave in order to attend advanced training courses.
- Investigate cases where violations of Israel's obligations under international law have led to loss of life or a deteriorating health condition.

Endnotes

¹ Committee on ESCR 2000 UN General Comment no. 14 'Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights'. Available on <http://www2.ohchr.org/english/law/crc.htm#art24>

² Physician for Human Rights – Israel 2010 Position Paper 'Israel has pledged to Ease the Closure, What Now? A Situation Report on Obstacles Facing Gaza Residents in Need of Medical Treatment'. Available on http://reliefweb.int/sites/reliefweb.int/files/resources/EC30718EA3DA7CE8C1257758004C4163-Full_Report.pdf

³ International Criminal Court 'Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory' Advisory Opinion of 9 July 2004 <http://www.icj-cij.org/docket/files/131/1671.pdf>

⁴ Ibid.

⁵ Committee on ESCR 2000 UN General Comment no. 14 'Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights'. Available on [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En)

⁶ UN Convention on the Rights of the Child 1989; Office of the Special Representative of the Secretary General for Children and Armed Conflict, 2009 Working Paper no. 1 'Six Grave Violations Against Children During Armed Conflict: The Legal Foundation'. Available on http://www.unesco.org/education/pdf/CHILD_E.PDF and <http://www.un.org/children/conflict/documents/SixGraveViolationspaper.pdf>

⁷ International Criminal Court 'Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory' Advisory Opinion of 9 July 2004 <http://www.icj-cij.org/docket/files/131/1671.pdf>

⁸ UN Committee Against Torture Consideration of Reports Submitted by States Parties under Article 19 of the Convention, CAT/C/ISR/CO/4, 23 June 2009, para. 31; UN Human Rights Committee, List of Issues to be Taken up in Connection with the Consideration of the Third Periodic Report of Israel, 17 November 2009, CCPR/C/ISR/Q/3, para. 19.; Physicians for Human Rights – Israel 2010 'Who Gets to Go? In Violation of Medical Ethics and the Law: Israel's Distinction Between Gaza Patients in Need of Medical Care'. Available on <http://www.mezan.org/upload/10401.pdf>

⁹ Physician for Human Rights – Israel 2010 Position Paper 'Israel has pledged to Ease the Closure, What Now? A Situation Report on Obstacles Facing Gaza Residents in Need of Medical Treatment'. Available on http://reliefweb.int/sites/reliefweb.int/files/resources/EC30718EA3DA7CE8C1257758004C4163-Full_Report.pdf

¹⁰ Physicians for Human Rights – Israel 2010 'Who Gets to Go? In Violation of Medical Ethics and the Law: Israel's Distinction Between Gaza Patients in Need of Medical Care'. Available on <http://www.mezan.org/upload/10401.pdf>

¹¹ Personal communication with PHR-I, October 2011.

¹² Physicians for Human Rights – Israel 2010 'Who Gets to Go? In Violation of Medical Ethics and the Law: Israel's Distinction Between Gaza Patients in Need of Medical Care'. Available on <http://www.mezan.org/upload/10401.pdf>.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ World Health Organization, 2011 'Referral of patients from the Gaza Strip, Monthly report January 2011; February 2011; March 2011; May 2011; June 2011; July 2011; August 2011; September 2011; October 2011'. Available on <http://issuu.com/who-opt/docs>

¹⁶ World Health Organization, 2011, 'Referral of patients from the Gaza Strip, January 2010; February 2010; March 2010; April 2010; May 2010; June 2011; July 2010; August 2010; September 2010; October 2010; November 2010; December 2010'. Available on <http://issuu.com/who-opt/docs>

¹⁷ AL Mezan Database, December 2011.

¹⁸ World Health Organization, 2010, 'Referral of patients from the Gaza Strip, January 2010; February 2010; March 2010; May 2010; June 2011; July 2010'; August 2010; September 2010; October 2010; November 2010; December 2010'. Available on <http://issuu.com/who-opt/docs>

¹⁹ World Health Organisation, 2011, 'Referral of Patients from the Gaza Strip October 2011' http://reliefweb.int/sites/reliefweb.int/files/resources/Full%20Report_340.pdf

²⁰ UNICEF CAAC Bulletin 2010 'Children Affected by Armed Conflict - Israel and the occupied Palestinian territory (oPt)' Annual Review. Available on : http://www.unicef.org/oPt/CAAC_2010_annual_bulletin.pdf

²¹ Ibid

²² Ibid

²³ Interview with AL Mezan fieldworkers, September 2011.