



**Al Mezan Center for Human Rights**

**Fact Sheet:**

**Five Years of Closure:**

**Gaza Patients as Victims of the Referrals System**

**14 June 2012**



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This factsheet serves as an overview of the hardships faced by Gaza patients who seek referral to hospitals outside of the Gaza Strip. Patients are subject to intrusive security procedures, arrest, coercion, and interrogation at the Erez Crossing. Further, their permits for travel may be denied by the Israeli Security Authority (ISA) even after the patients' physicians have recommended they be referred and the hospitals have agreed to treat the patients. Bureaucratic obstacles may delay the granting of travel permits, often leading to the aggravation of medical conditions and even premature fatalities. Child patients are especially impacted by the hardships associated with medical referrals.

**General Facts—May 2009 to April 2011:<sup>1</sup>**

- The ISA rejected 856 applications for permits from patients seeking to cross Erez for medical treatment; most of whom sought treatment in Palestinian hospitals in the West Bank, including Jerusalem.
- 1,902 requests for permits were delayed.
  - Six patients died while waiting for their permits to be issued, including three children and one woman.
- 553 patients were asked to appear at Erez for an interview and/or interrogation by the ISA.
- There were twelve cases of patients or their escorting relatives being arrested at Erez crossing.

**Facts Particular to Children:<sup>2</sup>**

- From January 2008 until December 2011, four children died due to delays in permit responses, which prevented them from crossing Erez to receive 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.
  - Fourteen children's permits applications were denied.
  - 479 permits were delayed, leading to missed appointments at hospitals.

**Relevant International Law and Treaties:**

According to international law, Israel has an obligation to make available the highest attainable standard of health to occupied population. The right to health is guaranteed by article 25 of the Universal Declaration of Human Rights.<sup>3</sup> Further, article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) solidifies this right by declaring that “[t]he States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” and that within this right “[t]he steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for...the creation of conditions which would assure to all medical service and

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<sup>1</sup> “Documentation Report on: Torture and other Forms of Cruel, Inhumane and Degrading Treatment against the Palestinian Population in Gaza Strip by IOF,” Al Mezan Center for Human Rights, reporting period 1 May 2009- 30 April 2011 Gaza, published July 2011 (hereinafter “Torture and other Forms of Cruel, Inhumane and Degrading Treatment”), p 4, *available at*: <http://www.mezan.org/upload/12381.pdf>.

<sup>2</sup> “Children in the Gaza Strip's Access to Medical Care,” Al Mezan Center for Human Rights, December 2011 (hereinafter “Children in the Gaza Strip's Access to Medical Care,”) p 3, *available at*: <http://www.mezan.org/upload/13131.pdf>.

<sup>3</sup> “Universal Declaration of Human Rights,” adopted 10 December 1948 as part A of U.N. General Assembly Resolution 217 (III), *available at* <http://www.un.org/en/documents/udhr/>.



Fact Sheet:

**Five Years of Closure: Gaza Patients as Victims of the Referrals System**

14 June 2012

---

medical attention in the event of sickness.”<sup>4</sup> Additionally, with regard to children, article 24 of the UN Convention on the Rights of the Child (UNCRC) requires that “States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and...shall strive to ensure that no child is deprived of his or her right of access to such health care services.” Denial of medical treatment constitutes a form of cruel, inhumane, and degrading treatment, a violation of article 16 of the Convention Against Torture (CAT).<sup>5</sup>

Additionally, the right to access medical treatment, even during times of conflict, is protected by international humanitarian law, which applies concurrently with international human rights law, with the former *lex specialis*. The right to health is protected in times of conflict and occupation by the Fourth Geneva Convention Relative to the Protection of Civilians in Times of War of 1949 under articles 17, 27, 38, and 55 and the Fourth Hague Convention under article 43.<sup>6</sup> These international treaties emphasize the unalienable right to enjoy the highest attainable standards of health and are applicable in the occupied Palestinian territory (oPt). Cruel, inhumane, and degrading treatment is a violation of CAT as well as the International Covenant on Civil and Political Rights, both ratified by Israel in 1991.<sup>7</sup> With regard to children, the 2005 UN Security Council Resolution 1612 established the Monitoring and Reporting Mechanism (MRM) on Children and Armed Conflict. This body was created to monitor, document, and report on the gravest violations of the rights of children during times of armed conflict. The MRM has recognized that denying children access to healthcare in times of armed conflict is a grave violation of children’s rights.<sup>8</sup>

**Bureaucratic Process and Obstacles:**

In order to receive a referral to a hospital outside of Gaza, a patient’s permit requires coordination between the receiving hospital, the Palestinian Ministry of Health, and the Health Coordination Office (HCO) under the Palestinian Ministry of Civil Affairs’ authority.<sup>9</sup> HCO sends requests to the Israeli District Coordination Office for approval. If denied, the patient can appeal this decision to the Humanitarian Affairs Office, but whether a medical travel permit will be authorized remains within

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<sup>4</sup> International Covenant on Economic, Social, and Cultural Rights: “United Nations — Treaty Series,” adopted 16 December 1966, enforced 3 January 1976, signature at p. 63, no. 14531, at p. 8, *available at*: <http://www2.ohchr.org/english/law/cescr.htm>.

<sup>5</sup> “Children in the Gaza Strip’s Access to Medical Care” at p. 4.

<sup>6</sup> “Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949,” *United Nations Treaty Series*, vol. 75 (1950), treaty no. 973, pp. 287–392, Art. 76, ¶ 1, at p. 336, *available at*: <http://www.icrc.org/ihl.nsf/full/380>; “Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land,” The Hague, 18 October 1907, entered into force: 26 January 1910 *available at*: <http://www.icrc.org/ihl.nsf/full/380>.

<sup>7</sup> “Torture and other Forms of Cruel, Inhumane and Degrading Treatment” at p. 3.

<sup>8</sup> “Children in the Gaza Strip’s Access to Medical Care” at p. 5.

<sup>9</sup> Urgent Appeal to Special Rapporteur Mr. Anand Grover, Al Mezan Center for Human Rights, 3 June 2012 (citing “Monthly Report: Referral of Patients from the Gaza Strip,” World Health Organization, reporting period February 2012, published March 2012, ref: RAD 2, p. 3.



Fact Sheet:

**Five Years of Closure: Gaza Patients as Victims of the Referrals System**

14 June 2012

the jurisdiction of the ISA.<sup>10</sup> The ISA can request an interrogation and, while in ISA custody, patients can be subject to arrest, torture, and blackmail.<sup>11</sup>

Israel, on political grounds, imposed much more strict requirements for permits after Hamas came to power in 2007 in order to further detriment the Gaza population.<sup>12</sup> Israel often denies permits on “security grounds,” and the process of coming to this conclusion lacks transparency and can be entirely arbitrary.<sup>13</sup> Often, in the case of children, this excuse is used to delay medical treatment until a new travel companion can be found to accompany the child patient, and even then, persons who may accompany the child are limited to a parent or grandparent.<sup>14</sup>

When determining whom to grant travel permits, Israel differentiates between ailments that are “life threatening” and those that impact “quality of life.”<sup>15</sup> Israel determines whose injuries and conditions are worth treating and who should adapt to a life marked with poor health or physical handicap. Included in the category of “quality of life,” subject to higher rejection rates, are loss of vision and limbs.<sup>16</sup> This is a violation of medical ethics principles and international humanitarian law, which requires state actors to guarantee the *highest standard* of health.

**Denied Permit—Ali Khear El Asaly and Raed Azzam Al-Mughari**

**Ali Khear El Asaly** is 48-years-old and suffers from severe dorso-lumbar scoliosis, compression of the heart and lungs, dyspnea, severe pain in the spine, and limps when he walks. When his condition deteriorated to a point where he could no longer be treated in Gaza’s Kamal Odwan Hospital, his doctors suggested he seek treatment outside of the Gaza Strip and the Ministry of Health referred him to Makassed Hospital in East Jerusalem. After he missed his initial 11 July 2011 hospital appointment because he was not granted a travel permit within the required time, El Asaly received word from HCO that he was requested for interrogation at the Erez Crossing. He was interrogated by an ISA official and told to reapply for a travel permit and promised that the permit would be granted. After again completing the process from beginning to end, El Asaly’s request was denied and he was not permitted to receive medical treatment abroad. El Asaly remains in Gaza, suffering terrible pain, without treatment.

**Raed Azzam Al-Mughari** was 37-years-old and suffered from hypertension, diabetes mellitus, IHDs, aortic valve stenosis, mitral valve regurgitation, and chest pain upon minimal exertion. His doctors stated that he was in urgent need of cardiac surgery as soon as possible and Al-Mughari was referred to the Specialized Arab Hospital in Nablus, with arrival requested between 18 July 2011 and 28 July 2011. On 18 July, the ISA rejected to permit his travel companion entrance through the Erez Crossing. Al-Mughari decided to travel alone. On 20 July, the ISA requested Al-Mughari for interrogation and, though in very poor health, he obliged. On 21 July, upon inquiry, his family

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> “Children in the Gaza Strip’s Access to Medical Care” at p. 7.

<sup>13</sup> *Id.* at p. 8.

<sup>14</sup> *Id.*

<sup>15</sup> “Torture and other Forms of Cruel, Inhumane and Degrading Treatment” at p. 21.

<sup>16</sup> “Children in the Gaza Strip’s Access to Medical Care” at p. 7.



Fact Sheet:

**Five Years of Closure: Gaza Patients as Victims of the Referrals System**

14 June 2012

received notice of denial despite clear expression of immediate need for surgery. Al-Mughari remained in the intensive care unit of Gaza's Shifa hospital until 25 July when his condition deteriorated and Shifa doctors had no choice but to perform the necessary cardiac surgery themselves in order to save Al-Mughari's life. The surgery began at 12:00PM, 25 July, and at 4:00PM, as his family awaited the end of surgery, they received news of his death.

**Delayed Permit—Shahira Saber Hammad**

Delayed permits can have a fatal impact on patients seeking medical treatment outside of the Gaza Strip, deaths that very easily could have been prevented. In 2011, three patients died before receiving permits to travel through the Erez Crossing to access hospitals they had already coordinated referral to, and since 2008, seventy referral patients are reported to have died before receiving their needed medical care.<sup>17</sup> Oftentimes the hospital the patients are denied access to is less than a two-hour drive from Gaza.

**Shahira Saber Hammad** was sixteen-years-old and suffered from severe dyspnea on effort, severely dilated right atrium and ventricle, moderate to severe tricuspid regurgitation, and a 3.7-centimeter hole in her heart. On 7 February 2012, her family was informed of the seriousness of her condition. Her father wanted to guarantee her the best treatment available and preferred that she be treated outside of the Gaza Strip, where doctors have more expertise on her rare condition. He requested she be transferred to Jordan. After he was denied this opportunity, he arranged on his own to transfer his daughter to Makassed Hospital in East Jerusalem. Hammad was not able to receive the life saving surgery she was in dire need of in time and, after surgery was delayed until 25 March 2012, she died immediately after surgery.

**Arrests and Coercion of Patients—A.N. and Nahedh Adeeb Dwema**

Even after gaining approval to travel, Gazan patients and their travel companions may be subject to interrogation, torture, and coercion at the hands of the ISA at the Erez Crossing.<sup>18</sup> Patients have been arrested and imprisoned within Israel after arriving at the Erez Crossing.<sup>19</sup> Further, patients have been threatened with denial of permission to travel in order to receive life-saving treatment if they do not collaborate with the ISA.<sup>20</sup> This inexcusable level of coercion interferes with the requirement of international law that states guarantee the highest attainable standard of health to all. Additionally, all patients, even those in poor health and feeble physical condition, are forced to walk a kilometer through a concrete and barbed wire corridor at the Erez Crossing and then are subject to strip searches once they reach the Israeli guards.<sup>21</sup>

**A.N.'s** presence was requested at the Erez Crossing by the ISA for an interview in order to facilitate approval for a permit to travel for medical treatment. A.N. arrived for his interview on 27 April 2010 and was then arrested, interrogated, and denied treatment for the duration of his

<sup>17</sup> "Monthly Report: Referral of Patients from the Gaza Strip," World Health Organization, reporting period April 2012, published 22 May 2012, ref: RAD 4, p. 3.

<sup>18</sup> "Torture and other Forms of Cruel, Inhumane and Degrading Treatment" at p. 14- 15.

<sup>19</sup> *Id.* at p. 15.

<sup>20</sup> *Id.* at p. 14- 15.

<sup>21</sup> *Id.* at p. 22.



Fact Sheet:

**Five Years of Closure: Gaza Patients as Victims of the Referrals System**

14 June 2012

detainment, which lasted until 25 May 2010. A.N. found himself in a prison cell in Ashkelon prison, then he was taken to Be'er Sheva District Court and appointed a lawyer. The result of the trial was the extension of his detention for nine additional days. During a nine-hour interrogation at the prison following the court hearing, A.N. was accused of being an arms dealer, having connections to "saboteurs," and participating in armed resistance against Israel. During another interrogation, A.N. suffered severe chest pain and was given an inhaler but not a medical check-up. He was bound to his bed for three consecutive days, unbound only at meal times, and was forced to endure unhygienic conditions including having insects crawl over his body. After four days of detention, he was visited by a doctor who took A.N.'s blood and urine samples. He was then subjected to twelve hours of interrogation everyday for six consecutive days.

After the nine-day extension ended, A.N. was taken back to the courthouse but denied a lawyer. The result of this hearing was that his detention was extended another twelve days. He was interrogated for three consecutive days and strapped to a lie-detecting device for six hours. After serving the remainder of his latest term, A.N. was taken to court for a third time and, again, his detention was extended, this time for six days. After this period, his detention was again extended five more days. He was then interrogated for three of these days for periods up to twenty hours. During these interrogations, A.N. was bound to a chair and faced continuous pain. Finally, after the last extension, charges could not be sustained and A.N. was released.

Nahedh Adeeb Dwema suffered from a urinary tract defect since birth and was in need of surgery that could not be performed in the Gaza Strip. The ISA summoned him for an interview at the Erez Crossing and during this interview, the Israeli military requested information on his brother, cousin, and neighbors. Dwema was told by the Israeli official, "we want you to collect information about people that we care about, then we will allow you to reach the hospital, you will receive medical treatment in Israel, and your life will be better." Dwema refused their offer and reapplied for a medical travel permit. Three days later, he was informed that his permit was denied.

Al Mezan publically denounces the restrictions of movement imposed on Gaza patients, including children. Additionally, Al Mezan implores the international community to take action to immediately lift the closure of Gaza and to abolish and denounce the excessive and arbitrary referral system in place that has been the source of severe human suffering and loss of life in Gaza. Al Mezan calls for the international community to hold the ISA accountable for all their actions that have led to loss of life or limb and practices of torture and cruel, inhumane, and degrading treatment under the present system.